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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Renee M. Zinni and Marco S. D'Alonzo,)

No. CV 11-02143-PHX-FJM

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Plaintiffs,)

ORDER

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vs.)

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Jackson White PC et al.,)

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Defendants.)

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We have before us plaintiffs' motion to set aside/cancel trustee's sale (doc. 24) and defendants' response (doc. 26). Plaintiffs allege that defendants were not properly appointed as trustees and therefore have no authority to conduct a trustee's sale. They also allege that the opening bid is a grossly inadequate price. We previously denied plaintiffs' motion for preliminary injunction (doc. 22). If plaintiffs' motion is construed as a motion for reconsideration, it falls short of the standards of Rule 60(b), Fed. R. Civ. P. and LRCiv 7.2(g). If viewed only as a motion to set aside the sale based on price, it is premature.

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Plaintiffs contend that defendants had not been assigned power of attorney on the plaintiffs' property, but the record discloses that defendant Scott L. Potter possesses a special power of attorney from M&I Marshall & Ilsley Bank to conduct non-judicial trustee's foreclosure sales on the bank's behalf. (Doc. 26, ex. A). This document also grants him the right to execute a notice of substitution of trustee. His appointment as successor trustee was therefore not fraudulent.

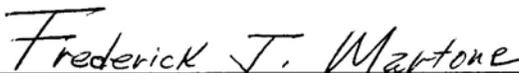
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1 "[A] sale of real property under power of sale in a deed of trust may be set aside solely
2 on the basis that the bid price was *grossly* inadequate." In re Krohn, 203 Ariz. 205, 214, 52
3 P.3d 774, 783 (2002). "[T]he debtor will have the burden of showing gross inadequacy as
4 compared to fair market value" Id. at 211, 52 P.3d at 780. Plaintiffs allege that they
5 have invested approximately \$356,000 in construction costs and mortgage payments (doc.
6 24 at 6). They purchased their house on April 22, 2005 for \$350,000 (doc. 1 ¶ 7). They
7 contend their house is now worth "at least \$650,000.00."

8 Plaintiffs ignore the fact that \$94,740.00 is the opening bid. The house may sell for
9 well over this amount. In addition, Krohn dealt with setting aside a trustee's sale after it
10 occurred, not precluding one based on a potentially low price, and does not provide authority
11 for us to cancel the sale.

12 **IT IS HEREBY ORDERED DENYING** plaintiffs' motion to set aside or cancel the
13 trustee's sale (doc. 24).

14 DATED this 4th day of January, 2012.

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18 Frederick J. Martone
19 United States District Judge
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