

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-009493

10/17/2013

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

B M O HARRIS BANK N A

LARRY O FOLKS

v.

ABDUL A MAHMOOD, et al.

GARY MICHAEL SMITH

UNDER ADVISEMENT RULING

This matter is under advisement following a fair market value hearing. The court makes the following findings.

1. Defendants owned two adjoining residential lots on North 27th Place in Phoenix. Lot 20 is 37,556 square feet and Lot 28 is 33,454 square feet for a total of 71,010 square feet.

2. The Lots are in a hillside area near Shadow Mountain with some slope and with views. The Lots touch the Phoenix Mountain Preserve at their corner, though it is not clear whether there is access to the Mountain Preserve at that corner.

3. Plaintiff foreclosed and sold the Lots at a trustee's sale on May 31, 2012 for \$252,100. This evidentiary hearing was held pursuant to A.R.S. § 33-814 to determine their fair market value.

4. Plaintiff's expert, Ms. Tucker, testified that the Lots have a fair market value of \$230,000, which is approximately \$3.24 per square foot (\$3.33 per square foot for Lot 20 and \$3.13 per square foot Lot 28).

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5. Defendants' expert, Mr. Sell, testified that the Lots have a fair market value of \$545,000, which is approximately \$7.67 per square foot.

6. The court finds Ms. Tucker's valuation to be more credible than Mr. Sell's, but finds that the Lots are worth more than Ms. Tucker opined for reasons explained below.

7. Ms. Tucker uses the comparative sales method and her valuation is based on four comparable sales. All of those sales are reasonably comparable for the reasons set forth in Ms. Tucker's report.

8. Mr. Sell also uses the comparative sale method. But his valuation is based on two sales and four listings.

9. Using listings may be acceptable appraisal practice, but the court finds the listings in this case to not be credible indicators of value.

10. One of Mr. Sell's two sales occurred approximately two years before the trustee's sale. The court finds this sale to not be a credible indicator of value.

11. The only one of Mr. Sell's comparable sales that is credible was at 14252 North 27th Place. That property is very close to the Lots, and is on the same cul-de-sac as Lot 28. The contract for sale of that property was entered very close to the date of the trustee's sale, and it closed in October 2012. This property sold for \$259,000, or \$7.85 per square foot.

12. Ms. Tucker's comparable sales ranged from \$1.58 per square foot to \$4.45 per square foot. How does one explain the difference between the sales prices for those properties and the \$7.85 per square foot price of 14252 North 27th Place so close to the trustee's sale? The court draws the following inferences:

a. Values in the neighborhood where the Lots are located are higher than in the neighborhood where Ms. Tucker's comparable sales are. Although that difference alone cannot account for the vast difference in value, neither can a fair market value determination ignore a sale so close to the subject property and so close to the date of the trustee's sale.

b. This sale suggests that the Lots are worth more than \$3.24 per square foot. It is not credible that the Lots were worth on a per-square foot basis less than half of what 14252 North 27th Place sold for within months of the trustee's sale.

c. However, there likely was something unique about 14252 North 27th Place that caused a buyer to pay more for that property than he or she would have paid for

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similar property elsewhere. The court notes that 14252 North 27th Place abuts the Phoenix Mountain Preserve on one side, which generally would make it more valuable than the Lots.

d. The fact that there are no other comparable sales in the same range as the 14252 North 27th Place sale during the relevant time period also suggests that it was worth far more than the Lots.

13. These determinations warrant an upward adjustment from Ms. Tucker's valuation. The court cannot find that the Lots have the same per-square-foot value as the 14252 North 27th Place property. But neither can it find that the Lots are worth the approximately \$3.24 per square foot that Ms. Tucker opines.

14. Appraisal is an inexact science, and therefore so is a court's fair market value determination. There is no quantitative way to adjust Ms. Tucker's valuation based on the 14252 North 27th Place sale. Rather, the court must make a reasonable determination regarding what that sale says about the Lots' value.

15. Considering all the evidence, the court finds that the fair market value of the Lots is \$5.00 per square foot, or \$355,050. This value is closer to Ms. Tucker's valuation, but accounts for the facts stated above concerning the neighborhood where the Lots are.

Based on the foregoing,

IT IS ORDERED that either party may lodge a form of judgment.

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.