

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-025847

07/13/2012

HON. MARK F. ACETO

CLERK OF THE COURT  
M. Scott  
Deputy

COPPER LEAF LENDER L L C

DALE S ZEITLIN

v.

DENNIS P FARR, et al.

JOHN A KLECAN

DENISE J WACHHOLZ

MINUTE ENTRY

On June 13, 2012, Defendants filed a document that includes "Motion in Limine No. 3". Through this motion, Defendants seek an order precluding evidence of the value of the subject property after the date of valuation in Defendant's appraisal.

The Court makes note of the following:

- Plaintiff has asserted a negligent misrepresentation claim. In Arizona, the tort of negligent misrepresentation is governed by the Restatement of Torts. *Standard Chartered PLC v Price Waterhouse*, 190 Ariz. 6, 31 (App. 1996).
- Restatement (Second) of Torts §552B provides the measure of damages for a negligent misrepresentation claim. In this regard, this Restatement section provides that the "damages recoverable for a negligent misrepresentation are those necessary to compensate the Plaintiff for the pecuniary loss to him of which the misrepresentation is a legal cause... ." This section goes on to provide a list of examples of damages that may be recovered; however, the Restatement section does not attempt to provide a complete or exhaustive list. Rather, the only limitation on damages imposed by Restatement (Second) §552B is that damages are limited to "the pecuniary loss... of which the misrepresentation is a legal cause... ."

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- The parties agree that a decrease in value caused by something other than the misrepresentation is not recoverable. For example, a decrease in value due to a decline in the market is not recoverable.
- Plaintiff contends that, but for Defendants' alleged misrepresentation, Plaintiff would have loaned less money. At trial, Plaintiff will be allowed to attempt to prove this to the jury.
- Plaintiff ultimately obtained the subject property at a trustee's sale. The parties agree on the value of the property at the time of the trustee's sale. Defendants contend that the value of the property after the date of valuation has no relevance in this case. Plaintiff disagrees in only one respect. Plaintiff concedes that Plaintiff is only entitled to recover its true loss. Further, since it ultimately obtained the subject property, Plaintiff is willing to concede that its damages should be reduced by the value of the subject property at the time it was acquired by Plaintiff (i.e. on the date of the trustee's sale).

Under the circumstances,

**IT IS ORDERED** denying Plaintiff's "Motion in Limine No. 3".

The Court cautions that evidence of value after the date of valuation may be admitted at trial only to establish a reduction in Plaintiff's claimed damages. Obviously, if Defendants prefer that the evidence not be admitted and choose not to argue that Plaintiff's damages should be reduced by the value of the subject property at the time of acquisition by Plaintiff, the Court expects that it would respect Defendants' waiver of this reduction in damages argument and would exclude evidence of value after the date of valuation.

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.