



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**Helvetica Servicing Inc. v. Pasquan CV-19-0242-PR**

**PARTIES:**

*Petitioner:* Michael S. Pasquan (“**Pasquan**”)

*Respondent:* Helvetica Servicing, Inc. (“**Helvetica**”)

**FACTS:**

In May 2003, Michael and Kelly Pasquan (the “**Pasquans**”) purchased a 4000 square foot home in Paradise Valley (the “**Property**”). They paid \$335,000 in cash and obtained a \$600,000 loan from Hamilton Mortgage Company (the “**Hamilton Loan**”). The Hamilton Loan was secured by a deed of trust recorded against the Property.

In December 2004, the Pasquans borrowed approximately \$2.1 million from Desert Hills Bank (the “**Desert Hills Loan**”) to significantly renovate the Property. The Desert Hills Loan paid off the Hamilton Loan in its entirety and the remainder was used to renovate and expand the Property. The Pasquans also borrowed smaller amounts from other sources.

During renovations, in September 2006, the Pasquans borrowed nearly \$3.4 million from Helvetica (the “**Helvetica Loan**”), which was secured by a new deed of trust on the Property. The Pasquans used the funds to pay off the Desert Hills Loan and the other smaller loans. They spent the remaining 350,000 from the Helvetica Loan to pay for landscaping, maintenance, taxes, utilities, and interest. The Pasquans eventually defaulted on the Helvetica Loan.

Helvetica sued to judicially foreclose on the Property. In April 2009, Helvetica obtained a judgment against the Pasquans for the amount due on the Helvetica Loan plus additional fees. In July 2009, Helvetica purchased the Property at a sheriff’s sale for a \$400,000 credit bid. The trial court determined that, after applying Arizona’s anti-deficiency statute A.R.S. § 33-729, the Pasquans owed Helvetica a deficiency judgment of approximately \$1.9 million. Pasquan appealed the amount of the deficiency judgment.

The court of appeals determined that the full amount of the Hamilton Loan constituted a “purchase money obligation” such that it was entitled to anti-deficiency protection under section 33-729. *Helvetica Servicing, Inc. v. Pasquan* (“**Helvetica I**”), 229 Ariz. 493, 497 ¶ 12 (App. 2012). The court also held that the “Desert Hills loan transaction did not destroy the purchase money status of Pasquan’s obligation, at least to the extent of the loan proceeds used to satisfy the Hamilton Loan.” *Id.* at 499 ¶ 23.

With respect to the “proceeds from the Desert Hills loans that were disbursed for other purposes, including construction of the residence,” the court of appeals stated that in *Southwest*

*Savings & Loan Ass'n v. Ludi*, 122 Ariz. 226 (1979), the Arizona Supreme Court had indicated that a “property improvement loan” was not covered by the anti-deficiency statute. *Id.* But, the court of appeals noted that *Ludi* did not discuss the nature of the property improvement loan or how its proceeds were used; the court of appeals also stated that given “the policies behind Arizona’s anti-deficiency legislation,” there were “significant differences between construction loans used to build residences and loans obtained to improve existing homes.” *Id.* ¶ 25 & n.6. The court held that

a construction loan qualifies as a purchase money obligation if: (1) the deed of trust securing the loan covers the land and the dwelling constructed thereon; and (2) the loan proceeds were in fact used to construct a residence that meets the size and use requirements set forth in A.R.S. § 33-729(A). In the case at bar, these are questions of fact that must be resolved by the superior court on remand.

*Id.* at 501 ¶ 32. And, the court of appeals held that to “the extent a judicially foreclosed mortgage includes both purchase money and non-purchase money sums, a lender may pursue a deficiency judgment for the latter amounts.” *Id.* at 502 ¶ 37. Thus, the court of appeals vacated the deficiency judgment entered by the trial court and remanded to the superior court “for further appropriate proceedings.” *Id.* ¶ 39.

While appellate proceedings in *Helvetica I* were underway, litigation continued in the trial court on a variety of other issues. *See Gold v. Helvetica Servicing, Inc.* (“*Helvetica II*”), 229 Ariz. 328 (App. 2012); *Helvetica Servicing, Inc. v. Giraud* (“*Helvetica III*”), 241 Ariz. 498 (App. 2017).

In 2017, after a bench trial, the trial court turned to the issues left open after the appellate decision in *Helvetica I*. The trial court found that “most (but not all)” of the original residence on the Property had been “demolished,” during renovations, and that a member of the Pasquan family had “utilized the property as a residence at all relevant times.” The trial court also found: that all of the Desert Hills loans “qualified as purchase money obligations;” that the other smaller amounts the Pasquans had borrowed from other lenders were “not purchase money obligations;” that the “amount of the Helvetica obligation that was not a purchase money loan” was approximately \$630,000; and that Helvetica was entitled to a deficiency judgment against Pasquan of \$341,188.35. Helvetica appealed the amount of the deficiency judgment.

On appeal, the court of appeals characterized its prior decision in *Helvetica I* as follows:

In *Helvetica I*, we held that a construction loan will qualify as a purchase money obligation when the deed of trust securing the loan covers the land and the dwelling constructed on the property, and the loan proceeds were used to construct a dwelling that meets the size and use requirements of § 33-729(A). 229 Ariz. at 501, ¶ 32, 277 P.3d 198. We noted, however, that a construction loan used to build a residence is significantly different for this purpose from a loan used to improve an existing home. *Id.* at 499 n.6, ¶ 25, 277 P.3d 198 (citing California’s interpretation of an analogous statute recognizing such a distinction). Although a construction loan may fall within the anti-deficiency statute, a home improvement loan will not. *Id.* Whether a loan is a construction loan or a home improvement loan depends on

the facts. *Id.*

*Helvetica Servicing, Inc. v. Pasquan* (“*Helvetica IV*”), 1 CA-CV 17-0699, 2019 WL 3820015, at \*3 ¶ 12 (Ariz. App. Aug. 15, 2019). The court of appeals noted that “[n]either the case law nor the statutes define a ‘home construction loan’ as we applied that term in *Helvetica I*,” and that in the “absence of clarification by the legislature,” the court “must use common sense to apply the rule announced in *Helvetica I* to the facts before the superior court.” *Id.* ¶ 14. The court of appeals continued:

On that basis, we conclude that the superior court erred by deciding that the entirety of the Desert Hills loan was a construction loan for purposes of anti-deficiency protection under § 33-729. Based on the evidence before the court after *Helvetica I* was decided, we conclude that except for the \$600,000 used to pay off the refinanced original purchase loan, the Desert Hills loan financed home improvement, not home construction. *See Sw. Sav. & Loan Ass’n v. Ludi*, 122 Ariz. 226, 228, 594 P.2d 92 (1979) (“property improvement loans” not covered by the anti-deficiency statute).

*Id.* ¶ 15. The court of appeals stated:

Pasquan testified that he lived in the home during the entire time of the renovation, that the project was not a complete “tear down,” and that, for as long as he has owned the Property, it was never a vacant lot. Pasquan also testified that he purchased the home in 2003 and the renovation/expansion took the next four years. Pasquan first remodeled the upper level of the home by adding a game room, two bedrooms, a kitchen, and a bathroom. Then, he renovated the entire downstairs as he lived and managed the renovation project from the upper level of the home.

....

The renovation/expansion project Pasquan completed was immense in scope, and doubtless added considerable value to the Property that secured the *Helvetica* loan. But we cannot overlook that he did not build a new home from scratch. The home that secured his original \$600,000 purchase money loan had two stories, three bedrooms, three bathrooms, a living room and a dining room, a three-car garage, and a swimming pool. Over a period of years, Pasquan methodically transformed that home into a much grander dwelling. But considering all the facts in the record, and in light of our supreme court’s holding in *Ludi*, we hold that the loan he obtained to do that from Desert Hills was a home improvement loan, not a loan for home construction.

*Id.* at \*3–4 ¶¶ 16–18. Ultimately, the court of appeals held that only the “\$600,000 used to pay off the original purchase money loan, and the associated loan fees and interest, are entitled to anti-deficiency protection under § 33-729.” *Id.* at \*4 ¶ 21. The court of appeals vacated the deficiency judgment and remanded “for entry of a revised judgment consistent with this decision.” *Id.* ¶ 22.

Pasquan then timely petitioned for review in this Court, raising the issues listed below.

**ISSUES:**

1. In reversing the trial court’s ruling after a bench trial, the *Helvetica IV* court ruled that over \$2 million in funds lent by Desert Hills Bank to Pasquan for a construction project, which added 7,000 square feet to an existing 4,000 square foot residence, is a mere “home improvement loan” rather than a “construction loan” for purposes of the anti-deficiency laws. The *Helvetica IV* court’s new must be built “from scratch” legal requirement for construction loans completely undermines the public policies of this State’s anti-deficiency statutes, as previously recognized by this court in *Baker v. Gardner*, 160 Ariz. 98, 107 (1989), and as later recognized by the Court of Appeals in its original *Helvetica I* opinion cited below;
2. The new rule of law created by the *Helvetica IV* court is irreconcilable with the prior published opinion from the same Court of Appeals in this same case, albeit with a different panel of appellate judges. *Helvetica Servicing, Inc., v. Pasquan*, 229 Ariz. 493, 499-503 (App. 2012). (“*Helvetica I*”, attached as Exhibit “1”); and
3. In determining that a residence must be built “from scratch” from a vacant lot in order to qualify as a construction loan entitled to anti-deficiency protection, the *Helvetica IV* court substituted its own findings of fact with those findings determined by the trial court after a bench trial, therefore wrongfully reversing the trial court’s ruling that found the Desert Hills Bank loans refinanced by *Helvetica* were in fact used by Pasquan for construction of a qualifying residence.

**STATUTORY PROVISION:**

In relevant part, A.R.S. § 33-729(A) provides:

[I]f a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single one-family or single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

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