

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-005522

03/06/2012

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nixon
Deputy

MERIDIAN BANK N A

JANESSA E KOENIG

v.

JAD GROUP L L C, THE, et al.

KARL S PEARSON

RULING

The Court has read and considered the briefing on Plaintiff's Motion for Summary Judgment. Plaintiff Meridian Bank N.A. ("Bank") moves for summary judgment against Defendants The JAD Group, LLC, Double "D" Construction 2000, Inc., and James Donaldson regarding Defendants' liability for a deficiency under a Promissory Note ("Note"). In response, Defendants argue that disputed issues of fact preclude summary judgment, specifically with regard to the fair market value of the subject property (the "Property") and the amount of the debt.

Fair Market Value.

Bank asserts that \$765,000 was the fair market value of the Property on the date of the 2/4/11 Trustee's Sale, based on the actual price paid at the Sale by Bank. Affidavit of Linda Spradling, Vice President of Meridian Bank, N.A. The last appraisal obtained by Bank prior to the Trustee's Sale ("Sale") valued the property at \$850,000 as of 10/12/10; \$765,000 reflects Bank's opening bid at 90% of appraised value of the Property, in accordance with Bank's typical practice. Supplemental Affidavit of Linda Spradling. Defendants assert that the fair market value was in excess of the alleged debt of \$1,341,982.29, relying on Donaldson's Declaration. Donaldson's opinion of value was based on an MLS listing reflecting the sale of a property comparable to the Property and his review of other comparable sales.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-005522

03/06/2012

The Court finds that Defendants have put forth competent evidence creating a factual dispute that precludes summary judgment on this issue. “[A]n owner of property is always competent to testify as to its value.” *Bd. of Regents of the Univ. & State Colleges of Ariz. v. Cannon*, 86 Ariz. 176, 1768 (1959). Any issue with regard to an owner’s valuation goes to weight of his testimony, not competency. *Id.*; *Atkinson v. Marquart*, 112 Ariz. 304, 307 (1975); *see also Santa Fe Pac R.R. Co. v. Cord*, 14 Ariz. App. 254, 265 (1971).

Amount of the Debt.

Bank asserts Defendants owed it \$1,341,982.29 on the Note on the date of the Sale. Affidavit of Linda Spradling. Defendants argue that Bank has not established an adequate foundation to support this amount, specifically with regard to how the interest, late charges, property taxes, and trustee’s fees and costs were calculated. The Court disagrees. Spradling’s affidavit established these amounts, which were supported by the Loan Payoff Summary. The Court finds that Bank laid sufficient foundation for the amount of the debt so that Defendants could have disputed this amount as inconsistent with the terms of the Note if they had chosen to do so.

Conclusion.

Based on the foregoing,

IT IS ORDERED denying Plaintiff’s Motion for summary judgment in part (fair market value) and granting in part (amount of the debt).

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.