

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-002588

05/01/2006

HONORABLE JANET E. BARTON

CLERK OF THE COURT
E. Schneider
Deputy

FILED: 05/03/2006

JAMES MEYER

ADAM S KUNZ

LISA MILLER, et al.

ERIC G BJOTVEDT

MINUTE ENTRY

10:53 a.m. This is the time set for an evidentiary hearing. Plaintiff James Meyer is present with counsel Adam S. Kunz. Defendant Lisa Miller is present with counsel Eric G. Bjotvedt.

Court Reporter: Beverlee Caperton

Opening statements are presented.

Plaintiff's case:

Lisa Miller is sworn and testifies.

James Meyer is sworn and testifies.

Plaintiff's exhibit 1 is marked for identification.

Plaintiff's exhibit 2 is marked for identification and received in evidence.

12:02 p.m. Court stands at recess.

2:00 p.m. Court reconvenes with respective parties and counsel present.

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damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.”

Based upon the evidence presented at the hearing, this Court is of the opinion that Plaintiff Meyer established by a preponderance of the evidence that the lis pendens filed by Defendant Miller contained material misstatements and/or false claims. In that regard, as noted above, the lis pendens filed by Ms. Miller indicated that CV2005-018869 was a civil action that involved and affected title to Plaintiff Meyer’s residence; that the object of CV2005-018869 was to foreclose on a judgment; that the relief demanded by Ms. Miller in CV2005-018869 is to foreclose on Mr. Meyer’s residence; and the Mr. Meyer no longer has any interest in his residence. In actuality, however, CV2005-018869 is a wrongful death action in which Ms. Miller claims that Mr. Meyer is liable for the wrongful death of Ms. Miller’s husband. In addition, Ms. Miller has not demanded foreclosure on Mr. Meyer’s residence as part of the relief she seeks in that action, and it is Ms. Miller, not Mr. Meyer, who presently has no interest in the subject property.

The Court is also of the opinion that Plaintiff Meyer established by a preponderance of the evidence that Ms. Miller knew or had reason to know that the lis pendens contained material misstatements or false claims when she filed it. In that regard, Ms. Miller is representing herself in CV2005-018869. Thus, at the time she filed the lis pendens she knew, or clearly should have known, by virtue of the Complaint she filed that CV2005-018869 was not a lawsuit involving title to Mr. Meyer’s residence, that the object of CV2005-018869 was not to foreclose on a judgment rendered against Mr. Meyer, and that foreclosure was not a form of relief demanded by Ms. Miller in CV2005-018869.

For the reasons set forth above, the Court finds in favor of Plaintiff and against Defendant on his claim for damages, attorneys’ fees and costs pursuant to A.R.S. §33-420(A).

With regard to damages, Plaintiff claims that his actual damages total \$19,630.80.¹ Thus, Plaintiff seeks damages of at least \$58,892.40 (\$19,630.80 trebled). The \$19,630.80 according to Plaintiff represents the difference between the interest he would have paid on his loan had it closed in December 2005 (the loan did not close at that time because of the lis pendens Ms. Miller had recorded against the property) and the interest he will now have to pay (according to Mr. Meyer the interest rate has increased about a point between December 2005 and the present). The Court is of the opinion that such damages do not constitute “actual” damages as that term is used in the statute. Rather, such damages constitute speculative or potential damages. For example, if the interest rate drops a point a year from now and Plaintiff refinances he will no longer be suffering the damages he seeks to recover herein and, in fact, will have received a wind fall if this Court awards the damages he is seeking.

¹ Plaintiff also seeks approximately \$350 for a second appraisal he had to obtain.
Docket Code 005

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For the reasons set forth above, this Court is of the opinion that Plaintiff has failed to establish by a preponderance of the evidence that he has suffered “actual” damages greater than \$5000. Therefore,

IT IS ORDERED awarding Plaintiff \$5000 as and for the damages he is entitled to pursuant to A.R.S. §33-420(A).

With respect to Plaintiff’s request for attorneys’ fees and costs,

IT IS ORDERED that within 10 calendar days of the filing of this Minute Entry, Plaintiff file his application for attorneys’ fees and statement of costs.