

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-017113

04/29/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

BARRY B YAMRON, et al.

JAMES J PALECEK

v.

ENGLE WHITESTONE L L C, et al.

BARBARA K BERRETT
BOOKER T EVANS JR.

MINUTE ENTRY

The Court has read and considered Defendant Preferred Home Mortgage Company's Motion to Strike Affidavits Submitted by Barry B. Yamron and Jeffrey P. Mast and Certain Portions of Plaintiffs' Combined Statement of Facts and Notice of Defendants Roberts Appraisal Group's and Eric Ranta's Joinder in same motion filed March 30, 2011, Plaintiffs' Response filed April 13, 2011 and Defendants Roberts Appraisal Group and Eric Ranta's Reply thereto filed April 25, 2011.

The Court observes that, at the time the motion to strike was filed, Preferred and Engle Whitestone were parties; in fact, it was their counsel who filed the motion, in which the Ranta defendants subsequently joined. As the Ranta defendants did not argue in their joinder that the statements of Ms. Quentzel and Mr. Land were inadmissible as to them for a reason that they might not have been inadmissible against the Preferred defendants, it is procedurally improper to raise that issue in the reply. Whether Ms. Quentzel and Mr. Land were acting in their representative capacities when they made the statements referred to in the affidavits is a question more suitable for a motion in limine.

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In the absence of case law from our own appellate courts, the Court considers the opinions of the federal District Court for the District of Arizona to be persuasive authority. It therefore follows *Marceau v. International Brotherhood of Electrical Workers*, 618 F.Supp.2d 1127 (D.Ariz. 2009), in looking to the admissibility of the expert opinions themselves, not the form in which they are presented. This is consistent with the overarching consideration that summary judgment is not to be granted if there is any issue of material fact requiring determination by the factfinder; its purpose is not to resolve factual issues, but to determine whether factual issues exist. *Yavapai County v. Wilkinson*, 111 Ariz. 530, 532 (1975). The Ranta defendants have not shown that the opinions of any of Plaintiffs' experts will not be admissible at trial. They will of course be able to bring further objections, if any, to their testimony in motions in limine or at trial. For summary judgment purposes, however, they may be considered in the light most favorable to the non-moving party.

Therefore, IT IS ORDERED denying Defendants' Motion to Strike Affidavits Submitted by Barry B. Yamron and Jeffrey P. Mast and Certain Portions of Plaintiffs' Combined Statement of Facts, filed March 30, 2011.

The Court's ruling on summary judgment will be issued in a separate minute entry.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.