

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-015082

11/07/2008

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT  
L. Gilbert  
Deputy

FLASH & THE BOYS L L C, et al.

ROGER L COHEN

v.

BRENT BUTCHER, et al.

BRENT BUTCHER  
3975 S HIGHLAND DR STE 6  
SALT LAKE CITY UT 84124

KRISTAL BUTCHER  
3975 S HIGHLAND DR STE 6  
SALT LAKE CITY UT 84124  
MICHAEL LICHTIE  
4141 S HIGHLAND DR STE 200  
SALT LAKE CITY UT 84124  
DAVID PAUL BROOKS

MINUTE ENTRY

This matter has been under advisement after an evidentiary hearing held to determine the fair market value of a parcel of real property located in Casa Grande, Arizona. Having considered the evidence and arguments presented, including the parties' written closing arguments, the Court issues the following ruling.

Pursuant to A.R.S. § 33-814(A),

the deficiency judgment shall be for the amount equal to the sum of the total amount owed the beneficiary as of the date of sale, as determined by the court,

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-015082

11/07/2008

less the fair market value of the trust property on the date of sale as determined by the court or the sale price at the trustee's sale, whichever is higher.

"Fair market value" is defined 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 ....

A.R.S. § 33-814(A).

The parties stipulated to the following pertinent facts. The property at issue is a 42-43 acre parcel of raw land ("the property"), that was sold to Plaintiffs at a trustee's sale on December 13, 2007 ("date of sale") for \$1.00. The property was secured by two liens, with balances of \$1,720,900.00 remaining on the first lien and \$924,544.61 on the second lien. Plaintiffs are secured parties with respect to the second lien.

Through expert testimony, each party proffered evidence as to the fair market value of the property as of the date of sale. Defendants' valuation expert valued the property at \$3,175,000.00. Plaintiffs' valuation expert valued the property at \$1,570,000.00.

As a preliminary matter, the Court finds that Plaintiffs' arguments pertaining to the trustee's sale of the property are without merit. Plaintiffs urge the Court to consider: 1) Defendants' failure to bid on the property at the trustee's sale as evidence that Defendants do not believe their own expert's appraisal; and 2) the fact that there were no other bids as evidence that there was no equity in the property. However, the Court finds that the distressed nature of a trustee's sale renders these matters irrelevant and will therefore not be entertained by the Court in determining the fair market value of the property. Similarly, the Court does not find the subsequent re-sale of the property by Pacific Casa, LLC to Casa 42 in May of 2008 as credible evidence of fair market value.

As to the parties' valuation testimony, both experts utilized a sales comparison approach to formulate their opinions as to the fair market value of the property at the date of sale. Both experts selected five transacted properties and adjusted their respective values based on various factors including property rights, location, physical characteristics, zoning classifications and sale conditions.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-015082

11/07/2008

The Court finds aspects of both experts' valuations troubling. With respect to Defendants' valuation, three of the five comparables used in arriving at their conclusion concerned properties intended for commercial use. The subject property is zoned R1-A Single Family Residential Zone and both experts state in their reports that residential use is the highest and best use of the property. Both experts agree that properties designated for commercial use have higher value than residential. Thus, the Court finds that only the residential property comparables (Defendants' "Comparable 4" and "Comparable 5") provide credible evidence as to the fair market value of the property at the date of sale.

With respect to Plaintiffs' valuation, four of the five comparables used concerned parcels of 160 acres or more. Both experts agree that the number of acres drives down the price per acre. Plaintiffs' expert testified that he made qualitative adjustments to his valuation to reflect the size difference; however, the Court is not comfortable speculating as to the accuracy of these qualitative adjustments when parcel sizes are so significantly varied. Thus, the Court finds that only the 70 acre comparable (Plaintiffs' "Comparable 3") provides credible evidence as to the fair market value of the property at the date of sale.

Defendants' Comparables 4 and 5 were sold for a price of \$0.99 per square foot and \$1.59 per square foot, respectively. Defendants' expert applied three upward adjustments of 30% to Comparable 4 and 20% to Comparable 5. These adjustments for location, infrastructure, and use resulted in the adjusted prices per square foot of \$1.28 and \$1.91, respectively. However, the Court finds that the 5% adjustment for use is unnecessary as both comparables were intended for single family residential use. Additionally, the Court finds that a downward adjustment of 8% is necessary to reflect the declining property market in late 2007. Thus, the \$0.99 price per square foot of Defendants' Comparable 4 should have been adjusted upward by 17% (not 30%) for a \$1.16 adjusted price per square foot. Similarly, the \$1.59 price per square foot of Defendants' Comparable 5 should have been adjusted upward by 7% (not 20%) for a \$1.70 adjusted price per square foot.

Plaintiffs' Comparable 3 had a \$0.49 price per square foot. Plaintiffs' expert applied two downward adjustments to Comparable 3 totaling 8% for unfavorable conditions of sale. He also applied five upward qualitative adjustments for location, roadway improvements, topography, utilities and development time frame. In Plaintiff's closing argument, it was assumed these adjustments had an aggregate upwards of 50%. Thus, the \$0.49 price per square foot should be adjusted upward by 50% for a \$0.67 adjusted price per square foot.

The Court finds that the average price per square foot of the foregoing comparables is \$1.18. The square footage of the property (1,866,982 square feet) multiplied by the average

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-015082

11/07/2008

price per square feet yields a value of \$2,203,038.76. Thus, the Court finds that the property had a fair market value of \$2,203,038.76 at the date of sale.

Accordingly, taking into account the parties' stipulations at the evidentiary hearing,

IT IS ORDERED directing Plaintiffs to lodge a proposed form of judgment consistent with the foregoing within twenty (20) days of the date of this Minute Entry.