

**IN THE COUNTY COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
CIVIL DIVISION**

**FUNICK, LLC,
Plaintiff,**

v.

**Case No.: 24-CC-007098
Judge James Nealis
Div: CC-E**

**ABPAYMAR, LLC,
Defendants.**

_____ /

OWNER'S REQUEST FOR SURPLUS

Defendant, **ABPAYMAR, LLC**, by and through its undersigned counsel and pursuant to Fla. Stat. § 45.032, requests that this Court award it the surplus funds emanating from this Court's November 14, 2024 foreclosure sale, [Dkt. 22], in this cause, and would show:

1. Defendant was the owner of the subject property in this action at the time of the recording of the Notice of Lis Pendens, upon entry of Final Judgment, and at all times relevant. [Dkt. 3, 14].

2. The amount paid by the winning bidder at the foreclosure sale in this action, \$150,000.00, [Dkt. 22], exceeds the amount of the Final Judgment, \$19,319.94, [Dkt. 14], resulting in a surplus of \$130,680.06. [Dkt. 70]

3. Defendant is not in bankruptcy. It does not owe any money on any property that was foreclosed, and it does not owe any money that is the subject of any unpaid judgment, or tax warrant.

4. Plaintiff is not entitled to any portion of the surplus as it has been over 15 days from the certificate of disbursements for the Plaintiff to object or seek additional monies from the sale. Asset Recovery, Inc. v. Wells Fargo Bank, N.A., 2023 Fla. App. LEXIS 7082, (Fla. 6th DCA 2023).

5. Any owner subsequent to the Lis Pendens and Complaint in this matter is not entitled to the surplus funds. See Corey v. Unknown Heirs, 301 So. 3d 380 (Fla. 2d DCA 2020); Pineda v. Wells Fargo Bank, N.A., 143 So. 3d 1008 (Fla. 3d DCA 2014); Suarez v. Edgehill, 20 So. 3d 410 (Fla. 3d DCA 2009).

6. There are no known subordinate lienholders as defined by Paragraph 14(B) of the Final Judgment. [Dkt. 14].

7. No other parties in the lawsuit have filed a claim to the surplus funds.

8. Fla. Stat. 45.032(3)(a) “[i]f the owner of record claims the surplus before the date that the clerk reports it as unclaimed and there is no subordinate lienholder, the court ***shall*** order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record.” (emphasis added).

9. Accordingly, no hearing is required.

10. As such, and for the reasons set forth herein, Defendant is entitled to the surplus funds currently being held in this Court’s registry, less applicable clerk fees, without further ado.

WHEREFORE Defendant respectfully requests relief in accordance with the foregoing.

CERTIFICATE OF SALE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished via the Eportal and/or via Electronic Mail or US Mail to Vestalia Aylsworth, Esq. at va@aylsworthllp.com and Ogechi Ejimofor at 2476 Brittany Park Lane, Ellerwood, GA 30294 on this November 27, 2024.

/s/ Christopher Hixson, Esq.
Christopher Hixson, Esq.
FBN: 41158
Hixson Law Group
18167 US Hwy 19 N, Suite 250

Clearwater, FL 33764

Phone: (833)-203-5294

Primary: chris@hixlawgroup.com - Attorney

Secondary: nykelle@hixlawgroup.com – Paralegal

Scheduling: nykelle@hixlawgroup.com

Counsel for Defendant