

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-050075

07/02/2013

COMMISSIONER JOHN R. DOODY

CLERK OF THE COURT
L. Carlson
Deputy

MICHAEL O JOHNSON, et al.

LAURA B BRAMNICK

v.

MOUNTAIN VISTA RANCH OWNERS
ASSOCIATION INC, et al.

COAST PROPRTIES 1 LIMITED
PARTNERSHIP
NO ADDRESS ON RECORD
JOSEPH FAIT C/O RICHARD
ROSSMILLER
8325 E VIA DE LAS FLORES
SCOTTSDALE AZ 85258
LEE AND SUSAN GOLDSTEIN
16164 N POST DR
SURPRISE AZ 85374
I M I INVESTMENT L L C
NO ADDRESS ON RECORD
SOUTHCOAST PROPERTY LLC C/O
RICHARD ROSSMILLER
8325 E VIA DE LAS FLORES
SCOTTSDALE AZ 85258
WILLIAM J O'LEARY

MINUTE ENTRY

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The Court has Plaintiffs' Motion filed on June 27, 2013 for Entry of Default Judgment. The motion is denied, without prejudice, to be resubmitted when counsel feels that she can address the concerns expressed in this minute entry.

This is an unusually complicated real estate case. The case started out simply enough. According to the Complaint, the Plaintiffs are a married couple serving in the armed forces. Back in 2000 they purchased the subject property as their residence and granted a mortgage to Wells Fargo Bank, who is not a Defendant. After that, the case went downhill in terms of complexity. The Complaint alleges that in 2001 the Plaintiffs sold the property on a Contract For Conveyance Of Real Property (aka contract for sale) to Defendant Southcoast Property LLC. The Complaint further alleges that the Wells Fargo Deed of Trust remained in effect. Somewhat later in the Complaint the Plaintiffs suggest that the contract required Southcoast to keep the Wells Fargo mortgage current, but later alleges that Southcoast breached that covenant or condition in the contract. Plaintiffs also allege that the contract prohibited the buyer to transfer the property (something that would seemingly be difficult to do under a contract for sale since the buyer does not have title). The Complaint then alleges a series of transfers and hypothecations, or attempted transfers and hypothecations, from Southcoast and various other entities, but Southcoast is the only entity in privity of contract with the Plaintiffs. Plaintiffs do allege, however, that one of these subsequent transferees (Joseph Fait) is currently in possession of the property.

Two of the Defendants are no longer in the case, having either stipulated to a judgment (Rosas International, LLC falls into this category) or have been dismissed (Mountain Vista HOA).

The Complaint seeks damages, including damages for monies unpaid under the contract, attorneys' fees against all Defendants, a judicial foreclosure, and possession of the premises.

The Complaint leaves a host of questions unanswered or unclear, including: How much was paid under the contract for sale? Did Wells Fargo ever foreclose the property in reaction to the payment defaults? Plaintiffs suggest they used a collection agent. If that is true, did the Plaintiffs ever exercise any the self-help remedies under Title 33, Chapter 6, Article 3, including, but not limited to, those set forth in ARS 33-745? On what basis do the Plaintiffs seek attorneys' fees from any Defendant other than Southcoast when Plaintiffs are only in privity of contract with Southcoast?

From a purely procedural point of view, the Court is satisfied that the following Defendants have been properly served with the Summons and Complaint: Joseph Fait, Lee and Susan Goldstein, Southcoast Property, LLC, Coast Properties I (limited partnership) and IMI Investment LLC, and that proper Rule 55(a) Applications for Entry of Default were served and

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filed for Joseph Fait, Lee and Susan Goldstein, Southcoast Property, LLC. However, no Rule 55(a) Applications for Entry of Default appear to have been served and filed for the latter two Defendants, Coast Properties limited partnership and IMI Investment LLC. They were both served through the Arizona Corporation Commission after diligent efforts were used to find the whereabouts of an agent who could accept service on their behalf, but for some reason no Rule 55(a) Applications for Entry of Default were served on them through the ACC. In other words, it appears that the latter two Defendants are not in default.

Finally, because the Complaint seeks non-monetary relief, no default judgment may be entered without a hearing per Rules of Civil Procedure Rule 55(b).

There may be other issues, but these constitute the low-hanging fruit. Hopefully most of them will be cured before the Plaintiffs set this matter for a hearing. The remaining ones will be addressed at the hearing.

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.