

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-013818

07/30/2013

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

B M O HARRIS BANK N A

MARY ANN HESS

v.

THOMAS C ARNOLD JR., et al.

GARY D ANSEL

UNDER ADVISEMENT RULING

This matter is under advisement following an evidentiary hearing. The only issue to be decided is the fair market value of the subject property as of the date of the trustee's sale.

Two witnesses testified at the evidentiary hearing. Plaintiff's witness was a certified appraiser. Using the "direct sales comparison approach," she valued the property at \$250,000. Defendants did not offer the testimony of an appraiser. Rather, Defendant Tom Arnold testified. Using what amounted to a "cost approach," Mr. Arnold testified that the property was worth \$600,000 as of the date of the trustee's sale.

The court finds that Plaintiff's expert's valuation was more credible than Defendant's. It was based on other transactions in the marketplace involving similar (though not identical) properties. Although Defendants pointed out several ways in which that appraisal might be subject to criticism, the court finds its methodology to be sound. The court further finds that the comparable sales on which the appraisal was based are reasonable, and that the appraiser's selection of \$25,000 per acre based on those comparable sales was reasonable.

Defendants' cost approach valuation was not grounded in market considerations. Rather, Defendant Tom Arnold assigned a value for the raw land, and then added to that value costs

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Defendants incurred to improve the property. The evidence does not establish, however, that those improvements translate to the significant increase in fair market value that Defendant believes it would. There was no objective evidence that the property would sell for anything close to \$600,000 on the market.

Defendants objected to the admission of Exhibit 2, which was an appraisal report they previously disclosed from their own expert. The court has not considered this report as substantive evidence. However, Plaintiff's appraiser testified that she reviewed it, and the court has considered it as one of the many items on which she based her opinion. The court has given no weight to that report as independent evidence of value.

"Fair market value" is defined as "the most probable price, as of the date of the execution sale . . . for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress." A.R.S. § 33-814(A). Based on all the evidence, the court finds the fair market value of the property as of August 21, 2012 to be \$250,000.

There being no other issues to decide,

IT IS ORDERED that this matter will be dismissed on **August 31, 2013** unless by that date Plaintiff lodges a form of judgment.

IT IS FURTHER ORDERED that any application for attorneys' fees or statement of costs shall be filed on or before **August 31, 2013**.

FILED: Exhibit Worksheet

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.