

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-093048

10/06/2006

HON. MARK F. ACETO

CLERK OF THE COURT
M. Brady
Deputy

RECONTRUST COMPANY

JEREMY T BERGSTROM

v.

MARICOPA COUNTY TREASURERS OFFICE

BARRY C BECKER
EARL E BERG
JAMES H HAZLEWOOD
MARICOPA COUNTY TREASURER

MINUTE ENTRY

Applications for release of the remaining excess proceeds in this case have been filed by both David Stahl ("David") and Victoria Stahl ("Victoria"). Following a hearing on October 5, 2006, the Court took this matter under advisement.

Normally, entitlement to funds or future payments can be changed by contract, e.g., assignment, or by Court order. A.R.S. Sect. 33-812 provides that, after claims of junior lienholders have been satisfied, any residual excess proceeds shall be paid to the owner of record at the time of the trustee's sale. The question presented in this case is this: did the legislature intend to create a special rule for excess proceeds which prevents reassignment of the right to excess proceeds through contractual agreement or court order.

In this case, David and Victoria were the owners of record at the time of the trustee's sale. At the time of the sale, David and Victoria were married. Earlier in the life of this case,

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some excess proceeds were released to a lien holder and half of the residual excess proceeds were released to Victoria. Thereafter, a decree of dissolution of marriage was entered by a different division of this Court. Excess proceeds in the amount of \$11,243.62 remain in the custody of the County Treasurer. Through the dissolution decree, the remaining \$11,243.62 were awarded to Victoria. The time for appeal has run and the dissolution decree is binding on both David and Victoria. A technical argument can be made that, since they were married at the time of the trustee's sale, the remaining excess proceeds should be released to both David and Victoria. Another technical argument can be made that the excess proceeds should be released to David. However, neither argument makes any practical sense.

A.R.S. §33-812(A)(5) provides that residual excess proceeds be released to the owner of record at the time of the trustee's sale. Like all statutes, this statute must be applied consistently with the legislative intent. The legislature clearly did not intend to compel absurd results. For example, if a former owner of record has assigned his rights to excess proceeds to another, the excess proceeds should not be distributed to the former owner. Rather, the excess proceeds should be distributed to the assignee. Similarly, when a binding judgment gives the exclusive right to excess proceeds to one of two former owners, the excess proceeds should be distributed to that owner.

It is beyond dispute that a binding judgment has awarded the remaining excess proceeds to Victoria. Under the circumstances,

IT IS ORDERED granting Victoria's application. Further,

IT IS ORDERED denying David's application. Through a separate signed order, the Court will direct that the County Treasurer release the remaining excess proceeds to Victoria.

DATED this 6th day of October, 2006.

/ s / HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT