

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

01/15/2020

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

Courtroom: ECB-411

Prior to the commencement of the hearing, Plaintiff's Exhibits 1 and 2 are marked for identification.

2:48 p.m. This is the time set for a Fair Market Value Hearing. Plaintiff BMO Harris Bank, NA is represented by Counsel Larry O. Folks. Defendants are not present or represented.

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

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

01/15/2020

LET THE RECORD REFLECT the Court delayed calling this matter, which was scheduled to begin at 2:30 p.m., to give Defendants an opportunity to appear for the hearing or contact the Court. No such appearance or contact has been made as of this time.

The Court briefly summarizes the record made during the 11/1/2019 hearing regarding attempts to contact the Defendants in this matter for the 11/1/2019 hearing. In addition, Plaintiff's counsel summarizes his prior attempts to contact the Defendants.

The Court notes that none of the minute entries mailed to the Defendants at the address on record in Canada have been returned; and therefore, the address appears to be a valid address for Defendants.

THE COURT FINDS Defendants have made no contact with the Court or opposing counsel, no good cause has been shown for Defendants' failure to appear, and it appears that Defendants are voluntarily absenting themselves from this hearing, and therefore Defendants are waiving their presence and the hearing will proceed in their absence.

The Court has reviewed Plaintiff's [unilateral] Prehearing Statement, filed 1/8/2020.

The sole issue for today's hearing is a determination of the fair market value of the property located at 21370 W. Jojoba Ct. Buckeye, AZ 85396 (the "Property") on the date of the foreclosure sale as partial summary judgment was previously granted in Plaintiff's favor on all other issues.

Plaintiff presents an opening statement.

Kenneth Leroy Truempler is sworn and testifies.

Plaintiff's Exhibit 1 is received in evidence.

Plaintiff's Exhibit 2 is received in evidence.

Plaintiff presents a closing argument.

For the reasons discussed on the record, **THE COURT FINDS** as follows:

- The date of valuation that applies, and that was used in the appraisal, is 9/19/2018, which is the date the foreclosure sale was held;
- The witness who testified today established the appraisal amount via a retrospective analysis of the fair market value of the Property on the date of the foreclosure sale as \$77,000;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

01/15/2020

- The successful bidder at the foreclosure sale on 9/19/2018 paid more than the fair market value of the Property, and specifically paid \$91,500 to purchase the Property;
- The higher value of \$91,500, and not \$77,000, must be used to credit against the loan deficiency;
- The loan balance on the date of the foreclosure sale, as established by the evidence, was \$186,717.16;
- The balance of the deficiency is \$95,217.16, which is the principle amount of the deficiency judgment that the Court is awarding to Plaintiff after deducting the sale price of \$91,500 (the credit applied because that is the amount the successful bidder paid at the foreclosure sale) from the loan balance of \$186,717.16;
- Interest will be calculated as permitted by the Contract (prejudgment and post-judgment interest will be at the same rate); and
- A basis for recovery of reasonable fees and costs has been established as this action arises out of contract and is permitted by A.R.S. § 33-814(A); therefore, the prevailing party will be entitled to its reasonable fees and costs.

IT IS ORDERED Plaintiff shall submit any Application for Award of Attorney's Fees and Statement of Costs by no later than 5:00 p.m. on Tuesday, **2/4/2020**.

IT IS FURTHER ORDERED Plaintiff shall, by that same date, lodge a proposed form of Judgment.

IT IS FURTHER ORDERED Defendants shall file any written objections to Plaintiff's Application for Attorney's Fees, Statement of Costs, and proposed form of Judgment by no later than **2/18/2020**.

Plaintiff's counsel advises the Court that he intends to submit a *China Doll* Affidavit.

3:54 p.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.** *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287 (App. 2001); *Homecraft Corp. v. Fimbres*, 119 Ariz. 299, 301 (App. 1978). 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 business entity in the Superior Court.** *Ramada Inns v. Lane & Bird Advertising*, 102 Ariz. 127, 426 P.2d 395 (1967).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

01/15/2020

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 in hard copy form 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.

Information on filing documents with the Clerk of the Court can be found at:
<https://www.clerkofcourt.maricopa.gov/services/filings/filing-counters>

Information on eFiling documents with the Clerk of Court can be found at:
<https://www.clerkofcourt.maricopa.gov/records/filings>

Additionally, information regarding eFiling in civil cases can be found at:
<https://www.azcourts.gov/efilinginformation>

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:

<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.):

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-012947

01/15/2020

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