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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-011244 01/21/2014

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
D. Harding
Deputy

WELLS FARGO BANK NATIONAL ASSOCIATION — WILLIAM SCOTT JENKINS JR.

v.

DE SANTANA HANDCARVED STONE INCORPORATED, et al. — PATRICIA A PREMEAU

UNDER ADVISEMENT RULING

On December 11 and 12, 2013, and January 3, 2014, the Court held an evidentiary hearing to determine the fair market value of Defendants' property as of the date of the trustee's sale. Having heard and considered the evidence and counsels' arguments, the Court finds as follows:

On April 21, 2003, Defendants obtained a loan in the amount of $420,000.00 from Wells Fargo. The parties secured the loan with a Deed of Trust on the real property at 3123 East McDowell Road, Phoenix, Arizona 85008, Assessor's Parcel No. 121-73-103 (the "Property"). Defendants defaulted. Plaintiff foreclosed and conducted a trustee's sale of the Property on June 9, 2011. The property sold to a third party, Big Apple Properties, LLC, ("Big Apple") for $145,000.00.

As of the date of the sale, Defendants owed Wells Fargo $195,612.21 plus accrued interest of $7,296.22 (accruing at the rate of 4.50% per annum ($24.45 per diem), until paid in full), late fees of $1,105.45, attorney's fees of $2,328.00, and sale costs of $486.00. In addition, there were past due property taxes of $35,450.85.

Before the sale, Wells Fargo obtained an appraisal of the Property and a Property Condition Report. The appraisal reported the fair market value of the property to be $145,000 as of June 9, 2011 based in part on the Property Condition Report which estimated $285,823 in deferred maintenance.

Two months after the trustee's sale, Big Apple sold the Property to a third party, Santos Investments, for approximately $285,000. It is unknown whether Big Apple made any repairs before it sold the Property.

Wells Fargo also obtained a post-sale appraisal that valued the Property at $140,000 less the taxes owed.

Defendants' expert, Doug Estes, appraised the Property as of June 9, 2011 at $300,000. According to his report, Santos made approximately $75,000 in repairs, is operating a cell phone card business in the building, and has also rented a portion of the building.

A.R.S. § 33-814(A) defines "Fair Market Value" as "the most probable price, as of the date of the execution sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress."

In his February 2, 2011 report, Plaintiff's appraiser cited six sales of comparable properties. The properties were similar to Defendants' property. Sales ranged from $200,000 to $485,000. Like Defendants' property, some these comps required some amount of deferred maintenance. The average sale price of these comps was $340,000.

In his March 6, 2012 report, Plaintiff's appraiser cited six sales of comparable properties. Sales ranged from $200,000 to $400,000. Like Defendants' property, some of these comps also required deferred maintenance. The average sale price of these properties was $333,000.

In his June 9, 2011 report, Defendant's appraiser cited four comparable sales. Sales ranged from $230,000 to $490,000. The average sale price of these comps was $342,000. One of these properties sold for $490,000 and required $60,000 to $100,000 in repairs for electrical issues, roof leaks, structural problems with the roof, and a dated interior.

The Court finds the 16 comparable sales to be a reasonably reliable indicator of the value of Defendants' Property. Together, the average of these 16 sales is $333,000.

The Property, however, was in disrepair. Mr. Cooley acknowledged that he did minimal maintenance because it was the lot behind, not the building itself, that he needed. The photographs show deterioration. Santos spent approximately $75,000 for repairs to make the building suitable for its business purposes and for at least one tenant.

The Property Condition Report's estimate for deferred maintenance is excessive. The photographs of the parking lot do not support the Report's recommendation to demo and replace the entire parking lot. Regarding the roof, a total replacement, including the structure, is not supported by evidence. The exterior and aerial photographs show one-half of the roof in reasonably good condition. There was no evidence of leaking under the entire roof, as part of the interior was not accessible and, therefore, not inspected.

What Santos spent to get the building in useable shape is more reliable figure for deferred maintenance than the Property Condition Report's unsupported estimates. Also, Fair Market Value is the most probable price that a reasonable buyer would pay and a reasonable seller could ask. Fair Market Value is not the value of the Property after deducting for repairs to fully restore a 60-year old building to ideal condition.

It is reasonable to expect a prospective buyer to factor the cost of repairs into the purchase price that buyer is willing to spend for a property. In addition, Mr. Cooley was not current on his property taxes. It is reasonable to expect a buyer faced with back taxes to factor those taxes into the price that the buyer is willing to pay.

Accordingly, the Court finds the Fair Market Value of the property on June 9, 2011 to be $333,000 less $75,000 for repairs and $35,450.85 for unpaid taxes, for a total Fair Market Value of $222,549.15.