

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-023496

02/24/2003

THE HONORABLE ANNA M. BACA

CLERK OF THE COURT
L. Falkenburg
Deputy

FILED: 02/26/2003

LINDA SIMMONS

LOREN MOLEVER

v.

LIZBETH PERRY

KENNETH B VAUGHN

MINUTE ENTRY

The court has taken under advisement Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. The court has considered the legal memoranda, counsels' statements to the court, the court's file, and the relevant law.

Plaintiff requests that the court enter summary judgment as to the legal invalidity of the Sheriff's sale of Plaintiff's home. Plaintiff contends that no genuine issues of material fact remain and that the court should set aside the sheriff's sale as a matter of law.

Under Rule 56, a movant who has the burden of proof at trial must carry the burden of producing uncontroverted prima facie evidence in support of its motion. Once the movant establishes a prima facie case entitling it to summary judgment, the other party has the burden of showing available competent evidence that would justify a trial. A party cannot rely solely upon unsupported contentions that a dispute exists to create a factual issue that would defeat summary judgment. In ruling on a motion, the trial court will generally consider "facts" as admissible in evidence when set forth in an affidavit or deposition; unsworn and unproven assertions are not "facts", State v. Mecham, 173 Ariz. 474, 478 (1993); United Bank of Arizona v. Allyn, 167 Ariz. 191, 197 (1991); and Orme School v. Reeves, 166 Ariz. 301, 310 (1990). Conclusory statements will not suffice, but the movant need not affirmatively establish the negative of the element, Id. at 310. Affidavits that contain inadmissible evidence, that are internally inconsistent, that tend to contradict the affiant's sworn testimony at deposition are insufficient to withstand a motion for summary judgment. Id.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-023496

02/24/2003

Any evidence contrary to the material facts—i.e., the facts which the moving party needs to show his entitlement to judgment—will preclude summary judgment. Mere speculation or unsubstantial doubt as to the material facts will not suffice, but where one evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper. United Bank of Arizona v. Allyn, 167 Ariz. at 195.

Here the court has found the abatement of facts contained in the response are sufficient to meet the standard in Tobel v. State, 189 Ariz. 168, 171 (Ct. App. 1997). The court further finds that based upon the exhibits attached to the verified complaint and affidavits attached to the separate statement of facts filed by plaintiff, the plaintiff has met the burden in Orme School v. Reeves, Supra.

Arizona law indicates that the court may set aside a forced sale of a property if the sale price was “grossly inadequate.” See Krohn v. Sweetheart Properties, Ltd., 203 Ariz. 205, 52 P.3d 774 (2002). There is a rebuttable presumption that sales prices that fall below 20% of the fair market value of the home may be deemed “grossly inadequate.” Id., 52 P.3d at 776.

The court makes the following findings of undisputed facts.

1. A distressed sale of Plaintiff Simmons home at 10216 North 87th Street Scottsdale, Arizona took place on April 11, 2002.
2. The high bidder was Defendant Lizbeth Perry and that her winning bid was \$5,277.66, costs included.
3. The appraisal value of the home was \$225,000. (Although Plaintiff presented evidence based on county treasurer valuation and Plaintiff/owner’s value, the court has accepted and parties agreed at oral argument that this is not a genuine issue of fact.)
4. Defendant paid the deed of trust lender on the home \$11,427.31 to reinstate the loan and stop a pending trustee’s sale.
5. Defendant’s total expenditures related to the acquisition of Plaintiff’s home are \$17,149.47.

The court finds as a matter of law that the sale price of Ms. Simmons’ home at the sheriff’s sale was “grossly inadequate” as defined in Krohn. Id. Therefore,

IT IS ORDERED granting Plaintiff’s Motion for Summary Judgment and denying Defendant’s Cross Motion for Summary Judgment.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-023496

02/24/2003

IT IS FURTHER ORDERED setting aside the Sheriff's Sale of Plaintiff's home for gross inadequacy of price.

The court further finds that Plaintiff's retention of monies paid by Defendant for the purchase and reinstatement of the property would be inequitable and constitute a windfall. Therefore,

IT IS FURTHER ORDERED that Plaintiff shall reimburse Defendant in the amount of \$17,149.97.

IT IS FURTHER ORDERED that the parties will execute any documents necessary to effectuate the court's rulings.

IT IS FURTHER ORDERED that counsel for Plaintiff shall file a form of order consistent with this court's rulings within ten judicial days of the filing of this minute entry.