

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-001332

09/17/2015

COMMISSIONER JAMES R. MORROW

CLERK OF THE COURT
S. Stulz
Deputy

RONALD M HORWITZ

JANESSA E KOENIG

v.

MARICOPA COUNTY TREASURER

MARK W WALDRON
MARICOPA COUNTY TREASURER

MINUTE ENTRY

Wells Fargo Bank, N.A., filed its Application for Distribution of Excess Sale Proceeds seeking release of \$11,675.82 to it in accordance with A.R.S. § 33-812. Having determined that there may be a lien superior to that of Wells Fargo, the Court ordered that no action would be taken until after the expiration of 180 days after the complaint was filed in accordance with *PNC Bank v. Cabinetry by Karman, Inc.*, 230 Ariz. 363, 284 P.3d 874 (App. 2012). Minute Entry filed April 2, 2015. August 11, 2015, was the 180th day after the filing of the complaint. No competing applications were filed by that date. On August 12, 2015, Wells Fargo filed a Motion for Summary Disposition of Its Application for Distribution of Excess Sale Proceeds.

A.R.S. § 33-812(J) provides in pertinent part:

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If the court finds that a person other than an applicant or respondent has a superior right to receive the proceeds, the court shall not issue an order on the proceeds until one hundred eighty days from the date the complaint was filed. At any time before the expiration of the one hundred eighty day period, an applicant or respondent may move for a hearing to determine whether the claimed superior right is valid or enforceable and whether the claim is entitled to receive priority over the claim of the applicant or respondent. . . . **If a response is not filed within the one hundred eighty day period by the person found by the court to have a superior right to receive the proceeds, the court shall enter an order in favor of any applicant or respondent entitled to the proceeds.**

(Emphasis added).

After the lapse of the 180 day period, Vineyard Commons Homeowners Association (Vineyard) filed a document on August 26, 2015, entitled Response to Complaint and Petition for Release of Surplus Funds from Trustee's Sale Pursuant to Arizona Revised Statutes Section 33-812. Vineyard provides no explanation in its application as to why it was filed past the 180 day period and no explanation is evident from the record. Jeff (last name illegible) signed on February 20, 2015, for receipt of the mailing of the complaint and notice of deposit of excess sale proceeds to Vineyard Commons Homeowners Association. Exhibit A, Trustee's Affidavit of Service filed March 19, 2015. Vineyard apparently notified its attorney, as its attorney expended 3.9 hours of time on the matter as of April 1, 2015. Exhibit A to *China Doll* Affidavit filed August 26, 2015. Jeff (last name illegible) signed on March 30, 2015, for receipt of the mailing of Wells Fargo's application to Vineyard Commons Homeowners Association. Exhibit A, Wells Fargo Bank, N.A.'s Affidavit of Service of Its Application for Distribution of Excess Sale Proceeds filed June 12, 2015. Vineyard again apparently notified its attorney regarding Wells Fargo's application. Exhibit A to *China Doll* Affidavit filed August 26, 2015 (April 20, 2015, time entry on History Bill). Despite notice, Vineyard did not timely assert a claim in accordance with the statutory procedure set forth in A.R.S. § 33-812.

IT IS ORDERED granting Wells Fargo's Motion for Summary Disposition of Its Application for Distribution of Excess Sale Proceeds.

IT IS FURTHER ORDERED granting Wells Fargo's Application for Distribution of Excess Sale Proceeds seeking release of \$11,675.82, all in accordance with the formal written Order Releasing Excess Sale Proceeds signed by the Court on September 17, 2015 and filed (entered) by the Clerk on September 17, 2015.

IT IS FURTHER ORDERED denying Vineyard Commons homeowners Association's Response to complaint and Petition for Release of Surplus Funds from Trustee's Sale Pursuant to

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Arizona Revised Statutes Section 33-812 as no excess funds remain after the release of funds to the applicant who timely complied with the statutory requirements.