

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/23/2017

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT

A. Arnold

Deputy

DONA LISA JOHNSON

JAMES ROBERT ECKLEY

v.

BERNARD POTOFF, et al.

LYN ANNE BAILEY

MARIA R KUPILLAS
RICHARD V MACK
ROBERT J SPURLOCK
THOMAS A STOOPS

UNDER ADVISEMENT RULING

The Court has reviewed the fully briefed Defendants Ashlie Van Winkle, James Dunning and Go Big, LLC's Motion for Summary Judgment (I) Opinion of Value, (II) Breach of Contract, (III) Attorney Fees. The Court has benefited from the oral arguments of counsel and has reviewed all the attachments to the pleadings. In reaching its decision, the Court also considered the legal file in this matter, and the applicable rules of court, statutes, and case law.

In deciding this motion, the Court is applying the well-established standard established by *Orme School v. Reeves*, 166 Ariz. 301 (1990). This court will grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of the evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.

With regard to the issues relating to the opinion of value, there are sufficient questions of fact, including the trier of facts ability to question the credibility of witnesses, as to whether Plaintiff truly relied on the property value as estimated by her real estate agent in determining whether or not to purchase the property and whether or not to have an independent appraisal

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conducted. Although the estimation of value may not in and of itself actionable, it does provide context for the discussions between the parties and the decisions made in purchasing the property thus testimony with regard to the opinion of value will be allowed.

As for the breach of contract claims, although there is no clear contract with all relevant terms spelled out in one document, there is a question of fact as to whether there are sufficient facts to prove that the parties did enter into a contract for KW Defendants to act as real estate agents for Plaintiff and what their responsibilities were as her agents and hers were as their client. The Agency Disclosure Form is not in and of itself a contract but it is part of the documents that evidence the contractual relationship between the parties with regard to the purchase and potential “flip” sale of the property that is the subject of this action.

IT IS ORDERED denying Defendants Ashlie Van Winkle, James Dunning and Go Big, LLC’s Motion for Summary Judgment (I) Opinion of Value, (II) Breach of Contract, (III) Attorney Fees.

At this juncture in the litigation, the Court declines to award attorney fees and will take up that issue at the conclusion of litigation, if appropriate.