

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-005231

12/12/2014

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

F H R CONSTRUCTION CORPORATION, et al. LARRY A ZIER

v.

STEPHEN CANTOR, et al.

KIRSTEN L COPELAND

SIGURDS M KROLLS
COURT ADMIN-CIVIL-ARB DESK

HEARING

Courtroom: ECB-512

1:33 p.m. This is the time set for oral argument regarding Defendants/Counterclaimants' July 21, 2014 Motion for Summary Judgment, Plaintiffs' September 17, 2014 Cross-Motion for Partial Summary Judgment and Counterdefendants' September 17, 2014 Motion for Partial Summary Judgment. Plaintiffs/Counterdefendants are represented by Counsel Larry A. Zier. Defendants/Counterclaimants are represented by Counsel Kirsten L. Copeland.

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 these matters under advisement.

Discussion is held regarding the status of arbitration.

2:05 p.m. Matter concludes.

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Later

The Remediation Contracts are in Plaintiffs' forms. The language of those forms was not negotiated, so their interpretation is a question of law. The Remediation Contracts provide that "Client shall pay the Contractor the sum of reimbursement provided by the Client's Insurance Contractor pursuant to the claim, relevant to the Scope of Work." In this provision, Plaintiffs agreed to accept as payment what the insurance company paid as reimbursement. The court reaches this conclusion based on the plain meaning of the contracts, and the interpretation is bolstered by the rule that form contracts are construed against their drafter.

Plaintiffs point out that their Remediation Contracts also say: "If there is no insurance coverage for the loss, then Owner will pay Contractor according to the terms in an addendum to this Construction Agreement." This provision has no application because there was, in fact, insurance coverage for the loss.

Based on this conclusion, summary judgment must be granted as to Plaintiffs' breach of contract and unjust enrichment claims as they relate to the Remediation Contracts. Plaintiffs cannot assert unjust enrichment that is contrary to the Contracts.

Summary judgment is not warranted on Plaintiffs' bad faith claim. There are material fact questions on whether Defendants had a good faith duty to participate in the insurance company's appraisal process and whether they breached that duty.

Material fact questions also preclude summary judgment for either party as to Plaintiffs' claim under the Remodeling Contract, and claims for the \$2,500 deductible and the alleged \$504.11 in retained insurance proceeds.

Summary judgment is, however, warranted on Plaintiffs' fraud claim. There is no evidence from which the trier of fact could find fraud.

Finally, summary judgment is not warranted on Defendants' counterclaim for the reasons stated above, and also because a fact question exists on whether Plaintiffs failed to complete the Remodeling Contract.

IT IS ORDERED granting Defendants' Motion for Summary Judgment in part as set forth above.

IT IS FURTHER ORDERED denying Plaintiffs' Cross-Motion for Summary Judgment.

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IT IS FURTHER ORDERED denying Counterdefendants' Motion for Partial Summary Judgment.

IT IS FURTHER ORDERED granting Defendants' October 8, 2014 Motion to Strike and striking Plaintiffs' September 17, 2014 Motion to Strike as contrary to Ariz. R. Civ. P. 7.1(f).