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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Holly Martenson,

No. CV-09-01314-PHX-NVW

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Plaintiff,

**ORDER**

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vs.

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RG Financing, et al.,

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Defendants.

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Before the Court is Defendant RG Financing’s and Defendant JL Financing’s “Motion for Attorneys’ Fees” (Doc. 115). Defendants, however, have foreclosed on a residential parcel of less than 2.5 acres through a non-judicial trustee’s sale. Accordingly, “no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses.” A.R.S. § 33-814(G). “Costs and expenses” in this context includes attorneys fees. *Sec. Sav. & Loan Ass’n v. Milton*, 171 Ariz. 75, 77, 828 P.2d 1216, 1218 (Ct. App. 1991). Technically speaking, Defendants are not asking for the “difference between the amount obtained by sale and the amount of the indebtedness *and* any interest, costs and expenses” — Defendants are only seeking “costs and expenses.” However, the Court does not believe that a trust deed beneficiary can avoid § 33-814(G) simply by seeking only a subset of everything it might have otherwise sought, but for the statute. Accordingly, Defendants cannot recover their

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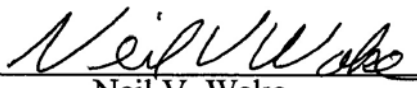
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1 attorneys fees with respect to Plaintiff’s state law claims or by virtue of attorneys fees  
2 provisions in the promissory note.

3 RESPA, on the other hand, is a federal statute which gives this Court discretion to  
4 award attorneys fees. 12 U.S.C. § 2607(d)(5). This Court does not believe that A.R.S. § 33-  
5 814(G) shields Plaintiff from RESPA’s attorneys fees provision — otherwise, Arizona would  
6 be upsetting federal policy regarding such fee awards. Nonetheless, Defendants must satisfy  
7 the “frivolous, unreasonable or without foundation” standard to receive fees. *See Lane v.*  
8 *Residential Funding Corp.*, 323 F.3d 739, 746–48 (9th Cir. 2003) (holding that the standard  
9 for defendants’ recovery under fee-shifting provisions in civil rights statutes also applies to  
10 fee-shifting provision in RESPA). The Court will not say, on this record, that Plaintiff’s  
11 RESPA claim was frivolous, unreasonable, or without foundation. The Court never reached  
12 the merits of this claim, but dismissed it for failure to satisfy the statute of limitations. (*See*  
13 *Doc. 98 at 2.*) Therefore, the Court will not award attorneys fees to Defendants under  
14 RESPA.

15 IT IS THEREFORE ORDERED that Defendants’ “Motion for Attorneys’ Fees” (Doc.  
16 115) is DENIED.

17 DATED this 10<sup>th</sup> day of March, 2011.

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Neil V. Wake  
United States District Judge