

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TJ 2013-003854

09/19/2013

COMMISSIONER JAMES R. MORROW

CLERK OF THE COURT
S. Stulz
Deputy

VELDA ROSE ESTATES HOMEOWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI

C ADAM BUCK

KATHY COLE
6429 E UNIVERSITY DR, #1
MESA AZ 85205
JAMES HANLEY
6429 E UNIVERSITY DR
2
MESA AZ 85205
NONI JOHNSON
6429 E UNIVERSITY, #3
MESA AZ 85205
COLETTE M THOMPSON
6429 E UNIVERSITY DR
#4
MESA AZ 85205

MINUTE ENTRY

Judgment Debtor Edith Poggi filed a Motion to Stay Sheriff's Sale in combination with her Rule 60(c) Motion to Set Aside Judgment. On September 18, 2013, the Court stayed the sheriff's sale scheduled to be held on September 19, 2013, conditioned initially on Judgment

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Debtor's posting \$2,500.00 with the Clerk of Court on September 18, 2013. The Court noted that it would issue an order addressing additional security to maintain the stay.

Rule 62(b) provides that "[i]n its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a . . . motion for relief from a judgment or order made pursuant to subdivisions (a) and (c) of Rule 60." Based upon the information provided during the oral argument on September 18, 2013, the Court understands that Judgment Debtor receives \$2,500.00 a month in rent from the property subject to the sheriff's sale. If the property is sold, she would no longer be entitled to receive these monies. If the sale goes forward, there is no assurance that Judgment Creditor would receive any monies from the sale, as Judgment Debtor has asserted that the property is "under water." Allowing Judgment Debtor to continue to receive these monies during a stay of the Judgment Creditor's attempt to collect on its judgment, however, would appear to present the Judgment Debtor with a windfall. Therefore, in the exercise of its discretion under Rule 62(b), the Court orders as a condition of the continued stay of the sheriff's sale that Judgment Debtor deposit \$2,500.00 a month with the Clerk of Court.¹ If Judgment Debtor fails to meet the conditions for the stay, the Court will entertain an emergency motion to lift the stay.

IT IS ORDERED setting the following conditions for the continued stay of the sheriff's sale pending the resolution of Judgment Debtor's Rule 60(c) motion in this matter:

1. Commencing in September, 2013, Judgment Debtor shall pay the sum of \$2,500.00 by the **eighteenth day of each month** to the Clerk of Court (cash or bond). If the eighteenth day of the month falls on a Saturday, Sunday, or legal holiday, the payment is due on the next day the Clerk's office is open to receive payments.
2. The payments must be delivered **on or before the due date** (not mailed), so Judgment Debtor may obtain a receipt for the payment from the Clerk. Judgment Debtor must provide a copy of the Clerk's receipt to the Judgment Creditor by email, hand-delivering or faxing it to Judgment Creditor, through its attorney, on the same day that the payment is made.

IT IS FURTHER ORDERED that in the event Judgment Creditor believes that Judgment Debtor has failed to comply with the conditions for the continuation of the sheriff's sale, the

¹ See Williams v. Miles, 212 Ariz. 155, 156, ¶ 6, 128 P.3d 778, 779, ¶ 6 (App. 2006) (concerning stay of execution of a writ of restitution based on the deposit of monthly rent payments in the context of an eviction action).

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Judgment Creditor shall file an emergency motion to lift the stay, which the Court intends to address on an expedited basis.

IT IS FURTHER ORDERED that the parties may file a motion for release asserting their interest in the monies deposited with the Clerk upon the resolution of the Rule 60(c) motion.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.