

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-017195

02/19/2013

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT
J. Polanco
Deputy

BEAL BANK NEVADA

MICHAEL R SCHEURICH

v.

PAUL T CLIFTON, et al.

SEAN E BREARCLIFFE

UNDER ADVISEMENT RULING

The Court conducted a fair market value hearing on October 24, 2012. The parties have submitted closing briefs which the Court has now reviewed along with the evidence submitted at trial. Based on the matters submitted the Court finds as follows.

The property in question was foreclosed by the Plaintiff on November 24, 2010.

The Property is 3.5 acres in total represented by 4 distinct but contiguous apartment complexes located in the area of 18th Street and Missouri Avenue in Phoenix Arizona.

The property generally had not been properly maintained at the time of the trustee's sale. Approximately 4 of the apartment units were uninhabitable; one of the swimming pools was not usable; and other buildings sustained damage due to termites and rodents.

The properties were approximately 50 years old and were made up of 51 residential units 49 of which were apartments and two were located within a single duplex.

The parties agree that the vacancy rate for the immediate submarket was greater than 12% and that apartment rental rates had been decreasing during 2008 and 2009. The rates began stabilizing in 2010. No new apartment construction took place in the subject neighborhood since 1980.

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Within the submarket for this property, apartment absorption was negative, that is, more projects were losing tenants than were gaining tenants every year from 2007 thru the 3rd quarter of 2010.

In order to attract or retain tenants, apartment owners were giving concessions which typically resulted in rent losses of approximately 15% of net rental income.

The parties agree that the foregoing facts and circumstances must be considered in determining fair market value. Each party argues that certain other conditions on which the parties do not agree must be considered.

Fair Market Value, for the purposes of this matter are governed by A.R.S. § 33-814, and it means “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.” The Plaintiff alleges that the Defendant’s expert witness, Mr. Naifeh, failed to utilize this definition in rendering his opinion of the fair market value of the property and points to a provision in his report where another statutory definition is used. The Defendant argues that the provisions are substantially the same and that it is the appraisal method that is more important. In this regard, the Defendant argues that Mr. Naifeh used the essential components of the applicable statute and the parties agree that the valuation methods generally were substantially the same.

The Court finds that it is bound to use the definition required by ARS § 33-814 and not that of any other statutory provision no matter how slight the nuances may differ.

The Plaintiff’s expert opined that the fair market value of the property is \$1,625,000.00 based on the income approach whereas the Defendant’s expert opined the value at \$2,000,000.00.

As in most cases the appraisers did not use the same comparables in coming to their conclusions. Using the income approach each appraiser used two properties in common. The appraisers differ with respect to the use of certain “cap” rates for certain properties. And it appears that Mr. Naifeh used an estimation of market rents in his analysis of the rental rates for the income approach while Mr. Zaddack used actual rental rates based on the lease in place at the time of valuation. The Court will also note that Mr. Naifeh suggested an upward valuation due to the property’s proximity to Camelback Road while Mr. Zaddack appears not to do so. This latter consideration appears to be highly subjective and that, coupled with the use of market rather than actual rental rates, leads the Court to believe that the approach by Mr. Naifeh tends to

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place an artificial additional value on the property. In this regard, the Court finds the opinion of Mr. Zaddack to be the more credible opinion.

The Court finds in favor of the Plaintiff's valuation such that the fair market value is \$1,625,000.00.

IT IS ORDERED the Plaintiff shall submit to the Court within ten (10) days from the date of this order, a form of judgment for the amount of the deficiency, if any, resulting from the foregoing finding taking into account the requirements of ARS § 33-814.

The foregoing ruling is all in accordance with the formal written Order signed by the Court on February 19, 2013 and filed (entered) by the Clerk on February 20, 2013.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.