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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PEOPLES BANK, et al.,
11 Plaintiffs,

12 v.

13 P/C AMBASSADOR OF THE
14 LAKE, et al.,

15 Defendants.

CASE NO. C16-1403JLR

ORDER ON MOTION FOR FEES
AND MOTION FOR JUDGMENT

16 I. INTRODUCTION

17 Before the court are: (1) Plaintiff Peoples Bank's motion for an order approving
18 administrative expenses, directing partial reimbursement of those expenses from
19 Plaintiff-in-Intervention Seattle Mobile Marine LLC ("SMM"), and approving legal fees
20 and costs (Mot. (Dkt. # 109)); and (2) Peoples Bank's motion for a deficiency judgment
21 against *in personam* Defendant Salvatore Ragusa (MDJ (Dkt. # 120)). SMM and Mr.

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1 Ragusa oppose portions of each motion.¹ (SMM Mot. Resp. (Dkt. # 115); Ragusa Mot.
2 Resp. (Dkt. # 113); SMM MDJ Resp. (Dkt. # 130); Ragusa MDJ Resp. (Dkt. # 127).)
3 The court has considered the parties' submissions in support of and in opposition to the
4 motion, the relevant portions of the record, and the applicable law. Being fully advised,²
5 the court GRANTS in part and DENIES in part the motion for fees and ORDERS that
6 Peoples Bank is entitled to judgment against Mr. Ragusa, *in personam*, for \$143,367.52,
7 plus interest at \$45.98 per day from November 27, 2017, through the date of entry of this
8 judgment and until paid.

9 II. BACKGROUND

10 This case arises from several debts that Mr. Ragusa owed to various entities; only
11 two loans with Peoples Bank remain in dispute. (*See* MDJ at 1-2; 11/28/17 Loosmore
12 Decl. (Dkt. # 122) ¶¶ 4-6, 8.) Peoples Bank made the first loan, Loan Number
13 5045130-601 ("the 601 Loan"), to Mr. Ragusa on November 20, 2015, for an original
14 principal amount of \$90,000.00. (11/28/17 Olson Decl. (Dkt. # 121) ¶ 3.) The principal
15 amount of the 601 Loan was subsequently increased to \$126,500.00 on February 4, 2016.
16 (*Id.*) Peoples Bank made the second loan, Loan Number 5045130-602 ("the 602 Loan"),
17 to Mr. Ragusa on August 10, 2016 for a principal amount of \$22,485.90. (*Id.*) As of
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19 ¹ SMM recently accepted an offer of judgment made by Mr. Ragusa, resolving its *in*
20 *personam* claims against him arising from his failure to pay for various repairs and
improvements made to Mr. Ragusa's vessel. (*See* Not. of Acceptance (Dkt. # 137); SMM
21 Compl. (Dkt. # 39) ¶¶ 30-32.)

22 ² Although SMM requests oral argument in regards to Peoples Bank's request for partial
reimbursement (*see* SMM Mot. Resp. at 1), the court finds that oral argument would not be
helpful to its disposition of that issue, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 November 27, 2017, Mr. Ragusa owes \$135,388.96 on the 601 Loan and \$26,300.68 on
2 the 602 Loan, owing in total \$161,689.64. (*Id.* ¶ 4.) Mr. Ragusa does not dispute any of
3 the above figures. (*See generally* Ragusa MDJ Resp.; Vaughn Decl. (Dkt. # 129) ¶ 2.)

4 On September 2, 2016, the court issued a vessel arrest warrant for Mr. Ragusa's
5 vessel, the Ambassador of the Lake, based on Peoples Bank's foreclosure on the marine
6 mortgage. (Arrest Order (Dkt. # 8); *see also* Peoples Bank Compl. (Dkt. # 1).) SMM
7 subsequently intervened in the case based on its verified statement of interest (10/25/16
8 Order (Dkt. # 40); *see also* SMM Compl.) but dismissed its *in rem* claims against the
9 vessel on April 24, 2017 (Not. of Dismissal (Dkt. # 90)). The court granted Peoples
10 Bank's motion for an interlocutory sale and authorized Peoples Bank to submit a credit
11 bid at that sale. (4/20/17 Order (Dkt. # 89) at 6-7, 10). Peoples Bank then purchased the
12 Ambassador of the Lake at the court-ordered interlocutory sale on May 24, 2017 for a
13 credit bid of \$149,753.12. (Ret. of Serv. Re: Marshal's Sale (Dkt. # 94) at 1).

14 Peoples Bank believed that it would be able to sell the vessel for \$123,363.35 to a
15 private buyer but instead realized only \$34,100.00 from the sale. (*See* 8/9/17 Order (Dkt.
16 # 106) at 2-3; 11/28/17 Loosmore Decl. ¶ 3; 11/15/17 Olson Decl. (Dkt. # 110) ¶¶ 4-5.)
17 Peoples Bank now asks the court to approve various administrative expenses, legal fees
18 and costs, and to enter a deficiency judgment against Mr. Ragusa, *in personam*. (*See*
19 *generally* Mot.; MDJ.) However, the parties disagree as to who is responsible for the
20 administrative expenses and the amount of the deficiency owed. The court first addresses
21 the motion concerning the administrative expenses and legal fees and then turns to the
22 motion for a deficiency judgment.

III. ANALYSIS

A. Motion for Administrative Expenses and Legal Fees

Peoples Bank asks the court for an order that: (1) approves administrative expenses of \$65,501.56 incurred during this matter; (2) directs SMM to reimburse half of those administrative expenses; and (3) approves \$65,929.44 of legal fees to be paid by Mr. Ragusa. The court considers the issues pertaining to the administrative expenses before turning to the legal fees.

1. Administrative Expenses

a. Approval of Administrative Expenses

Peoples Bank asserts that it has incurred and paid “costs of custody of the substitute custodian of \$10,521.51, for storage of the vessel ashore of \$49,743.62, and charges of the U.S. Marshal of \$5,236.43” for a total of \$65,501.56. (Mot. at 3.) As evidence of these costs, Peoples Bank offers the declaration of Amber Olson, the vice president and Special Assets and Credit Risk manager, who has personal knowledge of this suit and is responsible for receiving all statements for expenses and fees paid by Peoples Bank. (11/15/17 Olson Decl. ¶¶ 1-2; *see also* 12/1/17 Olson Decl. (Dkt. # 125) ¶¶ 1-2.) She states that “from the time Peoples Bank filed the lawsuit against Mr. Ragusa and his boat through the date the boat was released from arrest after the U.S. Marshals sale, Peoples Bank paid \$65,501.56 for administrative expenses.” (12/1/17 Olson Decl. ¶ 3.) She also includes a breakdown of those costs. (*Id.* ¶ 4, Ex. 1.) Neither Mr. Ragusa

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1 nor SMM offers any evidence to the contrary.³ (*See* Ragusa Mot. Resp. at 2; SMM Mot.
2 Resp. at 12-13.)

3 On September 2, 2016, the court appointed Dock Street Custodial, LLC as
4 substitute custodian for the vessel and ordered that all authorized expenses that are
5 incurred by Peoples Bank for “the movement and safekeeping of the defendant vessel and
6 its equipment” shall be deemed administrative expenses. (9/2/16 Order (Dkt. # 9) at 5.)
7 Finding no reason to question the above submissions of these expenses, the court
8 approves \$65,501.56 as administrative expenses in this matter.

9 *b. Contribution from SMM*

10 Peoples Bank also requests that SMM contribute to the administrative expenses by
11 reimbursing half of the costs. (Mot. at 3-5.) Peoples Bank argues that because the
12 proceeds from the subsequent private sale of the vessel—\$34,100.00—are less than the
13 costs of custody—\$65,501.56—SMM, as an intervenor plaintiff, must contribute equally
14 to the administrative expenses. (*Id.* at 4.) SMM disagrees for two reasons. First, SMM
15 relies on the judicial sale price of the vessel—\$149,753.12—and thus maintains that the
16 value of the boat exceeded the costs of custody. (SMM Mot. Resp. at 6-8.) Second,
17 SMM purports that even if the costs of custody exceeded the value of the boat, SMM
18 should not be responsible for reimbursement because, a month before the auction, it had
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20 ³ SMM asserts that it challenges the reasonableness of Peoples Bank’s administrative
21 expenses only “[i]n the event the [c]ourt finds [SMM] is required to contribute to the costs of
22 custody.” (SMM Mot. Resp. at 13.) Because the court finds that SMM does not need to
reimburse Peoples Bank for these fees, *see infra* § III.A.1.b, the court does not consider SMM’s
objection to the expenses submitted by Peoples Bank.

1 dismissed its *in rem* claims and accordingly distinguished its interest in the proceeds of
2 the sale. (*Id.* at 8-12.) The court agrees with SMM.

3 As a threshold matter, the court concludes that the value of the boat exceeds the
4 costs of custody, thus rendering reimbursement inappropriate. Both parties agree that
5 reimbursement is an option when the value of the boat is insufficient to cover the costs of
6 custody. (*See* Mot. at 4; SMM Mot. Resp. at 7); *see Donald D. Forsht Assoc. v.*
7 *Transamerica ICS, Inc.*, 821 F.2d 1556, 1557 (11th Cir. 1987) (considering
8 reimbursement “when the funds realized at a court-ordered interlocutory sale of [the
9 vessels] were insufficient to cover court-ordered administrative expenses”). However,
10 the parties disagree on what the value of the boat is: the sale price at the U.S. Marshal’s
11 auction or the price Peoples Bank later realized in the subsequent private sale. (*Compare*
12 Mot. at 4, *with* SMM Mot. Resp. 7-8.) Peoples Bank provides no authority for its
13 contention that the value of the boat is measured by its subsequent private sale rather than
14 what the vessel sold for at the public auction.⁴ To the contrary, the precedent cited by
15 Peoples Bank utilizes the public auction price as the value of the boat, even when the
16 mortgagee, like Peoples Bank did here, purchased the vessel at the auction and

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18 ⁴ Peoples Bank points repeatedly to the court’s parenthetical statement in a previous order
19 that “the resale price less the cost of repairs is presumptively the fair market value of property”
20 and assumes that “resale” refers to the private sale after the auction. (*See* Mot. Reply (Dkt.
21 # 124) at 3-4 (citing 8/9/17 Order at 6).) But the court did not definitively hold that “resale”
22 refers to the subsequent private sale, nor was it presented with the question of which sale price
applies. (*See* 8/9/17 Order at 6.) Indeed, the case the court was describing characterizes the
judicial auction sale price—and not the subsequent private sale price—as the presumptive value
of the vessel. *See Walter E. Heller and Co. v. O/S Sonny V.*, 595 F.2d 968, 972 n.3 (5th Cir.
1979) (“If . . . the defendants fail to carry their burden of proving a fair value in excess of the
[auction] sale price the district court should adopt the \$35,000 [auction] sale price as the measure
of the defendants’ offset.”).

1 presumably sold it afterwards to a third-party. (See Mot. at 4 (citing *Certain*
2 *Underwriters at Lloyds v. Kenco Marine Terminal*, 81 F.3d 871, 872 (9th Cir. 1996)
3 (utilizing court-ordered interlocutory sale price as value of the boat); *Forsht*, 821 F.2d at
4 1558 (utilizing auction sale price that the mortgagee paid to obtain the vessel).) And
5 using the auction sale price, reimbursement is plainly inappropriate here because the
6 value of the vessel—\$149,753.12—covers the costs of custody—\$65,501.56.

7 But even if Peoples Bank is correct that the value of the boat is insufficient to
8 cover the administrative expenses, reimbursement from SMM would still be unsuitable.
9 The Local Admiralty Rule authorizing contribution makes clear that it is within the
10 court's discretion to determine whether and to what extent an intervening plaintiff is
11 required to pay. Local Admiralty Rules W.D. Wash. LAR 131(d); *Dedolph v.*
12 *Pacatlantic Fisheries Inc.*, No. C97-1738RSL, 1999 U.S. Dist. Lexis 22538, at *7 (W.D.
13 Wash. Nov. 17, 1999) ("The Rule gives the Court discretion in deciding how to allocate
14 the costs of custody."). In *Dedolph*, the court declined to require contribution from
15 various intervening parties, either because they were likely to recover nothing from the
16 sale or because they had dismissed their claims before the auction took place. 1999 U.S.
17 Dist. Lexis 22538, at *8-10. The court concluded that it would be unjust to require
18 contribution from those parties. *Id.*

19 The court finds that requiring SMM to contribute would similarly be unjust. SMM
20 would have gained nothing from the sale of the vessel, given that Peoples Bank had the
21 superior claim. (See 4/20/17 Order at 6.) Moreover, SMM dismissed its *in rem* claims

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1 against the vessel before the auction even took place. (*See* Not. of Dismissal.)⁵ Thus, as
2 in *Dedolph*, it would be unfair for SMM to cover half of the custody costs in this matter.

3 Accordingly, the court declines to direct SMM to reimburse Peoples Bank for half
4 of the costs in custody. First, reimbursement is inappropriate as the value of the vessel
5 covers the administrative expenses. Second, even if the value of the vessel were
6 insufficient, it would be unjust to require SMM to contribute to the costs when it would
7 not recover anything from the sale and had dismissed its claims against the vessel before
8 the sale took place.

9 2. Legal Fees

10 Lastly, Peoples Bank asks the court to approve its attorney fees and costs, which
11 are to be paid by Mr. Ragusa per the terms of the various promissory notes and
12 agreements he signed with Peoples Bank. (Mot. at 5-6; *see also* 11/15/17 Loosmore
13 Decl. (Dkt. # 111) ¶¶ 2-4.) Peoples Bank states that it has incurred \$65,929.44 of
14 attorneys fees in connection with this suit. (Mot. at 5.) Mr. Ragusa concedes that the
15 promissory notes he executed provide for the payment of attorney fees and costs.
16 (Ragusa Mot. Resp. at 2.) He further takes no issue with “the hours claimed by counsel
17 for [Peoples Bank],” as he “acknowledges that this matter required substantially more
18 time that [sic] ordinarily would be required.” (*Id.*; *see also* 11/27/17 Vaughn Decl. (Dkt.
19 # 114) ¶ 5 (stating that he “do[es] not dispute the amount of time that this matter has
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21 ⁵ Peoples Bank takes issue with the fact that SMM filed a notice of dismissal rather than
22 obtaining an order of dismissal. (Mot. at 5.) But there is no requirement that SMM obtain a
court order for its dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A)(i).

1 required of all counsel”).) Nonetheless, Mr. Ragusa requests that the court “take into
2 consideration that the . . . attorney fees claimed by [Peoples Bank] far exceed the original
3 claim by [Peoples Bank] of [the] amount owed by [Mr.] Ragusa.” (*Id.*)

4 The court finds no reason to doubt the reasonableness of the fees claimed by
5 Peoples Bank and its counsel. Given the complexity of the case and the number of filings
6 involved, the court believes that \$65,929.44 is a reasonable and equitable award of
7 attorney fees and costs in this matter. Even if Mr. Ragusa is correct that the fees have
8 grown, he provides no indication that the increase is unreasonable or illegitimate in any
9 way. Accordingly, the court approves of \$65,929.44 in attorneys fees and costs incurred
10 by Peoples Bank.

11 **B. Motion for Deficiency Judgment**

12 The Ship Mortgage Act, 46 U.S.C. § 31325, allows for a mortgagee upon default
13 to pursue an action for deficiency judgment to recover what remains of the outstanding
14 indebtedness. 46 U.S.C. § 31325(b). By way of an *in personam* proceeding, “the
15 mortgagee is entitled to a deficiency judgment if the foreclosure sale does not satisfy its
16 lien and costs.” *Wilmington Tr. Co. v. M/V Miss B. Haven V*, 760 F. Supp. 2d 364, 366
17 (S.D.N.Y. 2010). The deficiency amount “can only be calculated by establishing the
18 difference between the total outstanding obligation and the fair value of the vessel
19 involved.” *Bollinger & Boyd Barge Serv., Inc. v. Captain Claude Bass*, 576 F.2d 595,
20 598 (5th Cir. 1978). In other words, the fair value of the vessel operates as an offset, and
21 the debtor is only responsible for what the vessel does not cover.

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Peoples Bank requests that the court enter judgment against Mr. Ragusa for the deficiency remaining after the sale of the vessel in the amount of \$226,269.86 plus interest at the default rate of \$45.98 per day. (MDJ at 1-2.) Mr. Ragusa disputes (1) what the total outstanding obligation is, and (2) how much offset he should receive for the fair value of the vessel. (Ragusa MDJ Resp. at 2; 12/18/17 Vaughn Decl. (Dkt. # 129) ¶¶ 3-14.) The court resolves each issue before calculating the deficiency amount.

1. Total Outstanding Obligation

Peoples Bank claims that as of November 27, 2017, the 601 and 602 Loans owed by Mr. Ragusa total \$161,689.64. (11/28/17 Loosmore Decl. ¶ 6; 11/28/17 Olson Decl. ¶ 4.) Mr. Ragusa concedes that he has defaulted on these two loans and does not challenge the figures provided by Peoples Bank. (*See generally* Ragusa MDJ Resp.; 12/18/17 Vaughn Decl. ¶ 2.) However, in passing, Mr. Ragusa points out that the court has not decided whether the 602 Loan was secured by the vessel. (12/18/17 Vaughn Decl. ¶ 3; *see* 8/9/17 Order at 5.) Thus, Mr. Ragusa seems to contest whether the 602 Loan amount should be included in the total outstanding obligation amount.

Mr. Ragusa is correct that the court's foreclosure order on August 9, 2017, did not determine whether the vessel secures the 602 Loan. (*See* 8/9/17 Order at 5.) Nevertheless, the 602 Loan amount ought to be factored into the total amount outstanding for two reasons. First, the preferred ship mortgage that Peoples Bank held for the vessel states that "this Mortgage shall secure the payment of all other sums with interest thereon which may hereafter be borrowed or received by [Mr. Ragusa] from [Peoples Bank]." (7/21/17 Vaughn Decl. (Dkt. # 101) ¶ 4, Ex. C at 3.) Because the 602 Loan was a sum of

1 money borrowed by Mr. Ragusa after the execution of this mortgage, the plain terms of
2 the mortgage dictate that the 602 Loan is secured by the vessel.

3 Second, even if the 602 Loan were unsecured, the court observes that it ought to
4 be included in the total outstanding amount as a matter of judicial efficiency. At this
5 stage of the proceedings, because Peoples Bank holds the only remaining claims, there
6 are no questions of priority that may affect payout. (*See* Not. of Acceptance; *see*
7 *generally* Dkt.) Moreover, Mr. Ragusa concedes that he defaulted on the 602 Loan and
8 thus, there is no question that he owes the outstanding amount claimed by Peoples Bank.
9 (12/18/17 Vaughn Decl. ¶ 2.) And lastly, the proceeds from the sale of the vessel is
10 insufficient to cover what is owed on the 601 Loan.⁶ Therefore, regardless of whether the
11 602 Loan is secured by the vessel, *in personam* defendant Mr. Ragusa is accountable for
12 both the deficiency owed on the 601 Loan and the entirety of the 602 Loan. Factoring in
13 the 602 Loan amount now saves the parties and the court the unnecessary additional step
14 of Peoples Bank filing separately for default judgment on the 602 Loan.

15 Accordingly, the court concludes that the total outstanding obligation is the sum
16 owed on the 601 and 602 Loans: \$161,689.64.

17 2. Offset

18 The parties' main dispute centers on how much credit Mr. Ragusa should receive
19 from the sale of the vessel. Generally, "the amount realized on sale is an automatic
20 determination of the amount to be applied upon the debt." *Walter E. Heller*, 595 F.2d at

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22 ⁶ The proceeds are insufficient regardless of whether the court looks to the public auction
or the subsequent private sale as determinative of the fair value of the vessel.

1 971; *see also United States v. F/V Fortune*, 1987 A.M.C. 2351, 2356 (D. Alaska 1987)
2 (“The most valid measure of the fair market value of a vessel is the market value of the
3 vessel obtained at a fairly conducted sale.”) But here, there were two sales and
4 consequently two vastly different sale prices that could serve as the offset. Peoples Bank
5 argues that because it “was able to realize only \$34,100.00” from the subsequent private
6 sale, that amount operates as the fair value of the vessel and consequently, the offset
7 figure. (MDJ Reply at 3.) Mr. Ragusa maintains that the sale price of \$149,753.12 at the
8 court-ordered U.S. Marshal’s auction should serve as the offset value. (Ragusa MDJ
9 Resp. at 2.)

10 The court recognizes that there is a dearth of case law with these exact
11 circumstances: where the mortgagor purchases the vessel at the judicial auction for one
12 price and argues that another price from its subsequent private sale should control. And
13 while Peoples Bank maintains that “the law is well established . . . that the resale price
14 less the cost of repairs is presumptively the fair market value of property”⁷ (Mot. Reply at
15 3-4), it does not proffer any precedent in which the court utilized a subsequent private
16 sale price in lieu of the judicial sale price (*see generally* MDJ; MDJ Reply). Indeed, no
17 party presents a case that directly addresses whether the “amount realized on sale” refers

19 ⁷ Peoples Bank again relies heavily on a parenthetical in the court’s previous order that
20 utilizes this “resale” language. (*See* MDJ Reply at 3.) This reliance is misplaced. First, the
21 parenthetical is dicta, as it was not essential to the court’s holding in that order foreclosing the
22 mortgage on the vessel. Second, as discussed above, it is not clear that “resale” refers to the
subsequent private sale. Indeed, *Walter E. Heller*, the case the court was describing in the
parenthetical, does not hold that the sale price of a subsequent sale trumps the judicial sale price.
See 595 F.2d at 972.

1 to the court-ordered public auction or a subsequent sale by the mortgager. (*See generally*
2 MDJ Reply; Ragusa MDJ Resp.; SMM MDJ Resp.)

3 Contrary to Peoples Bank's assertion, the judicial sale price usually serves as a
4 proxy for the fair market value of a vessel. *See Walter E. Heller*, 595 F.2d at 971; *First*
5 *Citizens Bank & Tr. Co. v. Oil Screw Little Lady*, 963 F. Supp. 506, 508 (E.D.N.C. 1997)
6 (accepting sale price at interlocutory sale to calculate the deficiency judgment).

7 However, courts have taken pause when the vessel-at-issue is bought by the mortgagor
8 and then sold for a different price. *See Walter E. Heller*, 595 F.2d at 972 (recognizing a
9 "need for scrutiny" when the mortgagor and not a third party purchases the vessel at the
10 interlocutory sale); *see also Citytrust v. Yacht Restoration*, No. 90 Civ. 7814(JSM), 1991
11 WL 90752, at *2 (S.D.N.Y. May 17, 1991). For instance, in *Walter E. Heller*, the
12 plaintiff purchased the vessel at the interlocutory judicial sale for \$35,000.00 but
13 allegedly sold it afterwards for \$52,000.00. 595 F.2d at 971. The Fifth Circuit
14 determined that, given the "substantial disparity" between the two prices, the district
15 court should have allowed the defendants to pursue an offset measured by the fair value
16 of the vessel as opposed to the judicial sale price. *Id.* However, the Fifth Circuit
17 cautioned that "[i]f on remand the defendants fail to carry their burden of proving a fair
18 value in excess of the sale price the district court should adopt the \$35,000 sale price as
19 the measure of the defendants' offset." *Id.* n.3.

20 The court adopts the *Walter E. Heller* approach here, as the present case presents
21 an analogous situation, albeit the parties' positions are switched. After obtaining
22 ownership at the auction, Peoples Bank sold the vessel for \$34,100.00—a price

1 drastically lower than its \$149,753.12 bid at the judicial auction. (*See* MDJ Reply (Dkt.
2 # 134) at 2-3.) Because of the “substantial disparity” between these two prices, the court
3 scrutinizes whether the judicial sale price adequately captures the offset value, or
4 whether, as Peoples Bank maintains, the fair market value is closer to what it received in
5 the subsequent private sale. *See Walter E. Heller*, 595 F.2d at 972.

6 After applying the necessary scrutiny to the record, the court concludes that
7 Peoples Bank has failed to establish that the fair value of the vessel is less than the
8 judicial sale price. Despite having notice that the fair value of the vessel would be a
9 central issue (*see* SMM Mot. Resp. at 12 (questioning Peoples Bank’s rejection of the
10 judicial sale price)) and multiple opportunities to provide such evidence, Peoples Bank
11 offers little to no support of the vessel’s fair value aside from declaration testimony that it
12 received \$34,100.00 from the private sale.⁸ (*See generally* 11/28/17 Olson Decl.;
13 11/28/17 Loosmore Decl.; 12/22/17 Olson Decl. (Dkt. # 135).) Instead, as Peoples Bank
14 recognizes, the record contains appraisals submitted by Mr. Ragusa that suggest the fair
15 value of the vessel exceeds even the price paid at the judicial auction. (*See* MDJ Reply at
16 3 (“Unfortunately, the file in this case is full of estimates of the value of the defendant

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19 ⁸ Peoples Bank emphasizes that its purchase at the auction was through a credit bid.
20 (MDJ Reply at 3; *see also* Mot. Reply at 4 (“The amount that plaintiff bid as a credit bid at the
21 interlocutory sale of the defendant vessel has no relevance to the value of the vessel.”).) But
22 Peoples Bank offers no authority to support its contention that the nature of the bid carries any
significance. (*See generally* MDJ Reply; Mot. Reply.) To the contrary, a survey of the case law
indicates that the type of bid at a judicial auction is irrelevant. *Cf. Branch Banking and Tr. Co. v.*
Frank, No. 2:11-CV-1366 JCM(CWH), 2013 WL 5428112, at *5 (D. Nevada Sept. 26, 2013)
 (“[T]he credit bid is sufficient to establish prima facie proof of fair market value . . .”).

1 vessel, ranging upwards of \$200,000.00 and more.”); *see also* Ragusa Decl. ¶¶ 5, 9, Ex. 1
2 (attesting to several surveys that value the vessel at above \$200,000.00).)

3 Rather than offering sufficient appraisal evidence, Peoples Bank relies heavily on
4 the fact that it “was able to realize only \$34,100.00 from the sale of the vessel.” (MDJ
5 Reply at 3.) But what Peoples Bank actually received for the vessel is plainly insufficient
6 to establish the fair market value, as evidenced by *Walter E. Heller*. In that case, it is
7 incontrovertible that the plaintiff actually received \$52,000.00 from its subsequent sale.
8 *Walter E. Heller*, 595 F.2d at 972. Nevertheless, the Fifth Circuit required more. *Id.*
9 Without more evidence of the fair market value of the vessel, the Fifth Circuit instructed
10 the district court to adopt the judicial sale price. *Id.* n.3. The court concludes the same
11 here. The fact that Peoples Bank realized only \$34,100.00 from a subsequent sale is
12 insufficient to establish that the fair market value of the vessel is different from what the
13 vessel sold for at the judicial auction.⁹

14 Accordingly, because Peoples Bank does not meet its burden of showing that the
15 fair market value of the vessel is something other than the judicial sale price, the court
16 adopts the judicial sale price of \$149,753.12 as the offset to be applied.¹⁰


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18 ⁹ Although not dispositive to its ruling, the court takes note that the public auction was
19 allegedly well-attended with interested bidders aside from Peoples Bank. (*See* SSM Mot. Resp.
20 at 5.) Thus, it is entirely possible that if Peoples Bank had not bid, a third-party would have
21 purchased the vessel for a price higher than \$34,100.00. Instead, Peoples Bank exercised its full
22 \$149,753.12 credit in the opening bid, presumably because it believed it could then sell the
vessel at a profit. (*See id.*) Unfortunately, Peoples Bank’s gamble did not pay off, and there is
no reason that Mr. Ragusa ought to pay—quite literally—for the risk that Peoples Bank
undertook.

¹⁰ Because the court concludes that the judicial sale price is the offset value, it does not
reach the issue of whether Peoples Bank’s subsequent private sale is required to comply with 28
U.S.C. §§ 2001 and 2004. (*See* Ragusa MDJ Resp. at 2; 12/18/17 Vaughn Decl. ¶¶ 9-12.)

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IV. CONCLUSION

For the foregoing reasons, the court GRANTS in part and DENIES in part Peoples Bank's motion for fees (Dkt. # 109). The court ORDERS that Peoples Bank is entitled to judgment against Mr. Ragusa, *in personam*, for \$143,367.52, plus interest at \$45.98 per day from November 27, 2017, through the date of entry of this judgment and until paid. The Clerk is DIRECTED to close this matter.


JAMES L. ROBERT
United States District Judge