

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-018734

06/07/2006

HONORABLE ROBERT E. MILES

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 06/08/2006

THOMAS HEALY, et al.

THOMAS HEALY
39838 N 107TH PL
SCOTTSDALE AZ 85262

v.

PAUL DALI, et al.

F MICHAEL CARROLL

JANICE HEALY
39838 N 107TH PL
SCOTTSDALE AZ 85262
FREDERICK E DAVIDSON

RULING

The Court has had under advisement Defendants' Motion for Summary Judgment [re contract based claims] (the "Contract Motion"), Defendants' Motion for Summary Judgment [re tort based claims] (the "Tort Motion"), Defendants' Motion for Summary Judgment Regarding Punitive Damages, and Plaintiffs' Motion for Rule 11 Sanctions re: Defendants' Motions for Summary Judgment I, II, and III. The Court now rules as follows:

CONTRACT BASED CLAIMS

Plaintiffs conceded that their contract claims are alleged only against Defendant Sonoran Golf Properties, LLC ("Sonoran"), not against the individual Defendants. Accordingly,

IT IS ORDERED granting the Contract Motion as to Defendants Robert E. Terry, Donna Legate, Baxter Baldwin, and Sara Baldwin.

As to Sonoran, Plaintiffs' Complaint does not allege any specific contract to which Sonoran was a party. Instead, the only contract alleged is the Purchase Contract between the Healys and Dalis. Sonoran is not a party to that contract. Although not previously disclosed as
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their theory in this case, in their response to the Contract Motion, Plaintiffs assert that Count IV – Breach of Contract “...is alleged solely against Defendant Sonoran Golf Properties arising out of its brokerage relationship with Plaintiffs...” However, Count IV references only the Purchase Contract, not any brokerage agreement. Plaintiffs have not provided a brokerage agreement nor have they stated any terms of any such purported contract that allegedly were breached. Accordingly,

IT IS ORDERED granting Defendants’ Contract Motion as to Sonoran.

TORT BASED CLAIMS

Defendants assert that the “economic loss doctrine” bars Plaintiffs’ tort based claims because Plaintiffs have not alleged any personal injury or property damages (other than to the structure itself), and conceded at oral argument that there were no such damages. Plaintiffs alleged damages are purely economic – i.e. diminution in value of the property.

The Court does not approach this issue with a clean slate. Judge Peter Reinstein has previously awarded summary judgment to the Dalis in this case, in part based on the economic loss doctrine. See July 5, 2005 Minute Entry. The tort claims alleged against the remaining Defendants are the same tort claims as were alleged against the Dalis. If the claims against the Dalis are barred by the economic loss rule, it follows that the claims against the other Defendants would also be barred. It would be incongruous to dismiss the claims against the Dalis based on the economic loss rule, but not do so as to the claims against the other Defendants.

Furthermore, by re-urging their argument that the economic loss rule does not apply, Plaintiffs are effectively seeking a “horizontal appeal” of the prior ruling. Such “horizontal appeals” are disfavored, absent some changed circumstances. None exist here. Accordingly, in light of the prior ruling regarding the economic loss rule,

IT IS FURTHER ORDERED granting Defendants’ Tort Motion.

In light of the foregoing rulings,

IT IS FURTHER ORDERED granting Defendants’ Motion Regarding Punitive Damages and denying Plaintiffs’ Motion for Rule 11 Sanctions.