

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-001644

08/02/2006

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

CENTRAL PACIFIC MORTGAGE COMPANY     ARI RAMRAS

v.

BRIAN P SMITH

DENISE J HENSLEE

MINUTE ENTRY

Plaintiff's Motion for Partial Summary Judgment (Negligence) has been under advisement. Having considered all memoranda submitted and the arguments of counsel the Court finds and orders as follows.

Plaintiff seeks partial summary judgment on the limited issue of whether defendant Smith was negligent in the manner in which he performed some of the appraisals at issue in this suit. The appraisals that are subject to this Motion for Partial Summary Judgment are those that caused defendant's license to be placed on probation by the Arizona Board of Appraisal, i.e., the appraisals for the Pallares, Gant, Dickerson, Armenta, Powell and Steelman appraisals.

It is undisputed that the Arizona State Board of Appraisal issued a complaint against defendant Smith on September 27, 2004 based on the above identified six appraisals. After an administrative hearing, the Board of Appraisal accepted the findings of the Administrative Law Judge and concluded that defendant Smith's conduct violated A.R.S. §32-3631(6).

In order to establish its claim for negligence, plaintiff must establish the elements of negligent misrepresentation. Kuehn v. Stanley, 208 Ariz.124, 91 P.3d 346 (App. 2004). This motion for partial summary judgment only addresses the element of negligence. Plaintiff urges

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that defendant is collaterally estopped from challenging the findings of the Board and that the Board's findings establish his negligence in this pending malpractice claim. Defendant, however, urges that collateral estoppel is not applicable in this case because there is no evidence that any deficiencies found by the Board of Appraisal caused the appraisals at issue to be incorrect.

However, plaintiff's Motion for Partial Summary Judgment is a very narrow motion and only relates to the limited question of whether defendant Smith failed to use reasonable care in the preparation of his appraisal reports. The issue of causation is not before the Court at this time.

In order to establish collateral estoppel, plaintiff must prove that 1) the issue was actually litigated in a previous proceeding; 2) there was a full and fair opportunity to litigate the issue; 3) resolution of this issue was essential to the decision; 4) there was a valid and final decision on the merits; and 5) common identity of parties. J.W. Hancock Enterprises, Inc. v. Arizona State Registrar of Contractors, 142 Ariz. 400, 690 P.2d 119 (App. 1984). The Court finds that plaintiff has established all elements and plaintiff is entitled to a finding of negligence by defendant Smith based on the findings of the Arizona Board of Appraisals.

The Court finds that the Arizona Board of Appraisal's findings are relevant to the issue of whether there has been a breach of defendant's standard of care. The Board found that defendant Smith violated A.R.S. §32-3635, A.A.C. R-4-46-401 (requiring defendant to comply with the Uniform Standards of Professional Appraisal Practice), and A.R.S. §§32-3631(6) and (7). Although the State Board of Appraisal made its findings for a different purpose than that sought in this civil action, the Court finds that the Board's findings are relevant and admissible for the purpose of establishing negligence.

Defendant also attacks the Board's findings as not being binding because defendant did not have a full opportunity to participate in the Board's administrative hearing. However, it is undisputed that the evidentiary hearing in this matter lasted over a day and defendant Smith was provided with the opportunity to be represented by counsel, to call witnesses and to cross-examine witnesses, as well as to petition for a rehearing or for review. The Court finds this argument unpersuasive.

Defendant Smith argues that collateral estoppel should not apply in this case for the additional reason that expert opinion testimony is needed to establish the standard of care at issue here. However, A.R.S. §32-3635 says that an appraiser "... shall comply with the standards of professional appraisal practice adopted by the Board". In addition, A.A.C. R4-46-401 requires that an appraiser "shall comply with the Uniform Standards of Professional Appraisal Practice."

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The Court finds that expert witness testimony is not needed to establish the applicable standard of care in light of this state's statutes and administrative rules. The Court finds that the doctrine of collateral estoppel precludes defendant from re-litigating the issue of negligence.

Finally, defendant seeks relief under Rule 56(f), ARCP. However, defendant has failed to satisfy the Court that there is any outstanding discovery necessary for defendant to fully respond to this Motion for Partial Summary Judgment.

IT IS ORDERED denying defendant's request for Rule 56(f) relief.

Based on the above, the Court finds that there are no questions of material fact and plaintiff is entitled to partial summary judgment only on the issue of negligence.

IT IS ORDERED granting plaintiff's Motion for Partial Summary Judgment as to negligence only.