

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-025847

11/09/2011

HONORABLE EMMET RONAN

CLERK OF THE COURT
K. Gilmet/T. Soto
Deputy

COPPER LEAF LENDER L L C

DALE S ZEITLIN

v.

DENNIS P FARR, et al.

DENISE J WACHHOLZ

KATHLEEN FARR
NO ADDRESS ON RECORD
NANCY KLATT
NO ADDRESS ON RECORD

MINUTE ENTRY

The Court has taken several Motions filed by Defendants under advisement. The Court has considered all of the pleadings filed by the parties and the arguments of counsel presented in court on October 24, 2011.

1) Defendants' Motion to Strike Declaration of John Lissberger and Plaintiff's Related Statements of Facts.

Defendants' arguments all go to the witness' credibility and the weight to be given to his testimony. Those are matters to be decided by the trier of fact.

IT IS ORDERED denying Defendant's Motion to Strike.

2) Defendants' Motion for Partial Summary Judgment No. 1 on Claims for Negligence and Professional Malpractice.

Plaintiff has advised the Court and counsel that his legal theory against the Defendants' at trial will be based on negligent misrepresentation.

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IT IS ORDERED granting Defendants Motion for Summary Judgment as to Plaintiffs negligence and professional malpractice legal theories pleaded in the Complaint.

3) Defendants' Motion for Summary Judgment No. 2 on all claims, pursuant to A.R.S 33-814(D) or, alternatively, for Rule 56(d) Finding.

The restrictions in A.R.S. 33-814(D) on a "deficiency" apply only to actions against those "directly, indirectly or contingently liable on the contract for which the trust deed was given as security". The reference in subsection A, to indirect contractual liability, applies to third parties whose relationship to the primary borrower renders them liable by operation of law for the primary borrowers contract. Defendants are not liable, by operation of law, for the borrowers contractual obligations in this case. Subsection D does not protect Defendants from liability, even if the damages assessed against them are calculated based on the indebtedness that Plaintiff was unable to recover through the trustee's sale. Finally, Defendants remain liable within the specific limitations periods prescribed for their alleged wrongful acts and their suit does not need to be filed within 90 days of the trustee's sale.

IT IS ORDERED denying Defendants Motion for Summary Judgment No. 2 based on A.R.S. 33-814.

4) Defendants Motion for Partial Summary Judgment No. 3 on Plaintiff's Measure of Damages.

Plaintiff is entitled to recover its compensatory damages. These damages are intended to compensate a Plaintiff for losses suffered, to place the Plaintiff in a position substantially equivalent in a pecuniary way to that which it would have occupied if the tort hadn't been committed. Compensatory damages for negligent misrepresentation include out-of-pocket and consequential damages. Consequential damages include those that might reasonably be expected to result from reliance upon the misrepresentation. In this case, the alleged misrepresentation is the appraiser's negligent overstatement of value.

In reaching their decision on damages, the jury should consider all of the testimony and evidence. This would include the experts current opinions as to the value of the property at the time of the loan, the appraisal prepared at the time of the loan, Plaintiffs testimony and evidence about the amount they would have loaned had they had different information, the market value of the property at the time of the trustee sale and the amount of Plaintiffs credit bid.

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IT IS ORDERED denying both parties Motions for Partial Summary Judgment on Plaintiffs Measure of Damages.

4) Defendants Motion for Partial Summary Judgment No. 4 on Issue of Reliance.

There are clearly numerous genuine issues of material fact as to whether Defendants made a negligent misrepresentation that Defendants intended Plaintiff to rely upon and whether Plaintiff had the right to and justifiably relied on the negligent misrepresentation. Those issues will need to be resolved by the appropriate trier of fact.

IT IS ORDERED denying Defendants Motion for Partial Summary Judgment No. 4 on Issue of Reliance.

IT IS ORDERED setting a Telephonic Status Conference on **December 2, 2011 at 9:45 a.m. (Time allotted: 15 minutes)** before:

**HONORABLE EMMET J. RONAN
SOUTHEAST ADULT FACILITY
222 EAST JAVELINA - COURTROOM 205
MESA, AZ 85210**

NOTE: Counsel for the Plaintiff is to initiate the telephonic conference by first arranging the presence of all other counsel or self-represented parties on the conference call and by calling this division at (602) 506-0438 promptly at the scheduled time.

IT IS FURTHER ORDERED if the parties settle the matter, they shall contact this Division so the hearing can be vacated.

NOTE: ALL COURT PROCEEDINGS ARE RECORDED BY AUDIO METHOD AND NOT BY A COURT REPORTER. ANY PARTY MAY REQUEST THE PRESENCE OF A COURT REPORTER BY CONTACTING THIS DIVISION THREE (3) COURT BUSINESS DAYS BEFORE THE SCHEDULED HEARING.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.