

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000179-001 DT

05/01/2014

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

VELDA ROSE ESTATES HOME OWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI (001)

EDITH POGGI
4132 N 3RD AVE #2
PHOENIX AZ 85013

JOSEPH I VIGIL
COMM. MORROW
MESA JUSTICE CT-EAST
REMAND DESK-LCA-CCC
MCSO CIVIL DIVISION
111 S 3RD AVE
2ND FLOOR
PHOENIX AZ 85003

MINUTE ENTRY

Lower Court Case No. CC2012-132551.
Comm. Morrow's Case No. TJ 2013-003854.
MCSO File No. C286247.

On April 30, 2014, Defendant-Appellant Edith Poggi (Defendant) filed a Motion for Accelerated Review of Defendant's Appeal To Avoid Irreparable [*sic*] Injury That Will Occur (See Exhibit A) Motion For Stay All Court Orders Pending Appeal Motion For Relief Of Posting Bond. This Motion was faxed to this Court. As of this date, the adverse party, Velda Rose Estates Homeowners' Association, has had no opportunity to respond and has not provided any opposition.

This Court will provisionally grant Defendant's request. This Court grants Defendant's request staying the last day for the redemption of the property. The last day for the redemption of the property at 6429 E. University Drive, Mesa Arizona, 85205, Units 1, 2, 3, and 4 is currently set for Wednesday May 14, 2014, at 5:00 pm. This date is stayed until after this Court has ruled on the procedural motions and/or Defendant's appeal pursuant to the conditions set forth in this Order. In order to minimize any inconvenience to the parties, this Court will also expedite its rulings on the procedural motion and/or appeal in this case.

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In so ruling, this Court notes our Arizona Supreme Court has interpreted the purpose for the redemption statutes. It held:

Whether a statute should be given a strict or equitable interpretation must be decided in accordance with the legislature's intent in enacting that statute. Redemption statutes are remedial in nature and exist for the dual purpose of insuring the property will bring a fair price at a sheriff's sale and that, if the mortgagor does not redeem, his property will be applied to payment of debts in the order of the priority to which his various creditors are entitled. *United States v. MacKenzie*, 510 F.2d 39, 41 (9th Cir. 1975); *Mutual Life Insurance Co. of New York*, 88 Ill.App.3d 952, 955-56, 43 Ill. Dec. 829, 832-33, 410 N.E.2d 962, 965-66 (1980); *Birznieks v. Cooper*, 405 Mich. 319, 330 n.10, 275 N.W.2d 221, 225 n.10 (1979); *Silbernagel v. Goin*, 31 Or. App. 545, 547-48, 570 P.2d 1011-12 (1977). It was not the "intent of the legislature" that the redemption statutes be given the severe application "required in the interpretation of a penal law." *Western Land & Cattle Co. v. National Bank of Arizona*, 29 Ariz. at 58, 239 P. at 302. Accordingly, we hold that in the absence of prejudice to the other parties, substantial compliance with the requirements of §§ 12-1282–12-1289 will be sufficient to effect a redemption.

Matcha v. Wachs, 132 Ariz. 378, 381, 646 P.2d 263, 266 (1982). The Supreme Court continued and held:

However, the establishment of any rule which permits the application of equitable principles invites controversy over what constitutes an equitable result in any particular case. We feel, however, that such a danger, if it be one, is better tolerated than the injustice that can result from the inflexible application of the redemption statutes. As the court stated in *Osborne Hardware Co. v. Colorado Corp.*, 32 Colo. App. 254, 258, 510 P.2d 461, 463 (1973) (quoting *Plute v. Schick*, 101 Colo. 159, 162, 71 P.2d 802, 804 (1937)).

"The purpose of the redemption law is to help creditors recover their just demands, nothing more. Equity has always prevented the redemption laws from being used as 'an instrument of oppression when substantial justice can be done without enforcing them to the letter.' "

See also, *Silbernagel v. Goin*, supra; *United States v. Loosely*, 551 P.2d 506 (Utah 1976); *Mutual Life Insurance Co. of New York v. Chambers*, 88 Ill.App.3d 952, 43 Ill. Dec. 829, 410 N.E.2d 962 (1980); *Hruby v. Steinman*, 374 Ill. 465, 30 N.E.2d 7 (1940); *Mollerup v. Storage Systems International*, 569 P.2d 1122 (Utah 1977); *Gordon Grossman Building Company v. Elliott*, 382 Mich. 596, 171 N.W.2d 441 (1969). These cases support the doctrine that although the right of redemption is a legal right, equitable principles may be utilized to relieve a redeeming lienholder from minor deviations and thus prevent injustice.

Matcha v. Wachs, 132 Ariz. at 381, 646 P.2d at 266. The Arizona Supreme Court also stated:

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The intent and purpose of the statute providing for redemption cannot be violated by an agreement. The object of the redemption statute is to give to the mortgagor time to pay his obligation and avoid the loss of his property. In the case of *Skach v. Sykora*, 6 Ill.2d 215, 127 N.E.2d 453, 52 A.L.R.2d 1320, the court, in discussing the purpose of the redemption period, stated:

‘The purpose of a mortgage foreclosure is to enforce the payment of the mortgagor’s debt. The purpose of the redemption statute is to give the debtor time and opportunity to avoid the loss of his property and to give his other creditors an opportunity to collect their debts from any surplus over the mortgage debt. The statutes are not intended to take the landowner’s property unjustly or for an inadequate consideration. They are not intended to penalize the debtor for his default nor to reward the purchaser by unjust enrichment above the amount of his debt at the expense of the landowner and his other creditors. The statute protects the purchaser to the extent of his bid, costs and interest on his investment. The statute contemplates redemption where the value of the property exceeds the sale price. The purchaser knows this when he makes his bid, whether he is the mortgagee or a stranger, and when he is repaid all that the statute allows upon redemption, that is all he is either legally or equitably entitled to receive. As was said in *Hruby v. Steinman*, 374 Ill. 465, 30 N.E.2d 7, 10, citing *Phillips v. Demoss*, 14 Ill. 410, ‘That he [the purchaser] may be deprived of a deed will not avail him, as his right to the land is no higher or more sacred than to the redemption money, and the statute holds out no inducements for a speculation at a sheriff’s sale, beyond the interest provided for the use of the purchase money.’ These being the purposes of a redemption statute a court of equity would not be justified in attaching a rigidity to its language which carried it beyond that purpose to work inequities.’ 127 N.E.2d at 456.

Elson Dev. Co. v. Arizona Sav. & Loan Ass'n, 99 Ariz. 217, 224-25, 407 P.2d 930, 936 (1965). Because this Court will expedite its ruling on the pending procedural motion and/or appeal, the deviation from the mandatory time lines should only be a minor deviation.

If Plaintiff has any opposition to Defendant’s Motion for Accelerated Review of Defendant’s Appeal To Avoid Irreparable [*sic*] Injury That Will Occur (See Exhibit A) Motion For Stay All Court Orders Pending Appeal Motion For Relief Of Posting Bond, Plaintiff should file with this Court, in writing, an Opposition and this Court will revisit the issue. Should the Plaintiff wish to file an Opposition, Plaintiff should file it with the Clerk of the Maricopa County Superior Court, and **MUST** provide one copy of the filing to this Division.

IT IS ORDERED provisionally staying the expiration of the time to redeem the property—following the sheriff’s sale—until such time as this Court has resolved the procedural motions and/or appeal in this matter.

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IT IS FURTHER ORDERED adopting any of the conditions still extant set by Commissioner Morrow in **TJ2013-003854**.

IT IS FURTHER ORDERED Defendant shall have a five-day period following the expiration of the stay period in which to redeem plus five calendar days to allow for mailing time. Should Defendant elect to redeem, Defendant shall pay (1) the amount for which the property was sold; plus (2) eight per cent; (3) any assessments or taxes which the purchaser has lawfully paid after purchase; and (4) interest on such amount.

IT IS FURTHER ORDERED signing this Minute Entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

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NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.