

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-004794

09/04/2003

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
W. Bobrowski  
Deputy

FILED: 09/10/2003

BRAD LEE, et al.

SID A HORWITZ

v.

UDC CORPORATION, et al.

LEE P BLAKE

ROBERT L STEWART JR.

RULING

Defendants' Motion for Summary Judgment on Emotional Distress has been under advisement. Plaintiffs seek an award of damages for "distress" based on Defendants' alleged fraud; however, Plaintiffs have not alleged a claim for intentional infliction of emotional distress. Plaintiffs only argue that they have been upset by the actions of Defendants and should be compensated for this.

The Court finds that Plaintiffs' claim for Emotional Distress has not been pled properly and the evidence does not establish any physical manifestations to support a claim for emotional distress. The Court is aware that Plaintiffs argue that they are not asserting a claim based on intentional infliction of emotional distress but rather a claim for distress based on fraud. The Court is not persuaded that there is legal authority for such a claim for damages. Accordingly,

IT IS ORDERED granting Defendants' Motion for Summary Judgment on Emotional Distress.

Plaintiffs' Motion in Limine to Preclude John Rothermel from Testifying has been under advisement. The Court finds that his testimony will be allowed, provided that proper foundation can be laid for the evidence.

IT IS ORDERED denying Plaintiffs' Motion in Limine, subject to proper foundation.

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Defendants' Motion in Limine #14, to preclude evidence of "stigma" damages has been under advisement. Defendants argue that such damages are speculative and, therefore, cannot be allowed. However, Plaintiffs have set forth evidence of a specific amount reasonably likely to be lost based on diminution in value due to the problems they faced with their home. Assuming that proper foundation can be laid, the Court will allow such evidence. Accordingly,

IT IS ORDERED denying Defendants' Motion in Limine #14.