

1 WO
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Michael J. Pence; Tauni R. Pence,
9

10 Plaintiffs,

11 v.

12 GMAC Mortgage LLC,
13

Defendant.

No. CV-12-1652-PHX-GMS

ORDER

14 Pending before the Court are Defendant's Motion for Order to Release Lis
15 Pendens (Doc. 44) and Plaintiffs' Motion for Clarification of Judgment of Dismissal
16 (Doc. 46). For the following reasons, reasons the Motion for Order to Release Lis
17 Pendens is denied and the Motion for Clarification of Judgment of Dismissal is granted
18 by the following clarification.

19 This quiet title litigation has ended without any determination as to the merits of
20 either party's claims or rights to the title of the home in dispute. The Pences requested a
21 voluntary dismissal and after they complied with the requirements of this Court, this
22 Court dismissed the action entirely. (Docs. 38–42.) GMAC Mortgage asked the Pences to
23 remove a Notice of Lis Pendens that the Pences have recorded in Maricopa County
24 Recorder's Office against the disputed property. (Doc 44-1 at 5–6.) The Notice of Lis
25 Pendens gives notice of this "pending Quiet Title lawsuit." (Doc 44-1 at 2.) The Pences
26 have not removed the Lis Pendens.

27 GMAC Mortgage asks this Court to enter an order releasing and discharging the
28 Lis Pendens. Arizona Revised Statutes § 33–420(b) provides that the owner or beneficial

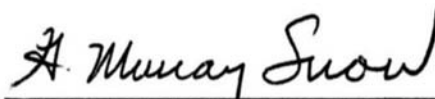
1 title holder of the real property may bring an action to clear title when a lis pendens has
2 been filed. The statute provides that such a “special action may be brought based on the
3 ground that the lien is forged, groundless, contains a material misstatement or false claim
4 or is otherwise invalid.” *Id.* A party “may bring a separate special action to clear title to
5 the real property or join such action with an action for damages as described in this
6 section.” *Id.* This case is dismissed and there is no “action for damages” to which an
7 action to clear the Lis Pendens can be joined. Further, this Court made no determinations
8 before dismissal that would give it a basis to determine whether “the lien is forged,
9 groundless, contains a material misstatement or false claim or is otherwise invalid.”

10 This denial is not on the merits and in no way limits GMAC Mortgage’s ability to
11 seek the removal of the Lis Pendens in an appropriate action.

12 **IT IS HEREBY ORDERED** that Defendant’s Motion for Order to Release Lis
13 Pendens (Doc. 44) is **DENIED**.

14 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion for Clarification of
15 Judgment of Dismissal (Doc. 46) is **GRANTED**. This Order is the requested
16 clarification.

17 Dated this 9th day of June, 2014.

18
19 

20 _____
21 G. Murray Snow
22 United States District Judge
23
24
25
26
27
28