

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-015560

03/11/2009

HONORABLE BETHANY G. HICKS

CLERK OF THE COURT  
D. Whitford  
Deputy

PIPELINE DYNAMICS INC

D KIM LOUGH

v.

PONTICELLO L L C, et al.

ROBERT P LINDFORS

**RULING ON MATTERS TAKEN UNDER ADVISEMENT**

On March 3, 2009, the Court heard oral argument on defendant Mortgage Equities XIII, L.L.C.'s Motion for Summary Judgment and plaintiff Pipeline Dynamics, Inc.'s Cross Motion for Summary Judgment, following which the Court took the matter under advisement.

Although the pleadings are unclear, and in some respects in conflict, it appears that, on or about June 7, 2005, Ponticello, LLC borrowed \$7.3 million from Merchants Funding, LLC to acquire and development a parcel of real property located in Maricopa County, Arizona. On or about October 31, 2005, Ponticello entered into an agreement with plaintiff Pipeline Dynamics to construct water, sewer and storm drain improvements on the property and commenced construction on or about December 26, 2005. Thereafter, on or about August 2, 2006, Ponticello borrowed \$7.5 million from Cattlemen's Mortgage and Investment Corporation and applied approximately \$5,145,524.72 to pay the outstanding balance on the Merchants Funding loan.

Subsequently, the project appears to have encountered difficulties and, on or about May 21, 2008, the property was sold to defendant Mortgage Equities at a trustee's sale. The pleadings and argument of the parties suggest, although not definitively, that Mortgage Equities acquired the property by purchasing (at some price) and taking an assignment of the Cattlemen's Mortgage loan and submitting a credit bid equal to all or a portion of the outstanding balance of the Cattlemen's Mortgage loan, although the plaintiff Pipeline Dynamics has asserted that

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Mortgage Equities paid cash in the amount of \$7,710,308.54 to purchase the property at the trustee's sale.

Absent the foregoing information, the Court is unable to determine whether, and, if so, to what extent, the doctrine of "equitable subrogation" may or may not apply in this case and, even if it does, whether there are moneys that should have been available from which the plaintiff's lien claim could and should properly have been paid in order to avoid the prejudice or injustice referenced in *Lamb Excavation, Inc. v. Chase Manhattan Mortgage Corporation*, 208 Ariz. 478, 95 P.3d 542 (App. Div. 2004), and the many cases cited therein.

Accordingly, defendant Mortgage Equities' Motion for Summary Judgment and plaintiff Pipeline Dynamics' Cross-Motion for Summary Judgment are denied.