

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/21/2017

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
A. Arnold
Deputy

DONA LISA JOHNSON

JAMES ROBERT ECKLEY

v.

BERNARD POTOFF, et al.

LYN ANNE BAILEY

MARIA R KUPILLAS
RICHARD V MACK
ROBERT J SPURLOCK
THOMAS A STOOPS

UNDER ADVISEMENT RULING

As for the “Motion for Summary Judgment on (I) Statute of Limitations; (II) Estoppel; and (III) Reliance” filed on September 30 2016, the Court has carefully considered the Motion, the Responses and Replies, the applicable case law, statutes and rules of court. The Court also benefited from the thoughtful arguments of counsel.

In deciding this motion, the Court will grant the Motion for Summary Judgment if there is no genuine dispute as to any of the material facts that form the basis for the claim being challenged by the motion. The Court will also make every inference in favor of the party opposing the motion.

With regard to the motion regarding whether the statute of limitations bars claims relating to the wash and inspection report, the key issue is when Plaintiff reasonably knew of the wash and how water would flow down it. Despite holding herself out as an experienced real estate licensee and general engineering contractor, Plaintiff claims that as she was from Northern

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California, she didn't understand how a desert wash functioned. Therefore she did not appreciate that it would flood if there were a significant rain.

The Court finds that the statute of limitations began to run when Plaintiff knew or should have known enough to investigate her alleged injury. Plaintiff was told that the wash was a "natural functioning wash". She also inquired of the Maricopa County Flood Control District regarding concerns about the wash as she had seen "not so nice and costly issues" as a result of flood and water flow issues. She also received a 2011 Grading and Drainage Report, which mentioned the wash. There was also substantial rain that would have flowed into the wash in August and September of 2012. Before signing the purchase contract, Plaintiff indicated that she would conduct all environmental inspections. Thus Plaintiff was on notice that there could be issues with the wash when she contacted the flood control district in September 2011. She certainly would have been on notice that a natural wash in Arizona can cause water flow during the rains in August and September of 2012. The Court finds that Plaintiff possessed the requisite knowledge sufficient to know a wrong may have occurred absolutely no later than September 7, 2012. Candidly, the Court believes that given Plaintiff's experience in buying and selling properties and in her communications with the Flood Control District, she truly was on notice by November 21, 2011 when she received the Inspection Report. However in drawing inferences in favor of the Plaintiff, the Court is using the letter date.

Thus with regards to claims under the Consumer Fraud Act, which has a one year statute of limitations, and under a claims for negligent misrepresentation or negligence, which has a two year statute of limitations, Plaintiff would have been required to file her complaint not later than September 7, 2013 and September 7, 2014 respectively.

As to the stucco cracking, Plaintiff testified that she noticed the cracking about one week after she closed escrow on the property. Thus, her claims regarding stucco damage would also be barred by the two-year statute of limitations.

IT IS ORDERED granting the Motion for Summary Judgment re: Statute of Limitations on the Consumer Fraud Act and Negligent Misrepresentation or Negligence claims.

With regard to the motion's request that Plaintiff is estopped from bringing claims against the KW Defendants, the Court finds that there are genuine issues of fact as to the extent to which Plaintiff initially may have justifiably relied on the statements made by KW Defendants. Although Plaintiff clearly relied on her own significant experience and her own due diligence efforts in deciding whether or not to purchase the property, there are questions of material fact with regard to what extent she relied on the KW Defendants statements regarding whether she should purchase this property and the value of the property.

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IT IS FURTHER ORDERED denying the Motion for Summary Judgment re: Estoppel and Reliance.