

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-006167

10/27/2014

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT  
S. Brown  
Deputy

JPMORGAN CHASE BANK N A

PAULA A WILLIAMS

v.

311 L L C, et al.

CURTIS D ENSIGN

**UNDER ADVISEMENT RULING**

On September 15, 2014, the Court conducted a bench trial in this matter. The parties have now submitted their separate Proposed Findings of Fact and Conclusions of Law, which the Court has considered, along with the testimony of the witnesses, the admitted exhibits, the argument of counsel, and the applicable law.

The Court makes the following findings of fact and conclusions of law:

*Findings of Fact*

1. On November 18, 2013, the Court granted Chase's Motion for Summary Judgment as to liability against 311, Bondwriter, and the Sparkses. The Court found that no dispute of material fact existed as to (1) the original borrower's default on the loan; (2) Defendants' 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.
2. The only issue before the Court is a determination of the fair market value of the collateral property.

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3. On September 5, 2012, Chase held a non-judicial trustee's sale of the property.
4. On August 1, 2012 Empower Valuation Services appraised the "as is" market value of the property as: (1) \$290,000 (based on a marketing time of 12 months); and (2) \$250,000 (based on a marketing time of 6 months).
4. At the time of the appraisal, the property was listed for sale at a price of \$293,335. (Exhibit One at 7-8.) The appraiser found that "[a] marketing period of 12 months appears reasonable for the subject." (*Id.* at 25.) The appraisal noted that the improvements to the property "are of average quality construction with average building materials." (*Id.* at 45.)
5. At the Trustee Sale, AVC Enterprises, LLC, a third party bidder, purchased the property for \$210,000. In early 2013, the property sold for \$295,000. (Exhibit 3.)
6. An earlier appraisal, dated March 7, 2012, found the "as is" market value of the property to be \$320,000, and the disposition value to be \$270,000. (Exhibit 4 at 74.) However, given the date of that appraisal and the fluctuating nature of real estate prices, those figures are not particularly relevant.
7. Mr. Sparks testified that the value of the Property on September 5, 2012 was \$450,000. He based that opinion on his discussions with realtors.
8. Mr. Sparks has worked as a bond underwriter; he is neither a real estate appraiser nor a realtor.

*Conclusions of Law*

1. A.R.S. § 33-814(A) defines deficiency damages:

[T]he deficiency judgment shall be for an amount equal to the sum of the total amount owed the beneficiary as of the date of the sale, as determined by the court less the fair market value of the trust property on the date of the sale as determined by the court or the sale price at the trustee's sale, whichever is higher.

2. Fair market value is defined as:

"[F]air market value" 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

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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.

*Id.*

3. The statute was enacted to protect a borrower from the risk of “artificial deficiencies” that may arise from forced sales. *Baker v. Gardner*, 160 Ariz. 98, 101, 770 P.2d 766, 769 (1988). “Given the nature of a trustee’s sale, ‘the statute does not contemplate that the purchase price will necessarily reflect the fair market value of the property.’” *CSA 13-101 Loop, LLC, v. Loop 101 LLC*, 233 Ariz. 355, 361, ¶ 17, 312 P.3d 1121, 1127, (App. 2013), review granted (September 23, 2014) quoting *MidFirst Bank v. Chase*, 230 Ariz. 366, 368, ¶ 7, 284 P.3d 877, 879 (App. 2012).

4. The Court finds that in this case, based on the evidence and testimony presented, that “reasonable exposure in the market” means a twelve-month time period.

5. An owner of property “is always competent to testify as to the value of his property.” *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 486, 851 P.2d 109, 111 (App. 1992). However, the basis for his opinion of value may affect the weight of that testimony. *Id.* The Court finds Mr. Sparks’ opinion about the value of the property is based in large part on speculation.

6. In contrast, Mr. Cottor based his opinion on value on his extensive experience as a real estate appraiser, research, and a comparison of similar properties.

7. Based on all of the above, the Court finds the fair market value of the property at the time of the sale was \$290,000.

**IT IS ORDERED** JP Morgan Chase Bank lodge a proposed form of judgment by November 17, 2014.