

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-019063

06/01/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT  
L. Nixon  
Deputy

MESA BANK

MICHAEL J FARRELL

v.

THOMAS ALEXANDER, et al.

THOMAS ALEXANDER  
12771 E LUPINE AVENUE  
SCOTTSDALE AZ 85259

ANDREW ABRAHAM  
JOHN E DEWULF  
MICHAEL PETER SALCIDO  
MARK S SIFFERMAN  
JILL B DAVENPORT

MINUTE ENTRY

Defendant Capital Title Agency, Inc.'s ("Capital Title") Motion for Summary Judgment and Defendant American Mortgage Specialists, Inc.'s ("AMS") Motion for Summary Judgment having been under advisement, the court issues the following rulings.

Capital Title's Motion for Summary Judgment is DENIED in part and GRANTED in part; and

AMS' Motion for Summary Judgment and Bobbi Jo Johnson and Capital Title's joinder therein is GRANTED in part and DENIED in part.

Capital Title's Motion for Summary Judgment

Capital Title contends that plaintiff Mesa Bank's damage claim is barred by Arizona's anti-deficiency statute, A.R.S. § 33-814(G). In the alternative, Capital Title contends that Mesa Bank's damages must be measured using its credit bid as the value of the collateral. Finally,

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-019063

06/01/2010

Capital Title contends that, at the very least, Mesa Bank's damages must be measured as of the date of the trustee's sale.

The parties dispute the scope of Arizona's anti-deficiency statute, A.R.S. § 33-814(G). Capital Title argues that A.R.S. § 33-814(G) precludes a lender from filing an action to recover a deficiency from anyone, whether the borrower or a third-party. Mesa Bank maintains that A.R.S. § 33-814(G) was adopted solely to protect homeowners and is therefore limited to protecting homeowner borrowers only.

The court finds that A.R.S. § 33-814(G) does not apply to Capital Title. A.R.S. § 33-814(A), allows a creditor to pursue a deficiency judgment against those "directly, indirectly or contingently liable on the contract for which the trust deed was given as security." Because Capital Title is not directly, indirectly or contingently liable to Mesa Bank on the contract for which the trust deed was given as security, the court finds that Capital Title does not fall within purview of A.R.S. § 33-814 and therefore cannot avail itself of its protection. The court finds "no indication...of a legislative intent to allow strangers to [a] loan transaction to be protected by the anti-deficiency statute." Glenham v. Palzer, 792 P.2d 551, 553 (Wash. App. 1990). This conclusion is in line with the spirit and policy of Arizona's anti-deficiency statute "to protect homeowners from personal liability for debts secured by trust deeds." Long v. Corbet, 181 Ariz. 153, 157-58, 888 P.2d 1340, 1343-44 (App. 1995). The court finds that this reasoning applies with equal force to the defendants who joined in this motion.

Capital Title argues that Arizona's common law credit-bid rule established Mesa Bank's credit bid as the minimum value of the collateral for the purpose of determining the amount owing on the loans and plaintiff's damages. The court finds that the bank's damages, if any, should be measured from the date of the credit bid(s) made by the bank and that the amount of the bank's damages is a question of fact which may or may not be measured by the amount of their credit bid.

The court finds that the common law credit-bid rule, to the extent that it exists independent of Arizona's anti-deficiency statute, does not limit Mesa Bank's damage calculations to the value of its credit bid. The court is not aware of any binding precedent that applies the credit-bid rule to third parties and the court declines to do so in this case. The court finds no persuasive reason to employ anti-deficiency principles to a lender's relationship with third parties.

Finally, Capital Title argues that Mesa Bank's damages must be measured as of the date of the trustee's sale because Capital Title is not the proximate cause of Mesa Bank's injuries after the trustee's sale. Specifically, Capital Title maintains that the subsequent diminution in value of the collateral was caused by Mesa Bank's appraisers or the real estate market collapse.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-019063

06/01/2010

The court finds that the proximate cause of plaintiff's damages is a genuine issue of material fact.

AMS' Motion for Summary Judgment

AMS' motion for summary judgment is granted as to all loans originated by Thomas Alexander while he was employed by mortgage brokers other than AMS, which is consistent with the allegations of plaintiff's complaint.

AMS' motion for summary judgment is denied as to all other claims because substantial issues of material fact exist, including whether and to what extent Thomas Alexander's conduct proximately caused damage to plaintiff.