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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Judith M Rich, et al.,

10 Plaintiffs,

11 v.

12 BAC Home Loans Servicing LP, et al.,

13 Defendants.
14

No. CV-11-00511-PHX-DLR

ORDER

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16 At issue is Plaintiffs' Motion to Exonerate and Release Voluntary Supersedeas
17 Bond. (Doc. 496.) The motion is fully briefed. For the following reasons, Plaintiffs'
18 motion is denied.¹

19 **BACKGROUND**

20 Plaintiffs initiated this action six years ago, asserting a number of claims related to
21 their efforts to obtain a home loan modification. On October 9, 2014, the Court granted
22 summary judgment in favor of Defendants on all remaining claims. Thereafter, the Court
23 awarded Defendants \$39,524.00 in attorneys' fees pursuant to fee-shifting provisions in
24 the Note and Deed of Trust governing Plaintiffs' home loan. Alternatively, the Court
25 found that if the fee-shifting provisions were inapplicable Defendants nonetheless would
26 be entitled to their attorneys' fees under A.R.S. § 12-341.01(A). Plaintiffs appealed both

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28 ¹ Defendants' request for oral argument is denied because the motion is adequately
briefed and oral argument will not help the Court resolve the issues presented. *See* Fed.
R. Civ. P. 78(b); LR Civ. 7.2(f).

1 orders.

2 On May 28, 2015, with no objection from Defendants, the Court granted
3 Plaintiffs' motion to stay execution of the fee award order upon posting of a supersedeas
4 bond. Specifically, the Court ordered that "upon the posting of the bond, execution of the
5 order awarding [Defendants] attorneys' fees in the amount of \$39,524.00 shall be
6 **STAYED** until the Court of Appeals has completed its review of this Court's order and a
7 mandate has issued." (Doc. 490.) On June 2, 2015, Plaintiffs posted a bond with the
8 Court in the form of a cashier's check in the amount of \$39,524.00.

9 After roughly two years of appellate litigation, the Ninth Circuit Court of Appeals
10 issued a memorandum decision affirming the Court's orders granting summary judgment
11 in favor of Defendants and awarding attorneys' fees pursuant to the fee-shifting
12 provisions of the Note and Deed of Trust.² *Rich v. Bank of Am., N.A.*, 666 Fed. App'x
13 635 (9th Cir. 2016). The Ninth Circuit issued its mandate on December 13, 2016. Two
14 days later, Plaintiffs filed the instant motion seeking exoneration of their bond.

15 LEGAL STANDARD

16 "The purpose of a supersedeas bond is to secure the appellees from a loss resulting
17 from a stay of execution[.]" *U.S. ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, No. CV
18 06-01381 PHX NVW, 2010 WL 384594, at *2 (D. Ariz. Jan. 29, 2010). "The posting of
19 a bond protects the prevailing [party] from the risk of a later uncollectible judgment and
20 compensates him for delay in the entry of the final judgment." *N.L.R.B. v. Westphal*, 859
21 F.2d 818, 819 (9th Cir. 1988). "Courts release supersedeas bonds when the bond has
22 served its purpose and no outstanding judgment remains. A supersedeas bond posted for
23 a stay of execution of judgment should be released once all appeals are exhausted, the
24 stay has been lifted and full payment has been made." *Goss Int'l Corp. v. Tokyo Kikai*
25 *Seisakusho, Ltd.*, No. 00-CV-35-LRR, 2006 WL 4757279, at *3 (N.D. Iowa Aug. 9,

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27 ² The Ninth Circuit concluded that "courts cannot award fees under A.R.S. §12-
28 341.01(A) if the parties provided for attorneys' fees in their contract," but affirmed the
Court's primary conclusion that the fee-shifting provisions in the Note and Deed of Trust
entitled Defendants to their reasonable attorneys' fees.

1 2006) (citations omitted).

2 DISCUSSION

3 The Ninth Circuit has affirmed the fee award, its mandate has issued, no further
4 proceedings are pending, and by its own terms the stay has expired. It does not appear,
5 however, that Plaintiffs have fully paid the fee award. Plaintiffs nonetheless argue that
6 they are entitled to have their bond exonerated. The crux of their argument is that the
7 fee-shifting provisions in the Note and Deed of Trust require Defendants to add
8 attorneys' fees incurred in the connection with Plaintiffs' default on the Note to the
9 amounts already owed under those instruments. Because Defendants have elected to
10 conduct a non-judicial foreclosure of the subject property, Plaintiffs argue that Arizona's
11 anti-deficiency protections preclude them from recouping their attorneys' fees from
12 anything other than the trustee's sale proceeds. *See* A.R.S. §§ 33-729(A), -814(G).
13 Defendants sold the property at a trustee's sale on February 3, 2017. Plaintiffs therefore
14 contend that Defendants have received all amounts to which they are entitled under
15 Arizona law.

16 This marks the third time Plaintiffs have pressed this issue. Plaintiffs first
17 advanced this argument in their opposition to Defendants' attorneys' fees motion. The
18 Court rejected it. Plaintiffs reasserted this argument on appeal and it was briefed by both
19 sides. (*See* Doc. 19 at 67-69, Doc. 26 at 45-46 in *Rich v. Bank of Am., N.A.*, No. 14-
20 17190; 15-15885.) Though the Ninth Circuit concluded that fees could not be awarded
21 under *both* the contractual fee-shifting provisions *and* A.R.S. § 12-341.01(A), it affirmed
22 without modification the portion of this Court's order awarding Defendants their
23 attorneys' fees under the Note and Deed of Trust. In so doing, the Ninth Circuit
24 implicitly rejected the argument again at issue here. Plaintiffs are not entitled to a third
25 bite at the apple.

26 Indeed, Plaintiffs' motion is foreclosed by the "law of the case" doctrine, which
27 precludes a court "from reexamining an issue previously decided by the same court, or a
28 higher court, in the same case." *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir.

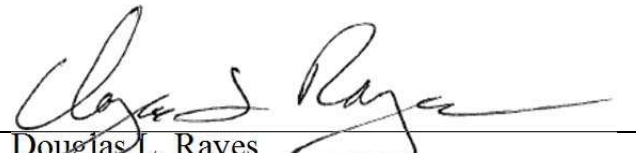
1 1988). The doctrine applies where, as here, the issue was “decided explicitly or by
2 necessary implication in [the] previous disposition.” *Liberty Mut. Ins. Co. v. E.E.O.C.*,
3 691 F.2d 438, 441 (9th Cir. 1982). “This rule of practice promotes the finality and
4 efficiency of the judicial process by protecting against the agitation of settled issues.”
5 *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816 (1988) (internal
6 quotations and citation omitted). Having been explicitly decided by this Court and by
7 necessary implication by the Ninth Circuit, the argument raised by Plaintiffs in their
8 instant motion is “not open to relitigation.” *Mann v. GTCR Golder Rauner, LLC*, 483
9 F.Supp.2d 864, 870 (D. Ariz. 2007).

10 **CONCLUSION**

11 Although all appeals have been exhausted and the stay issued by the Court has
12 expired, Plaintiffs are not entitled to exoneration of the supersedeas bond until full
13 payment of the attorneys’ fee award has been made. If Plaintiffs refuse to fully pay the
14 fee award or lack the means to do so, Defendants may take appropriate measures to
15 obtain the bond to satisfy the outstanding judgment for which it was posted as security.
16 *See J. Perez & Cia., Inc. v. United States*, 578 F. Supp. 1318, 1320 (D. Puerto Rico 1984)
17 (noting that “the judgment itself can be satisfied out of the supersedeas bond”).

18 **IT IS ORDERED** that Plaintiffs’ Motion to Exonerate and Release Voluntary
19 Supersedeas Bond (Doc 496) is **DENIED**.

20 Dated this 29th day of March, 2017.

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25 Douglas L. Rayes
26 United States District Judge
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