

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-006201

03/14/2005

HONORABLE BARRY C. SCHNEIDER

CLERK OF THE COURT
C. Johnston
Deputy

FILED: 03/15/2005

BARBARA BRODER, et al.

ERIC G SLEPIAN

v.

ALLAN FRIEDMAN, et al.

SARAH LYNN BARNES

PATRICK R BARROWCLOUGH
JEFFREY J GOULDER

MINUTE ENTRY

The court has received and reviewed Plaintiff's Motion for Summary Judgment, Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment, Plaintiffs' Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment, Defendants' Cross-Motion for Judgment on the Pleadings, Plaintiffs' Response to Defendants' Cross-Motion for Judgment on the Pleadings, and Defendants' Reply in Support of their Cross-Motion for Judgment on the Pleadings.

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment.

IT IS FURTHER ORDERED denying Defendants' Cross-Motion for Judgment on the Pleadings.

The relevant language of the Residential Resale Real Estate Purchase Contract [hereafter Purchase Contract] and the attached Addendum states:

"Appraisal: The Buyer's obligation to Complete this sale is contingent upon an appraisal of the Premises by an appraiser acceptable to the lender for at least the sales price." Purchase Contract 2, Line 68.

"The following additional terms and conditions are hereby included as a part of the Contract described above:...A.9.(3) Within 48 hours after all contingencies have been removed,
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Buyer to deposit an additional \$5,000.00 earnest money for a total of \$10,000...ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.”

Addendum to Purchase Contract (emphasis in original).

The “sales price,” as stated by the Addendum was to be “\$577,500.00,” an increase of \$5,000.00 presumably to account for the additional \$5,000 amount to be deposited into escrow within 48 hours of the removal of the “contingencies” imbedded within the Purchase Contract. Those contingencies included as shown above, “an appraisal of the Premises by an appraiser *acceptable to the lender* for at least the sales price.” A fair interpretation of this provision is that the lender must be satisfied by the quality of the appraisal provided to them by the appraiser that they have chosen. If the lender suspects that the appraisal is not of “acceptable” quality, it is common practice for such lender to request a review of the appraisal by another appraiser of their choosing. The Buyers’ lender in this case was unsatisfied with the quality of the first appraisal and upon ordering a review of the appraisal, the “appraisal of the Premises by an appraiser acceptable to the lender” did not produce an appraised value “for at least the sales price.” Standing alone, this provision of the Purchase Contract, starting on Line 68, removes the “Buyer’s obligation to complete the sale.”

The Addendum to the Purchase Contract does not affect this outcome. The stipulated fact that Plaintiffs, as the Buyers in this action, deposited the “additional \$5,000.00 earnest money” does not act as a waiver of the above-mentioned appraisal contingency. Although Defendants argue that Plaintiffs’ deposit of the additional money acted as a signal to Defendants that “all contingencies [had] been removed,” the language of the Addendum does not support such a determination. The Addendum provides that the money must be deposited “*within 48 h[ou]rs* after all contingencies have been removed.” It does not follow from a fair reading of this requirement that Plaintiffs could not place the additional monies into escrow *before* “all contingencies [had] been removed.” The Addendum’s further language, stating in large handwritten caps, that **ÁLL OTHER TERMS AND CONDITIONS REMAIN THE SAME,**” supports the conclusion that the appraisal contingency remained in effect. Accordingly, Summary Judgment is appropriate in favor of Plaintiff Buyers.