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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Custom Homes By Via, LLC,

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No. CV 12-01017-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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Bank of Oklahoma,

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Defendant.

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The court has before it defendant’s Motion to strike the jury and try this case to the court (doc. 101), plaintiff’s Response (doc. 103), and defendant’s Reply (doc. 105).

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Defendant contends plaintiff waived the right to a jury trial in the deed of trust. Plaintiff contends the waiver is unenforceable, and in any event the motion comes too late on the eve of trial. Nevertheless, plaintiff is willing to waive its right to a jury trial if defendant agrees to pay its reasonable fees and expenses incurred in preparing for a jury trial. Response at 2. Defendant agrees to pay those expenses. Reply at 1-2. If the parties cannot agree on the amount, the court will decide the amount. Id. The waiver of the jury is unconditional.

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We would have denied the motion on grounds it comes too late. Nevertheless, in light of the plaintiff’s non-opposition and the parties’ agreement, it is ORDERED GRANTING the parties’ joint Motion to try this case to the court without a jury. (Doc. 101).

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Trial will proceed as scheduled beginning November 19th to the court without a jury.

DATED this 18th day of November, 2013.

Frederick J. Martone
Frederick J. Martone
Senior United States District Judge