

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-036230

03/21/2011

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT

D. Harding

Deputy

NATIONAL BANK OF ARIZONA N A

JASON P SHERMAN

v.

NICHOLAS A MONARDO

RICHARD W HUNDLEY

TRIAL MINUTE ENTRY
DAY 1

Courtroom CCB-701

Prior to trial, Plaintiff's Exhibit 1 and Defendant's Exhibits 2-5 are marked for identification.

9:43 a.m. This is the time set for trial to Court. Plaintiff is represented by counsel, Jason P. Sherman. Defendant is present and represented by counsel, Richard W. Hundley.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Plaintiff's Case:

John R. Willis, Jr. is sworn and testifies.

Plaintiff's Exhibit 1 is received in evidence.

10:55 a.m. The Court stands in recess.

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11:06 a.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Defendant's Case:

Defendant's Exhibit 2 is received in evidence.

Nicholas A. Monardo is sworn and testifies.

Closing arguments are presented.

IT IS ORDERED that the clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee. Counsel/party shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits and presented to the Exhibits Room of the Clerk's Office. The Court's exhibit tag must remain intact on all refiled exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form

11:50 a.m. Matter concludes.

LATER:

Finding of Facts:

1. On or about September 23, 2007 Plaintiff made a loan to Defendants in the original principal face amount of \$271,500.00 (the "Loan").
2. The Loan was secured by a Deed of Trust in favor of Plaintiff.
3. The Deed of Trust was recorded on January 14, 2008 at instrument no. 2008-0032743 records of Maricopa County, Arizona, and encumbers certain real property described therein (the "Property").
4. Defendants failed to pay Plaintiff in accordance with the terms of the Loan Documents and were and are in default thereunder.
5. The principal sum of \$276,435.17 with interest accrued through September 2, 2009 was due, owing and unpaid to Plaintiff by Defendant. The subject property secured by the Loan Documents was raw/vacant land.

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6. Plaintiff directed Christopher R. Perry as substitute trustee under subject Deed of Trust to sell said property pursuant to the power of sale contained therein. A trustee's sale was regularly conducted on September 2, 2009.
7. As of the date of the trustee' sale, there was due and owing under the note \$276,435.17.
8. After briefing summary judgment, the Court granted Plaintiff's motion on all issues except that the determination of value of the subject property.
9. Plaintiff purchased the subject properties with its credit bid of \$156,000.00.
10. Plaintiff's appraisal of the Property resulted in Plaintiff's determination of the fair market value of \$175,000.00.
11. After the valuation hearing held on March 21, 2011, the Court finds that the value of the Property as of the foreclosure sale to be \$195,000.00.
12. Pursuant to A.R.S. § 33-814, the deficiency balance owed is \$81,435.17.

Conclusions of Law:

1. That the Plaintiff is entitled to judgment against Defendants for \$81,435.17, the difference between the Court's determination of the value of the Property (\$195,000.00) and the payoff balance as of the foreclosure sale date (\$276,435.17) plus interest at the contract rate from the date of the foreclosure sale.
2. That Plaintiff is entitled to its reasonable attorneys fees pursuant to A.R.S. § 12-341.01 and taxable costs together with all post-judgment costs accruing subsequent to the date hereof.

IT IS ORDERED there being no just reason for delay in entry of final judgment in this matter pursuant to Arizona Rules of Civil Procedure, Rule 54(b), that final judgment be entered in favor of Plaintiff and against the Defendants pursuant to the Plaintiff's Complaint.

IT IS FURTHER ORDERED Plaintiff shall file an Affidavit of Fees and Statement of Costs no later than **April 20, 2011**.

Dated: March 24, 2011

/ s / HONORABLE J. RICHARD GAMA

JUDICIAL OFFICER OF THE SUPERIOR COURT

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This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.