

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-009678

01/18/2013

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
D. Glab
Deputy

M & I MARSHALL AND ILSLEY BANK

JESSICA LAGINESS

v.

JOSE A AVALOS

GREG R DAVIS

MINUTE ENTRY

The Court received Defendant's Motion to Strike Expert Witness H. Charles Johnson, MSA, Johnson Appraisal Group, filed December 18, 2012. A response and reply were filed. Neither party requested oral argument.

After review of the parties' papers and the docket, the Court finds that the complaint was filed as a mortgage deficiency action pursuant to ARS § 33-814. Although there is a factual dispute about whether the loan related to the undeveloped lot falls within the protection of Arizona's anti-deficiency statute, if that factual dispute is resolved in Plaintiff's favor, a retrospective valuation of the lot will be required in order for the Court to determine the value of the property on the date of the Trustee's Sale. See ARS § 33-814(A). Real estate appraisal requires specialized knowledge, and the opinions of such experts will assist the Court to understand the evidence and determine whether any deficiency exists. The deficiency action will be tried to the Court, not a jury, so there is no need for the Court to act as a "gatekeeper" regarding expert opinions that only the Court will hear. Defendant's questions about the expert's abilities, methods and foundation for his opinions can be raised at trial through cross-examination.

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IT IS ORDERED denying Defendant's Motion to Strike Expert Witness H. Charles Johnson, MSA, Johnson Appraisal Group, filed December 18, 2012.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.