

Michael K. Jeanes, Clerk of Court
 *** Filed ***

09/11/2014 8:00 a.m.

SUPERIOR COURT OF ARIZONA
 MARICOPA COUNTY

CV 2013-052168

CV 2013-053636

09/08/2014

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
 M. MINKOW
 Deputy

M T C FINANCIAL INC

REX C ANDERSON

v.

TREASURER OF MARICOPA COUNTY

LORI A LEWIS

MARY T HONE

UNDER ADVISEMENT RULING

This case involves Applicant Centurian Capital's ("Centurian") Applications for Release of Excess Proceeds filed in the above-captioned cases. MTC filed the Applications pursuant to Ariz. Rev. Stat. Ann. § 33-812. Centurian claims a right to the proceeds under assignments it purchased from persons who had an interest in the proceeds. The Maricopa County Treasurer ("Treasurer"), in both cases, filed a response objecting to the release of the proceeds to Centurian, as an assignee.

On May 5, 2014, Centurian indicated that it would file summary judgment motions in both cases--- and the Court consolidated the cases for oral argument. Having heard oral argument, the Court took the matter under advisement on August 23, 2014.

The Court will deny the Motions for Summary Judgment and deny Centurian's Applications. Pursuant to Rule 56(a) of the *Arizona Rules of Civil Procedure*, the Court sets forth the reasons for its ruling below.

A. CV 2013-052168

On March 25, 2013, MTC Financial, Inc. ("MTC") filed its Complaint and deposited excess proceeds in the amount of \$23,556.01 with the County Treasurer. The proceeds were

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derived from MTC's foreclosure of its security interest in real property at a Trustee Sale on December 28, 2012.

Pursuant to Ariz. Rev. Stat. Ann. § 33-812(A), MTC distributed the proceeds to superior lienholders and paid all obligations secured by the Deed of Trust. Pursuant to Ariz. Rev. Stat. Ann. § 33-812(C), MTC sent notice to all known to have an interest of record including the trustor, Nancy Newton, who was the titleholder of the property at the time of the sale. Ms. Newton, however, died on March 26, 2012.

Centurian obtained an assignment from Ms. Newton's children.¹ The assignor-children are the putative heirs to the funds.² Centurian has not provided the Court with the amount of consideration paid for the assignment to the Newton children.

B. CV 2013-053636

On June 19, 2013, MTC filed its Complaint and deposited excess proceeds in the amount of \$18,775.75. The proceeds were derived from MTC's foreclosure of its security interest on real property on March 28, 2013.

Pursuant to Arizona law, MTC distributed the proceeds to superior lienholders and paid all obligations secured by the Deed of Trust. Pursuant to Ariz. Rev. Stat. Ann. § 33-812(C), MTC sent notice to all known to have an interest of record including the trustors, Hanan and Hanna Atwan. Centurian obtained an assignment from Hanna Atwan.³ Ms. Atwan purportedly obtained her husband's interest following a divorce and from his execution of a disclaimer deed.

Centurian has not provided the Court with the amount of consideration paid for the assignment to Ms. Atwan.

C. Ruling

The Treasurer opposed the motions and argued: (1) Claimant's assignments were invalid under Ariz. Rev. Stat. Ann. § 33-812; and (2) even if the assignments were valid, material questions of fact preclude summary judgment on Claimant's Applications. Because the Court

¹ While the assignment is provided, the consideration is not set forth in that document.

² No testamentary instrument was provided with the Motion for Summary Judgment.

³ The Treasurer challenges whether the assignment was obtained from Wife because of the similarity of the names. Like CV2013-052168, Centurian has not provided the Court with the amount of consideration paid for the assignment to Ms. Atwan.

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finds that the assignments of the claims to excess proceeds are invalid, the Court will not address the Treasurer's secondary arguments.⁴

Section 33-812 provides Trustees with a method for distribution of proceeds following a Trustee sale. Generally, Section 812 directs the Trustee to apply the proceeds in the following priority: (1) costs; (2) contracts secured by the trust deed; (3) other obligations secured by trust deed; (4) HOA fees owed; and (5) junior lienholders. Ariz. Rev. Stat. Ann. §33-812(A) (1-5) (2014).

The Trustee, however, may choose to use an interpleader-type option available under the statute. More specifically, the Trustee may, after paying off the obligations secured by the deed of trust, elect to deposit the balance of the proceeds with the Treasurer and file a lawsuit which is served on possible claimants to the deposited proceeds.⁵ Ariz. Rev. Stat. Ann. § 33-812(C) (2014). Following service, the Trustee is discharged from further proceedings. Ariz. Rev. Stat. Ann. §33-812(F) (2014).

Section 812 sets forth a very specific procedure for persons to claim the deposited proceeds. A person or entity with a recorded or other legal interest in the property at the time of the sale ("claimant") may file a written application for release of the proceeds within two years. Ariz. Rev. Stat. Ann. § 33-812(G) & (L) (2014). Like the Trustee's Complaint, the claimant's application must be served on all persons who have a recorded or other legal interest in the property at the time of the sale. Once served with an application, those persons may object or otherwise make their own application within 45 days. Ariz. Rev. Stat. Ann. § 33-812(I) (2014). Finally, the Court must hold a hearing if there are competing claims to the proceeds. Ariz. Rev. Stat. Ann. § 33-812(J) (2014).

The legal dispute in these cases arises directly from the interpretation of Section 33-812(P) ("Section P") which caps the rights of a third party to \$2500 remuneration when helping claimants recover the proceeds. The Treasurer argues that the assignment of a right to the proceeds circumvents Section P.

⁴ The Court has reviewed the Motions and the entire file. The Court applies the standards under *Orme School v. Reeves*, 802 P.2d 1000 (Ariz. Sup. Ct. 1990) (summary judgment standards) and *National Bank of Arizona v. Thruston*, 180 P.3d 977 (Ariz. Ct. App. 2008) (requiring movant to meet its burden of production with respect to affirmative defenses).

⁵ "The trustee shall mail by certified or registered mail, with postage prepaid, a conformed copy of the complaint that displays the filing stamp of the court clerk to the county treasurer and all persons, other than the beneficiary, who are entitled to notice pursuant to section 33-809 and to any other person known by the trustee to have an interest of record in the property at the time of the sale. The conformed copy shall be mailed to all known addresses for those persons who are required to receive notice pursuant to this subsection." Ariz. Rev. Stat. Ann. § 33-812(D) (2014).

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Section P provides, in relevant part, that:

A claimant may enter into an agreement with a third party to pay for the recovery of or for assistance in the recovery of excess proceeds on deposit with the county treasurer. . . . Any fee or payment provided for in an agreement shall be reasonable. The fee or payment shall be presumed to be unreasonable and the obligation to pay the fee or payment is unenforceable if the fee or payment agreed on exceeds two thousand five hundred dollars excluding attorney fees and the costs of filing the claim and providing the statutorily required notices. . . .

Ariz. Rev. Stat. Ann. § 33-812(P) (emphasis added).

Section P further provides that:

Any person seeking a fee or payment exceeding two thousand five hundred dollars may apply to the court for additional compensation but the person has the burden of establishing that the additional compensation is reasonable under the circumstances. This subsection does not preclude a claimant from contesting the reasonableness of any fee or payment that is provided for in an agreement for the recovery of or for assistance in the recovery of excess proceeds.

Id.

The precise question before the Court, therefore, is whether Section P proscribes the assignment of a claimant's right to proceeds. The interpretation of a statute is a question of law. *Cypress v. Sunland Homowner's Ass'n v. Orlandini*, 227 Ariz. 288, 298, 357 P.3d 1168, 1178 (Ariz. Ct. App. 2011). The primary goal is to effectuate legislative intent. *Id.* The Court will, of course, avoid interpretations that lead to absurd results. *Id.*

The legislature enacted Section P in 2005. While the legislative history reflecting the legislature's intent is somewhat sparse, the Treasurer correctly points out that the legislative Committee on Commerce and Economic Development knew very well that Section P was a consumer-protection provision that limited the alienability of the right to proceeds. See Defendant Treasurer of Maricopa County's Response in Opposition to Plaintiff's Motion for Summary Judgment, pp. 9-10 (6/30/14) (highlighting the Committee's recorded statement from Chairman Leff who responded to the question of restriction of assignments by stating that "we

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protect people from being overcharged—we do that all the time”). Indeed, assignments were expressly discussed and the Committee appeared to reject them opting instead for a focus on consumer protection. *Id.*

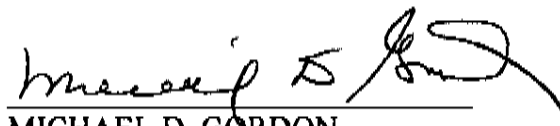
It is difficult to conceive just why the legislature would limit a non-claimant party’s right to charge more than \$2500 to assist recovery but nonetheless permit that very party to purchase an assignment that nets it more than \$2500. Such an interpretation, in the Court’s view, leads to an absurd result. Under these circumstances, it is direct circumvention of Section P. *Cf. Auditor of Owen County v. Asset Recovery, Inc.*, 991 N.E.2d 9894 (Ind. App. 2013) (providing that the assignment of rights to tax surplus funds under Indiana statute violated statutory recovery cap).

Finally, the Court addresses the issue of Centurian’s failure to divulge the consideration paid to the claimants in these cases. Centurian argues that the amount of consideration is irrelevant. The Court agrees, albeit for different reasons. Section P provides that the statutory cap of \$2500 is presumptively reasonable but provides that the presumption does not preclude a claimant from “contesting the reasonableness of any fee or payment for recovery.” An assignment of a claimant’s right to the proceeds achieves that proscribed result regardless of the consideration paid.

D. Conclusion

Accordingly, the Court denies Centurian’s Motions for Summary Judgment, sustains the Treasurer’s objections, and denies Centurian’s applications for release of proceeds filed in these cases.

IT IS FURTHER ORDERED that pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure, no just cause exists to delay entry of judgment and therefore the Court signs this minute entry as a final order.


MICHAEL D. GORDON
JUDGE OF THE SUPERIOR COURT