

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

11/01/2019

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
K. Ballard
Deputy

B M O HARRIS BANK N A

LARRY O FOLKS

v.

KATHY HILSENTEGER, et al.

KATHY HILSENTEGER
SUITE 1680, 700-6TH AVE SW
CALGARY
ALBERTA
CANADA T2P 0T8

MARTY HILSENTEGER
SUITE 1680, 700-6TH AVE SW
CALGARY
ALBERTA
CANADA T2P 0T8
JUDGE MAHONEY

HEARING SET

Courtroom: ECB-411

10:20 a.m. This is the time set for a Scheduling Conference on Plaintiff's Motion to Set Fair Market Value Hearing Pursuant to A.R.S. § 33-814(A), filed 9/30/19. Plaintiff BMO Harris Bank, NA is represented by Counsel Larry O. Folks (appearing telephonically). No other party is present or represented.

A record of the proceedings is made digitally in lieu of a court reporter.

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The Court confirms that Plaintiff's counsel is the only person on the conference call, and that counsel has been unable to contact the Defendants for purposes of this conference call this morning.

Plaintiff's counsel states that he filed his lawsuit against Defendants Kathy Hilsenteger fka Kathy Degroot and Martin Hilsenteger, Defendants were served in Canada where they reside, and Defendants were represented in the case by counsel. Defendants' counsel subsequently filed a Motion to Withdraw that was granted by the Court. Since the withdrawal of representation, counsel indicates that he has not received any contact from the Defendants, and Defendants have not actively participated in this case, even though counsel believes he has a valid mailing address for the Defendants as it is the same address at which Defendants were served.

Plaintiff's counsel advises the Court that his office has attempted to contact the Defendants in this case beginning on Monday of this week by calling the phone number provided for Defendants at 1-403-354-3980, and every day since, and have on each occasion reached voicemail, stating "It's Marty, please leave a number." Additionally, Plaintiff's counsel attempted to contact Defendants at that same phone number this morning without success.

The Court notes Plaintiff's Motion to Set Fair Market Value Hearing Pursuant to A.R.S. § 33-814(A), filed 9/30/19, was mailed to Defendants and sent to the same address that is on file with the Court for Defendants.

Additionally, the Court notes the Minute Entry dated 9/18/19, filed 9/19/19, in which the Court granted Plaintiff's Motion for Partial Summary Judgment on all Issues in the Case, Except for Determination of the Amount of the A.R.S. §33-814(A) "Fair Market Value" Credit Against the Loan Balance as of the Foreclosure Sale Date, filed 6/24/19, as unopposed as Defendants did not file a Response or Objection or any other filing regarding that Motion for Partial Summary Judgment.

LET THE RECORD REFLECT at the Court's direction today, Court staff also attempted to call Defendants this morning at 10:10 a.m. at the number stated on record for them, which is the same number stated by Plaintiff's counsel, 1-403-354-3980, and also received the voicemail stating "Hi, you have reached Marty. Please leave a message and I'll call you back," to which Court staff left a message advising Defendants that their telephonic presence was required for the 10:00 a.m. hearing before this Court, and that Defendants needed to all the Court back as soon as possible; however, as of this time, the Court has not received a return call from Defendants.

For all the reasons discussed on the record, **THE COURT FINDS** that Defendants have been given notice of today's hearing, in a variety of ways, and have not responded or participated in any way. Therefore, the Court will proceed in their absence.

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Brief discussion is held regarding what Orders are necessary in advance of conducting the Fair Market Value Hearing.

Plaintiff confirms that an appraisal has already been completed by Plaintiff's expert and was provided to Defendants in September, 2019.

Plaintiff's counsel does not believe any other discovery needs to be completed or any additional Orders need to be issued prior to the hearing. Counsel further states that he is willing to waive the priority setting for the Fair Market Value Hearing, and that the Court may set a hearing at its convenience within the next 60 days or so.

Plaintiff's counsel further states that if the Defendants decide to participate in the hearing, they may wish to obtain their own appraisal.

Discussion is held regarding the scope of the Fair Market Value Hearing. Plaintiff's counsel advises the Court that he only intends to call his appraiser (Kenneth Trumpler) to testify at the hearing and submit a few exhibits (the appraisal and the expert's CV). Additionally, based on the Court's 9/18/19 ruling, the only issue for the Court to determine is the fair market value of the property on the date of the foreclosure sale.

Plaintiff's counsel confirms that he and his expert are both available in January, 2020.

IT IS ORDERED setting a Fair Market Value Hearing on **1/15/2020 at 2:30 p.m. (time allotted: 1 hour)** before:

**Honorable Margaret R. Mahoney
East Court Building
101 West Jefferson, Courtroom 411
Phoenix, AZ 85003-2202
Telephone: (602) 506-0387**

IT IS FURTHER ORDERED that all parties shall hand-deliver to the Clerk of this Division (1) all Exhibits to be used at the hearing and (2) a bench copy for the Court of all Exhibits in a tabbed binder no later than **3:00 p.m. on 1/8/2020**. **Please contact the Clerk with any questions regarding procedures for marking and submitting Exhibits (602) 506-7504.** All hearing Exhibits shall have been exchanged prior to that time. Exhibits shall be accompanied with a numbered list of each Exhibit and shall be separated with a blank sheet of colored paper. No duplicate Exhibits shall be presented for marking. Exhibits are marked in numerical order per party, making it necessary to mark all of one party's Exhibits before marking the other party's.

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Accordingly, the Defendant's Exhibits numbering shall start at the next number following the last of Plaintiff's Exhibits. (For example, Plaintiff submits 10 Exhibits, which are marked Exhibit 1 through 10. Defendant submits 10 Exhibits, which are marked 11 through 20). Exhibits must be stapled or bound together prior to delivery to the clerk.

IT IS FURTHER ORDERED counsel shall file, no later than 1/8/2020, a Prehearing Statement (or a Joint Prehearing Statement if Plaintiff is able to obtain Defendants' cooperation) setting forth the issue to be decided, the parties' positions regarding the calculation, the appraisal's evaluation, etc.

LET THE RECORD REFLECT that it does not appear that any of the Court mailings to Defendants at the address set forth on this Minute Entry have been returned as undeliverable or unknown. Therefore, it appears the address on file with the Court is the correct address for Defendants.

Plaintiff's counsel is advised that if he is contacted by Defendants and any issues arise regarding the Fair Market Value Hearing, counsel shall contact the Court or file any necessary notices.

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

NOTE: All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

10:36 a.m. Matter concludes.

ATTENTION SELF-REPRESENTED LITIGANTS: Unless an attorney files a notice that he or she represents a party, the person(s) not represented by an attorney will act as his or her own attorney. **The law requires the Court to hold all persons representing themselves to the same standard as a licensed attorney.** Self-represented litigants are encouraged to review and become familiar with the Arizona Rules of Civil Procedure, paying particular attention to Rule 26. Please note that **only a licensed attorney may represent a corporation, LLC, or similar**

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business entity in the Superior Court. Ramada Inns v. Lane & Bird Advertising, 102 Ariz. 127, 426 P.2d 395 (1967).

Before the Judge can consider anything you send her, you must show her that you have given a copy of your request:

1. To the Clerk of the Court. The Clerk of the Court is a separately elected official. It is the Clerk's job to keep an independent record of everything that happens at the Court. The Court cannot act on a document that has not been made a part of that record; and
2. To every other party involved in the case. This allows all parties a fair chance to tell the Judge what they think before the Judge makes a decision.

Because of that, if you want the Judge to consider something you send her, you must file the original document with the Clerk of the Superior Court, mail or deliver a copy directly to this Division (that is, to the Judge, using her specific courtroom address), and mail or deliver a copy to all opposing parties. In addition, on each document, you must include a signed certificate that says whether you mailed or hand-delivered each copy, when you did so, and states the specific people and the specific addresses to which you mailed or hand-delivered each copy. If a party is represented by a lawyer, you must send or deliver the copy to the lawyer, not to the party. All proposed Orders submitted to this Division must include copies of the Order with self-addressed, stamped envelopes for all parties/counsel.

Do not mail or send papers for the Clerk or other parties to the Judge.

If you want to file papers with the Clerk of the Court by mail, please send them to:

Clerk of the Superior Court's
Civil File Counter
201 W. Jefferson
Phoenix, AZ 85003

The Clerk's guidelines for filing by mail can be found at:
<http://www.clerkofcourt.maricopa.gov/filing-by-mail.asp>

If you are not represented by a lawyer, you must keep the Court updated regarding your current address and telephone number. If your address or phone number changes at any time, you must file a notice of change of address/phone number with the Clerk of Court. That form can be downloaded at no charge from the following website:

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<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

Alternatively, you may purchase printed forms at any of the following Superior Court Law Library Resource Center locations (Monday-Friday, 8:00 a.m. to 5:00 p.m.):

Downtown Phoenix Facility

East Court Building
101 W. Jefferson St.
Phoenix, AZ 85003-2243

Southeast Facility

222 E. Javelina Ave.
Mesa, AZ 85210-6201

Northeast Court Facility

18380 N. 40th Street
Phoenix, AZ 85032

Northwest Regional Center

14264 W. Tierra Buena Lane
Surprise, AZ 85374