

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-011171

07/22/2011

HONORABLE EMMET RONAN

CLERK OF THE COURT
T. Soto
Deputy

BANKFIRST

EUGENE F O'CONNOR II

v.

A B C D W, L L C, et al.

LAWRENCE C WRIGHT

PINAL COUNTY SUPERIOR COURT
NO ADDRESS ON RECORD

MINUTE ENTRY

The Court has previously taken this matter under advisement following a Trial to the Bench. The Court has considered the testimony and evidence presented on March 22nd and March 23, 2011. The Court has also considered the written closing arguments filed by counsel.

This is a “deficiency” action pursuant to A.R.S. §33-814. The only issue at Trial was the fair market value of the real property at the time of the Foreclosure Sale on April 22, 2009. Plaintiff has the burden of proof on this sole remaining issue.

Plaintiff purchased the property at the Foreclosure Sale with a successful credit bid of \$14,160,000. At the time of the Foreclosure Sale the amount of the Loan Balance was \$23,395,877.79. Plaintiff's hired a certified real estate appraiser who prepared a written appraisal report. His opinion is that the fair market value of the property, as of March 23, 2009, was \$14,320.00. He testified at Trial regarding the basis of his opinion. The Court has reviewed his report. (Ex 19)

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The Court has also reviewed three other appraisals prepared by David M. Lyons regarding this property.

1. January 14, 2006, date of valuation, fair market value \$89,000,000. This as prepared for Marshall Bank First Corporation. (Ex 44)
2. September 10, 2008, date of valuation, fair market value \$65,500,000. This was also prepared for Bank First Corp. (Ex 27)
3. October 3, 2010, date of valuation, fair market value \$12,500,000. This was prepared for Plaintiff, Presidium Asset Solutions, the successor in interest to Bank First. (Ex 22)

The Court notes that all four of these appraisals used the “sales” approach to determine fair market value. The Court also received, and has considered, evidence of fair market value from Mr. Brian Dorrah. Although not a certified real estate appraiser, the Court believes he is qualified to testify as to the fair market value of this property based on his work experience in banking, real estate development and because of his unique familiarity with this particular property.

Plaintiff argues that the Court should give no weight at all to any of Mr. Lyons appraisals because he did not testify at Trial. However, all three of his appraisals were prepared for Plaintiff, or its predecessor in interest. All of his evaluations used the same “sales” approach by Mr. Steffen. In light of the extreme volatility of the real estate market in the last four to five years, the Court concedes that the value of the Lyons reports are somewhat limited in trying to determine the fair market value at the time of the trustee sale. However, the Court does believe they have significant relevance in determining whether Plaintiff has carried their burden of proof on that issue. When you look at the loss of value between his first and second appraisals and the loss of value between the trustee sale and his third appraisal in October 2010, the drastic drop in value between September 2008 and April 2009 makes no sense. It is not even consistent with the market decline at the time. The only reasonable inference is the value of the property had not declined that much.

Defendants raised a number of issues relating to the manner in which Mr. Steffen arrived at his opinion of fair market value. The Court does find it interesting that, while using the sales approach to valuation, he discounted his own comparable sales by 60%. The Court believes that the predevelopment planning and studies that were done by the Defendants do add value to the property. The Court believes that the testimony and evidence presented by the Defendants rebutted Mr. Steffen’s reasons for discounting the property as he did.

In light of the volatility of the real estate market since 2006, it is impossible to speak in terms of “accurate or inaccurate” when referring to opinions of fair market value. In this case,

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the Court believes there are numerous questions surrounding Mr. Steffen's opinion of fair market value. Some of them are the result of previous appraisals done at Plaintiff's (or their predecessor) request. Plaintiff has not established that it is more probable than not that the fair market value of the property was \$14,160,000. at the time of the trustee sale. Plaintiff has not established that it is more probable than not that the fair market value of the property was less than the loan balance at the time of the trustee sale. In fact, it appears to the Court that it is more probable than not that the property was worth more than the loan balance at the time of the trustee sale.

Finally, both parties have filed Motions for Sanctions alleging the other party and/or their counsel, failed to participate in good faith in the mediation process. The Court had deferred ruling on that issue pending Trial. In reviewing the parties' pleadings, the Court believes that both parties appear to have made something less than their best effort at mediating the case. That is probably due, in part, to the fact that they were so far apart in their positions, and likely to remain that way.

IT IS ORDERED denying the Motions for Sanctions.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.