Clerk of the Superior Court
*** Electronically Filed ***
02/07/2019 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-006319 02/05/2019

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT
M. Corriveau
Deputy

U S BANK NATIONAL ASOCIATION KIM R LEPORE

v.

ROBERT M GALVAN, et al. ROLF NATHANIEL CLARKSON

JUDGE BRODMAN

RULING ON FAIR MARKET VALUE

On February 4, 2019, the Court held a fair market valuation hearing pursuant to A.R.S. § 33-814(A). The Court heard testimony from Harrison Whitaker, James Schofield, Robert Galvan and William Dominick. The Court reviewed the exhibits.

Plaintiff Bank is the successor to a loan made by Revelations in Design, LLC. This loan was secured by a deed of trust on property. The Galvans personally guaranteed the loan. The loan is unpaid, and the Bank claims that the amount owed is approximately $3.5 million. The trustee sold the property for a credit bid of $2.3 million. The Bank claims the Galvans are personally liable for the deficiency.

The property in question is an industrial flex building facility located at 725 East Baseline Road, Gilbert, Arizona (the “Property”). The Court must determine the fair market value of the Property as of March 30, 2016. On that date, the Property was purchased for $2.3 million by Ocwen. Ocwen’s pre-purchase valuation showed a maximum value of $2.42 million.

Approximately four months after the trustee’s sale, the Property sold on the open market for $2.125 million.

Mr. Schofield, the Bank's expert witness, determined the fair market value of the Property to be between $2.6 million and $2.9 million. Exhibit 1, p. 9. He concluded that the reconciled fair market value of the Property on March 30, 2016 was $2.8 million. *Id*. He admits that he did not possess all of the information relevant in order to make his appraisal. Although he visited the Property, he never went inside. His report does not contain any photographs of the interior of the Property, and testimony indicated that the finishes were excellent. He did not account for 750 square feet of mezzanine space. (At $110 per square foot, this would increase his value by $82,500.) He was not knowledgeable on the percentage of the Property that was air-conditioned, or how that number compared to his comps.

Mr. Schofield concluded that the low adjusted value is approximately $89 per square foot and the high adjusted value would be $131.68 per square foot. He chooses a mid-range of $110 per square foot.

Mr. Schofield was furnished with a copy of the unofficial Broker Price Opinion (BPO), but he acknowledged that the BPO is not an accepted real estate valuation document. Both experts agree that REO sales should be disregarded because they do not reflect an arm's length transaction. As a result, the Court places little weight on Ocwen's pre-purchase analysis or the purchase price at the trustee's sale.

Mr. Schofield's contention that Mr. Dominick's report violated USPAP standards was unpersuasive. He criticized one sale because the contract was entered into before the date of the trustee's sale, but the sale didn't close until a later date. The Court agrees with Mr. Dominick that a contract for sale occurring shortly before the date of evaluation is an appropriate comp to use. Indeed, some sales may take months to close and the sale of a property right before the trustee's sale would give an accurate snapshot of the market on the date of the trustee's sale. Second, other than his testimony, Mr. Schofield provided no documentation that using a later sale failed to meet appropriate appraisal standards.

Mr. Dominick, defendant's expert witness, evaluated the fair market value of the Property on March 30, 2016 to be $3.45 million. Based on the Sales Comparison Approach, he believes the range of values is $3.32 million to $3.59 million. Pursuant to the Income Capitalization Approach, the value is $3.39 million to $3.52 million. Exhibit 2, p. 88. He concludes that the Property would, on average, require an exposure time of 9 to 12 months, if priced at or near the concluded opinion of value, and adequately marketed through a professional brokerage. Exhibit 2 at 2.

The Court finds Mr. Dominick more credible than Mr. Schofield. Defendant pointed out a number of issues of concern in Mr. Schofield's testimony. Mr. Schofield underestimated the square footage of the building. Even though the comps were spread out over a larger area, the Court found Mr. Dominick's comps to be more reliable. The Court found Mr. Dominick credible when he testified that the Bank's sale of the Property did not truly reflect its value because REO transactions do not have proper exposure and are sold at a discount. Mr. Dominick was credible when he said that the property sells for a discount because the Bank is not required to give any sort of warranty, and the purchaser must take the property "as is."

Mr. Dominick concluded that the appropriate value for the subject property ranges from \$125-\$135 per square foot. For his calculated value of \$3.45 million, he used a value of \$130 per square foot.

The Court finds that the lower range of Mr. Dominick's sales comparison approach is appropriate here. Three of the four properties used in his comparisons were 100 percent air-conditioned, and the Court believes an R&D facility will bring in a higher price. A deduction for the air-conditioning would be appropriate. The Court believes the \$125 per square foot in the lower range of Mr. Dominick's analysis most accurately reflects the fair market value. As a result, the Court finds the most persuasive fair market valuation to be \$3.32 million.

Given that the likely best use of the Property would be owner occupied, the Court places little weight on the Income Capitalization Approach.

The Bank argues that the Property's value is approximately \$2.2 million. In support of this position, the Bank cites a number of documents, including the Galvans' bankruptcy filings. As an initial matter, the Court finds the opinions of the appraisers more credible than numbers provided in the Galvans' bankruptcy schedules.

The Bank's most persuasive evidence is the fact that the Bank sold the Property on July 12, 2016 (less than four months after the trustee's sale) for \$2.125 million. *See* Exhibit 11. The Bank argues that this number reflects the true fair market value of the Property. The Court was not persuaded by this evidence.

First, even the Bank's expert places the value of the property to be \$2.8 million (nearly \$2.9 million if corrected for the mezzanine), more than \$600,000 greater than the Bank's sales price. Second, there was no persuasive evidence that the Bank engaged in an aggressive marketing campaign. In fact, the Property was sold less than four months after the trustee's sale. Finally, the Court found Mr. Dominick credible when he testified that sales like the transaction in question have a decreased value. The Property was marketed as an REO sale. As noted in the contract, the Seller made no representations or warranties and the property was sold "as is." *See* Exhibit 11, p. 475.

IT IS ORDERED that the fair market value of the Property as of the date of the trustee's sale was $3.32 million.

IT IS ORDERED that the Galvans' request for additional briefing is denied.

IT IS FURTHER ORDERED that, within 20 days from the filed date of this order, the parties are to submit a Rule 16 joint report and proposed scheduling order for completion of this case.