

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-019077

09/22/2004

HON. JONATHAN H. SCHWARTZ

CLERK OF THE COURT
D. Glab
Deputy

FILED: 09/27/2004

JOLENE POTTER

FLORENCE BRUEMMER

v.

RENEE MCCLAIN, et al.

JENNIFER A SPARKS

RULING

IT IS ORDERED denying Defendant's Motion to Dismiss for Lack of Prosecution and granting Plaintiff's Motion to Continue on the Inactive Calendar and to Enlarge Briefing Schedule. The case is continued on the Inactive Calendar until October 31, 2004 (Order signed by the Court September 8, 2004 and entered (filed) by the Clerk on September 9, 2004). Plaintiffs' Responses to Defendant McClain's Motion for Summary Judgment and Defendant Speros' Motion for Summary Judgment are due October 11, 2004. The replies are due October 25, 2004.

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment. Plaintiff failed to assert her rights under the lease. Plaintiff was entitled to an appraisal of the property and to the purchase price of \$198,000 or the appraised value, which ever was higher. Defendant chose not to abide by that term of the lease. Defendant rejected Plaintiff's appraisal. This was probably an action that Defendant was not entitled to take. Plaintiff's options were to refuse Defendant's position and to insist on the terms of the lease and the option. Instead, Plaintiff agreed to the closing of this transaction by signing a deed for the subject property over to Defendant for Defendant's demanded sum of \$198,000. Plaintiff was represented by counsel. Defendant was represented by counsel.

The Court is concerned that on reading page seven, lines one through nine, it appears that Defendant Ticor Title closed this transaction on July 2, 2003. Plaintiff did not inform the Court in the recitation of facts leading up to that fact that in fact Plaintiff had by signing the deed

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unilaterally reject the Plaintiff's appraiser in this situation. The Defendant may have through counsel threatened the Plaintiff with numerous lawsuits. Plaintiff's options were to call that bluff. Instead, Plaintiff decided to go along with the sale of this property at the price that Defendant demanded. The fact that Plaintiff succumbed to Defendant's behavior does not amount to a breach of contract.

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment.

Order Re: Plaintiff's Motion to Enlarge Briefing Scheduling on Defendant McClain's Motion for Summary Judgment to Permit Discovery is signed by the Court on September 8, 2004 and entered (filed) by the Clerk on September 9, 2004.