

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-006002

03/27/2017

HONORABLE JAMES T. BLOMO

CLERK OF THE COURT
G. Verbil
Deputy

KEITH KLEIN, et al.

v.

K HOVNANIAN GREAT WESTERN HOMES L DAVID A TIMCHAK
L C, et al.

PINE COUNTRY CABINETS INC
ATTN WADE MACNEILLE
1640 E ADAMS ST
SHOW LOW AZ 85901
RICHARD C GRAMLICH
JARED MICHAEL SCARBROUGH

UNDER ADVISEMENT RULING

The Court has under advisement, following oral argument, Plaintiffs' Motion for Partial Summary Judgment, Defendants' Response to Plaintiffs' First Motion for Partial Summary, and Plaintiffs' Reply to Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment.

In addition, the Court has under advisement, following oral argument, Defendants' Motion for Summary Judgment, Plaintiffs' Response to Defendants' Motion for Summary Judgment, and Defendants' Reply in Support of Defendants' Motion for Summary Judgment.

In addition, the Court has read and considered the supplemental briefs submitted by the parties.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-006002

03/27/2017

Rule 56(c) of the Arizona Rules of Civil Procedure provides that the Court may grant a motion for summary judgment only if there “is no genuine issue of material fact....” Any evidence or reasonable inference contrary to fact which the moving party needs to show his entitlement to judgment will preclude summary judgment. *United Bank of Arizona v. Allyn*, 167 Ariz. 191 (Ct.App. 1990). If there are material facts upon which reasonable people could reach different conclusions, summary judgment is not appropriate. *Gold Insurance Company v. Grishom*, 126 Ariz. 123 (1980).

In making a determination on a motion for summary judgment, the court should consider the evidence and state the facts in the light most favorable to the party opposing the summary judgment and indulge in all reasonable inferences in support thereof. *City of Tucson v. Sanderson*, 104 Ariz. 151 (1969). Moreover, courts have long held that the interests of justice are best served by a trial on the merits. *Comacho v. Gardner*, 104 Ariz. 555 (1969).

Plaintiffs’ Motion for Partial Summary Judgment

The Court is asked to determine whether Plaintiff is entitled to seek consequential damages, including loss of use and diminution in value, at trial and attorney fees pursuant to A.R.S. § 12-341.01 and/or A.R.S. § 12-1364 should they prevail. Defendants contend that the Plaintiffs are prevented from seeking consequential damages and attorney fees and that their sole remedies are repair or payment of reasonable cost of repair or if not repairable, the lesser of the reasonable cost of repair or diminution in value of the lot and improvements due to the unrepaired or irreparable condition.

The Court finds that Plaintiffs are entitled to seek consequential damages, including loss of use and diminution in value, at trial and attorney fees pursuant to A.R.S. § 12-341.01 and/or A.R.S. § 12-1364 should they prevail.

Accordingly,

IT IS ORDERED granting Plaintiffs’ Motion for Partial Summary Judgment.

Defendants’ Motion for Summary Judgment

Defendants contend that the matter must be dismissed for lack of jurisdiction for failing to comply with the Purchaser Dwelling Act (PDA). In addition, Defendants contend that Plaintiff Klein’s complaint must be dismissed due to her having notice of the defects before purchasing the property.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-006002

03/27/2017

The Court finds that Plaintiff did comply with the PDA and provided sufficiently detailed notice. In addition, the Court finds that the issue of what Klein and the seller of the property to Klein knew is a question of fact for the jury.

Accordingly,

IT IS ORDERED denying Defendants' Motion for Summary Judgment.