

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-006167

11/18/2013

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
S. Wrye
Deputy

JPMORGAN CHASE BANK N A

PAULA A WILLIAMS

v.

311 L L C, et al.

CURTIS D ENSIGN

LANCE C VENABLE

MINUTE ENTRY

East Court Building – Courtroom 412

10:00 a.m. This is the time set for an Oral Argument regarding Plaintiff's Motion for Summary Judgment. Plaintiff is represented by counsel, Paula A. Williams. Defendants are represented by counsel, Curtis D. Ensign.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is presented.

IT IS ORDERED taking Plaintiff's Motion for Summary Judgment under advisement.

10:30 a.m. Matter concludes.

LATER:

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The Court heard argument on Plaintiff's Motion for Summary Judgment, filed July 8, 2013. A response and reply were filed. The parties filed statements of fact. After considering the parties' papers related to the motion, as well as the arguments of counsel, the Court finds as follows.

Summary judgment is appropriate where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), Ariz. R. Civ. P. In determining whether there are any factual issues to resolve, the Court views the matters of record in the light most favorable to the party opposing the summary judgment motion. *Espinoza v. Schulenburg*, 212 Ariz. 215, 129 P.3d 937 (2006).

If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted. *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 (1990).

"To carry its burden of persuasion, a plaintiff who seeks summary judgment must submit 'undisputed admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim.'" *Wells Fargo Bank, N.A., v. Allen*, 231 Ariz. 209, 292 P.3d 195 (App. 2012) (citing *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293, 229 P.3d 1031, 1035 (App. 2010).) Just as in *Wells Fargo v. Allen*, the question here is whether Plaintiffs presented sufficient undisputed admissible evidence to establish its entitlement to judgment.

Plaintiff/Lender sued Defendants/Guarantors of a commercial loan secured by real property. The property was sold at trustee's sale held September 5, 2012; the buyer was a third party who outbid Plaintiff's credit bid. Plaintiff/Lender now requests summary judgment as to both liability on the guaranties and as to the amount owed by Defendants/Guarantors. This calculation necessarily includes a determination of the fair market value of the property pursuant to ARS § 33-814. Defendants/Guarantors did not dispute their obligations under the guaranties or their default, but did dispute the fair market value of the property on the date of the trustee's sale. At oral argument, but not in their papers, Defendants/Guarantors questioned the calculations of interest and late fees because the method of calculation was not provided; D/G did not affirmatively state that these calculations were incorrect.

The Court finds that no dispute of material fact exists as to 1) the original borrower's default on the loan; 2) Defendants/Guarantors' liability under the commercial guaranties; 3) the amount that the third party (AVC Enterprises, LLC) paid to purchase the collateral; or 4) the principal amount due to Plaintiff as of the date of the trustee's sale. The Court finds that the

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allegations listed in paragraphs 1 through 15 are conclusively established.

The Court further finds that Defendants/Guarantors failed to raise a genuine issue of material fact as to the calculation of interest or late fees. They did not mention any issue with the calculations in their response to the summary judgment motion, and at oral argument they did not offer any evidence that the calculations were actually incorrect. The Account Transaction History was attached to Plaintiff's Statement of Facts as Exhibit 2, which was filed July 8, 2013; as of the date of the oral argument, Defendants/Guarantors have had this document for more than four months. Any genuine issue with the calculations could have been, and should have been, discovered earlier. The Court finds that, as of July 2, 2013, the past due interest was \$37,756.03 and the late fees and costs totaled \$1,951.92.

For reasons more fully stated in Defendants/Guarantors' response and at argument, the Court further finds that there is a genuine issue of material fact regarding the fair market value of the property as of the date of the trustee's sale. Defendant/Guarantor Sparks will be given an opportunity to testify about his opinion of the fair market value of the property, and his opinion will be given the weight it deserves.

IT IS ORDERED granting, in part, and denying, in part, Plaintiff's Motion for Summary Judgment, filed July 8, 2013.

IT IS FURTHER ORDERED denying, as moot, Defendants/Guarantors' Motion to Strike Portion of Declaration and Appraisal Report, filed October 21, 2013.

IT IS FURTHER ORDERED affirming the telephonic status conference set **March 14, 2014 at 9:00 a.m.** Plaintiff's counsel shall initiate the call to the Court by calling 602-372-0825.

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.