

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-000371

01/12/2018

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT  
D. Charbagi  
Deputy

ALYDA DICKSON

KEVIN F MCCARTHY

v.

MATHEW CLAGETT, et al.

PAUL O MITTELSTADT

RAYMOND J SLOMSKI

MINUTE ENTRY

The court has carefully considered the fully briefed “Defendant’s Motion for Summary Judgment” filed May 25, 2017. The court benefited from the arguments counsel presented on November 15, 2017 and has reviewed the applicable case law, statutes and rules of court.

The facts of the case are straight forward. Plaintiff purchased a home at 2157 W. Minton Drive, Tempe, Arizona in 2003. The appraisal conducted for that purchase indicated a gross living area of 1475 square feet. Included in this number was a family room addition that is a converted patio. In 2016, Plaintiff listed the house for sale and entered into a contract with a buyer. The buyer was to purchase the home using a Federal Housing Administration (FHA) loan. At the lender’s request, Defendant conducted the appraisal and did not include the additional room in his calculation of gross living area. Thus he calculated the gross living area to be 1206 square feet. He opted not to include the addition as it was not ducted to the main heating and air condition units for the home. Plaintiff’s agent attempted to have the appraisal modified to include the addition and the loan officer refused. Plaintiff then elected to reduce the purchase price of the home rather than risk having the buyer cancel the contract.

The core issue is whether Defendant, as an appraiser hired by the buyer’s lender, owes Plaintiff a duty as a matter of law and could Defendant be liable to Plaintiff for negligent

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misrepresentation. The court looks to *Southwest Non-Profit Hous. Corp. Nowak* to guidance. 234 Ariz. 387, 322 P.3d 204 (App. 2014).

In the Southwest case, the issue was whether three appraisers were liable to plaintiff for negligently conducted appraisals which resulted in lost home sales for plaintiff. As in the Southwest case, there are no facts that indicate that Defendant intended for Plaintiff to rely on the appraisal. In this case, Defendant was hired by the buyer's lender. Thus only the lender, and to some extent the buyer, was the audience Defendant intended to rely on his appraisal report. There is no evidence that Defendant intended for Plaintiff to rely upon his report and thus no evidence that Defendant intended to influence Plaintiff.

Secondly, the Appraiser's Certification in the instant case appears to be identical to the one used in the Southwest case, which limits the intended audience for the appraisal and thus makes it clear that Defendant did not owe a duty to Plaintiff. Plaintiff was not a party to the contract hiring the Defendant as an appraiser nor was she intended to be someone for whom the appraisal would provide guidance, support or a benefit.

Lastly, Plaintiff did not rely on the appraisal. She clearly disagreed with it and tried to convince the lender to change it to include the addition in the gross square footage of living area. She opted to go forward with the sale of the property and reduced the price. The choice to move forward with the sale was hers to make and she could have refused to reduce the sale price and risk losing that particular buyer. But she did not do so, instead she amended the sales contract and proceeded.

For those reasons, the Court agrees with the arguments of Defendants as set forth in their pleadings.

**IT IS ORDERED GRANTING** Defendants' Motion for Summary Judgment.