

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-015102

01/23/2015

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

FORT MCDOWELL YAVAPAI NATION, et al. LEO R BEUS

v.

STEPTOE & JOHNSON L L P, et al.

GARY L BIRNBAUM

JOHN DANIEL CAMPBELL

HEARING

Courtroom: ECB - 512

9:04 a.m. This is the time set for oral argument regarding the Appraiser Defendants' August 27, 2014 Motion for Summary Judgment re: No Duty to Tribe or WKJ. Plaintiffs Fort McDowell Yavapai Nation, Fort McDowell Enterprises, LLC, and We-Ka-Jassa Investment Fund, LLC (collectively, "Plaintiffs") are represented by Counsel Timothy J. Paris (appearing in place of Leo R. Beus). Defendants Lawrence E. Bloom, Larry D. Schnepf and Ringel Valuation Services, Inc. (collectively, the "Appraisal Defendants") are represented by Counsel Angela L. Potts and John Daniel Campbell. Defendants Steptoe & Johnson, LLP, Nancy White and Ralph Guerin (collectively, the "Steptoe Defendants") are represented by Counsel Bradley A. Burns (appearing in place of Gary L. Birnbaum).

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

9:39 a.m. Matter concludes.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-015102

01/23/2015

Later

Plaintiffs allege that they invested in real estate deals in reliance on faulty appraisals prepared by the Appraiser Defendants. The Appraisers seek summary judgment as to two Plaintiffs -- Fort McDowell Yavapai Nation ("the Nation") and We-Ka-Jassa Investment Fund ("WKJ") -- on the ground that the Appraisers owed no duty to these Plaintiffs.

The Appraisers prepared the appraisals for the property owner, DDB Ventures, LLC ("DDB"). The record supports an inference that they knew DDB was seeking a lender and that the appraisals would be used to persuade it to lend. It is undisputed that the Appraisers added Plaintiff Fort McDowell Enterprises, LLC ("FME") to the appraisals as a client or intended user.

The appraisals contain express language limiting their use and reliance to the "client" and stating that they are not intended to be relied upon by third parties.

Section 552 of the Restatement of Torts, which Arizona follows, governs this claim. It says:

(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-015102

01/23/2015

for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

Restatement (Second) of Torts § 552 (1981). Citing this provision and Arizona cases relying on it, the Appraisers argue that they owed no duty to the Nation or WKJ.

The evidence supports an inference that the Appraisers knew DDB intended to supply the appraisals to its prospective lender, and knew the recipients intended the appraisals to influence the lending transaction. The evidence further supports an inference that, in their discussions about use of the appraisals, DDB and the Appraisers did not distinguish between legal entities but rather understood the appraisals would be supplied to “Fort McDowell.” This evidence is sufficient to support a duty under Restatement § 552 to the Nation and WKJ. Although duty is generally a legal question, its existence here turns on the existence of disputed facts.

Language in the appraisals that limits intended recipients is relevant to duty, but not dispositive. Under Restatement § 552, the Appraisers’ duty is not defined solely by their own documents or their intent. Rather, even if the Appraisers did not intend for third-parties to rely on the appraisals, they may have a duty if they knew their clients intended to supply the appraisals to third-parties. The cases the Appraisers cite do not hold that disclaimers in an appraisal are sufficient to defeat a duty when the appraiser knows the appraisal will be used by others.

IT IS ORDERED denying the Motion.