

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-007665

08/16/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

BILTMORE BANK OF ARIZONA, THE

JEFFREY J GOULDER

v.

COUNTRYWALK HOMES INC, et al.

JAMES E VIEH

MINUTE ENTRY

The court has had the issues raised in the trial of this action concerning the amount of the deficiency after the December 12, 2008 trustee's sale under advisement and, having reviewed the exhibits, the parties' trial briefs, and the cases cited, enters the following ruling.

The court finds the fair market value of the real property which was sold at the December 12, 2008 trustee's sale is \$160,048.50.

The court arrived at this amount by taking the total loan balance of \$1,770,048.50 and subtracting the independent fee appraiser, Dawn Blaskis' opinion of value as of October 28, 2008, of \$1,610,000.00.

Ms. Blaskis' opinion of value was the only opinion received in evidence from an independent source. The court finds that Ms. Blaskis' 94-page appraisal is the best evidence of the fair market value of the property that was sold, not only because it is a thorough analysis, but also the value was established only 45 days prior to the date of the trustee's sale, and the appraisal itself was commissioned by plaintiff.

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The court does not find that the attorney's error in failing to record the Declaration of Covenants, Conditions and Restrictions had a material effect on the value of the property as of December 12, 2008, and, in fact, the error ultimately worked to plaintiff's benefit.

The court finds that Exhibit 27 in evidence, the March 3, 2009, General Assignment, assigned 5055 Holdings, LLC's right to file this action for a deficiency to The Biltmore Bank prior to the filing of suit. Although the ultimate disclosure of the assignment document itself occurred very close to the trial date, that situation is ameliorated by the fact that defendants did not raise it as an issue until late in the course of litigation and, further, because the fact of the assignment itself was set forth in paragraph 17 of the complaint which defendants admitted in their answer.

The bank's explanation that the October 21, 2008, "sale" of the promissory notes was overstated on 5055's Holdings, LLC's general ledger by \$562,575.17 (Exhibit 94) was not overwhelming, but the court accepts it as an accounting adjustment made by 5055's accountants.

The accounting adjustment makes no difference in the outcome because the court has accepted Ms. Blaskis' appraisal as the best evidence that was offered of the fair market value of the property.

Our court of appeals' said in Honeywell Information Systems, Inc. v. Maricopa County, 118 Ariz. 171, 174, 575 P.2d 801 (App. 1978), a case involving the sale of electronic data processing equipment rather than real estate:

"The test of fair market value is not necessarily what an appraiser thinks the property is worth but rather what the property would sell for between a willing buyer and a willing seller in an arm's-length transaction."

In this case the court believes that the bank's commissioned appraisal conducted 45 days prior to the trustee's sale is the best evidence of fair market value.

Plaintiff may submit a form of judgment and application for attorneys' fees.