

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-017116

04/24/2015

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

DOUGLAS W TERPSTRA, et al.

MATTHEW M ELLINGSON

v.

ACADEMY MORTGAGE CORP

BRIGHAM A CLUFF

DAVID M MORRISON

RULING

The Court has considered Defendant, Academy Mortgage Corp.'s ("Academy") Motion for Summary Judgment, Plaintiffs', Douglas and Olyvya Terpstra's (collectively, "Terpstra") Response and Cross-motion for Summary Judgment, Academy's Reply and Response to Terpstra's Cross-motion, and the parties' Statements of Fact.

The Court finds that the briefing is sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. 7.1(c)(2) to expedite the business of the Court.

In the Amended Complaint, Terpstra alleges that Academy negligently misrepresented that the second "Appraisal," submitted in support of their home loan application, was acceptable, while knowing that Terpstra would liquidate retirement funds for a down payment in anticipation of a loan. Terpstra maintains that Academy's *delay* in formally declining the loan (based on the Appraisal) caused them damages. (Count I, Negligent Misrepresentation). In Count II (Promissory Estoppel), Terpstra claims that once the Academy made the statement (promise) that the Appraisal was approved, they relied on that statement and suffered expenses and lost opportunities caused by Academy's processing delay.

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A motion for summary judgment should be granted “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990). It should be denied where the evidence or inferences therefrom could permit a factfinder to resolve a material issue in favor of the party opposing the motion. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195 (App. 1990). Questions of credibility, weighing of the evidence, and drawing of inferences are questions for a jury, not the judge. *Allstate Indem. Co. v. Ridgely*, 214 Ariz. 440, 444 (App. 2007) (citations omitted).

Academy moved for summary judgment on both Counts. Academy’s challenge to Terpstra’s “justified reliance” raises factual issues which cannot be settled on summary judgment. Furthermore, the defense of “unclean hands” is factually disputed in this record. Finally, Academy assumed that Terpstra’s damage claims should be excluded pursuant to the Economic Loss Rule (“Rule”). The Court agrees the Rule does not apply. The Court is not persuaded by the Academy’s damage arguments under these tort theories.

The Court further finds that the grounds for Terpstra’s Cross-motion for Summary Judgment are also entangled with factual disputes.

Based on the forgoing,

IT IS ORDERED denying Academy’s Motion for Summary Judgment.

IT IS FURTHER ORDERED denying Terpstra’s Cross-motion for Summary Judgment.