

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-014813

11/09/2009

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

M & I MARSHALL AND ILSLEY BANK

JEFFREY D WOLFE

v.

CHUCK E LEFEBVRE, et al.

CHUCK E LEFEBVRE
29667 N 70TH AVE
PEORIA AZ 85383

AMY R LEFEBVRE
29667 N 70TH AVE
PEORIA AZ 85383

MINUTE ENTRY

The Court has received Plaintiff's Motion for Partial Summary Judgment on All Issues Related to Plaintiff's Mortgage Deficiency Claim 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 and Defendant's Motion for the Court to Dismiss Plaintiff's Motion for Judgment on All Issues Related to Plaintiff's Mortgage Deficiency Claim. As the Lefebvres' motion offers no basis for Plaintiff's motion to be stricken, the Court treats it as their response brief. The Court has also received and reviewed Defendants' Response/Reply filed September 24, 2009. Neither party has requested oral argument, and the Court believes the matter is adequately briefed in the written materials submitted to it.

The bulk of the Lefebvres' argument relates to the alleged unfairness of M&I's appraisal of their property and its purchase at the trustee's sale. A.R.S. § 33-814(A) provides a procedure whereby the Court, after hearing the evidence submitted by both parties, determines the proper fair market value as of the date of the sale with which they are to be credited, and M&I's motion

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expressly reserves that issue for the required hearing. The Court must follow that statutorily-prescribed procedure.

The Lefebvres also raise (without identifying it) A.R.S. § 33-729(A), the anti-deficiency statute. However, the protection of this statute is limited to property which is “utilized” as a single-family or two-family dwelling. As our Supreme Court has noted, “There is a difference between property intended for eventual use as a dwelling and property utilized as a dwelling.” *Mid Kansas Fed. Savings & Loan Assn. of Wichita v. Dynamic Development Corp.*, 167 Ariz. 122, 129 (1991). The Lefebvres concede that they have never lived in the property, and that it is in fact not in habitable condition. That they may have intended to use it as their dwelling in the future is immaterial. The anti-deficiency statute does not apply.

The Lefebvres have not contested the matters submitted in M&I’s motion.

Therefore, it is ordered granting Plaintiff’s Motion for Partial Summary Judgment on All Issues Related to Plaintiff’s Mortgage Deficiency Claim 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.

It is further ordered the A.R.S. § 33-814(A) hearing shall be set by separate minute entry.

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