

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-011558

05/11/2004

HONORABLE PETER C. REINSTEIN

CLERK OF THE COURT
M. Sahli
Deputy

FILED: 05/13/2004

UMLIC, V P, L L P

ROGER R FOOTE

v.

ROBERT HICKS, et al.

ROBERT HICKS
30710 N WHIRLAWAY TRAIL
QUEEN CREEK AZ 85242-4258

ANDREW ABRAHAM
WILLIAM G FAIRBOURN

MINUTE ENTRY

The Court has reviewed Defendants' (Ingomar) Motion for Summary Judgment, Plaintiff's (UMLIC) Response and Cross Motion, and Ingomar's Reply and Response to the Cross-Motion. The Court has also heard arguments of counsel.

The issue at bar is whether there was a breach of the statute, A.R.S. § 33-808 in conjunction with the sale of the property in question. Ingomar contends that the notice given was more than adequate for the trustee's sale which took place March 14, 2003. UMLIC claims that the sale was invalid because the trustee failed to post a proper notice on the property.

With respect to the notice given in the present case, the following facts are not in dispute:

1. Mr. Callan (the trustee) recorded the notice of the trustee's sale in the Maricopa County Recorder's Office on October 5, 2001.
2. Mr. Callan mailed, via certified, return receipt mail, notices to all of the interested parties pursuant to A.R.S. § 33-809 on October 10, 2001.
3. Mr. Callan instructed Trustee Services of Arizona to post notice of the sale at the Hicks property and at the courthouse at least 20 days before the date of sale. Trustee Services of Arizona posted notice on the public bulleting board

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at the Maricopa County Courthouse on August 27, 2002. The sale was held on March 14, 2003.

4. Mr. Callan published notice of the sale in the Arizona Business Gazette on October 18, October 25, November 1, and November 8, 2001.
5. Mr. Callan mailed a certified copy of the notice of trustee's sale within five days after recording the notice of trustee's sale to each of the persons who were parties to the trust deed, the Hicks, pursuant to A.R.S. § 33-809 (C).

Further, Mr. Callan postponed the sale seven times while the parties attempted a settlement. There is no dispute that Mr. Callan properly postponed each sale by complying with A.R.S. § 33-810.

It is well settled that one of the basic purposes of the Deed of Trust Act was to provide for expeditious foreclosure proceedings. Ledesma v. Pioneer Nat. Title Ins. Co., 129 Ariz. 171, 173 (App. 1981). In addition, it is incumbent on the Court to look at the totality of the circumstances surrounding the notice and sale in determining whether fair notice was given. The Court finds that the notice given here was in compliance with the statute and that no breach occurred. The Court further finds that even if there was a failure to properly post the notice pursuant to 33-809, on August 30, 2002, it does not invalidate the sale given the totality of the circumstances.

Finally, the Court finds that Defendants' argument based upon A.R.S. § 33-811 (C) is well taken. The statute mandates that "all persons to whom the trustee mails a notice of sale under a deed of trust pursuant to § 33-809 shall waive all defenses and objections to the sale not raised . . . before the scheduled date of the sale." In the case at bar, UMLIC failed to raise the objections that they now are asserting against the trustee.

Accordingly, the Court finds that as a matter of law summary judgment is proper in favor of Defendants on all Plaintiff's claims. Therefore,

IT IS ORDERED granting Defendants' Motion for Summary Judgment.