

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/22/2017

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

The Court has carefully considered “Defendants’ Echo E. Farrell, Robert Farrell, Farrell Fine Homes, LLC and Karen Kelly’s Motion for Partial Summary Judgment (Statute of Limitations) on Counts I, II and III of Plaintiff’s Claims Against Defendants”. The Court has benefited from the oral arguments of counsel and has reviewed all the attachments to the pleadings. In reaching its decision, the Court also considered the legal file in this matter, and the applicable rules of court, statutes, and case law.

In deciding this motion, the Court is applying the well-established standard established by *Orme School v. Reeves*, 166 Ariz. 301 (1990). This court will grant summary judgment “if the facts produced in support of the claim or defense have so little probative value, given the quantum of the evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.”

For the reasons as set forth in this Court’s ruling on the KW Defendants Motion for Summary Judgment on (I) Statute of Limitations; (II) Estoppel; and (III) Reliance, the Court

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finds that with regard to issues relating to the wash between the house and the barn, Plaintiff had sufficient knowledge to know that a wrong may have occurred and caused injury by September 7, 2012.

With regard to the following issues, Plaintiff had the requisite knowledge to know that a wrong may have occurred and caused injury more than two years before the initiation of this case. She was aware no later than November of 2011 that there was a wash north of the barn. As for roofing issues, Plaintiff knew by December 23, 2011 that the roof was in need of repair as she sought out recommendations for a good roofer. The November 21, 2011 Scottsdale Desert home inspection, which was given to Plaintiff, indicated that the roof was in need of repair. Likewise she was aware of stucco issues on the house by January 13, 2012, when she approached the home inspector about the work that needed to be done as the stucco was cracking and coming off in places. Plaintiff was on notice via the same Scottsdale Desert home inspection that the chimney cap need flashing below the chimney. In December 23, 2011, Plaintiff emailed Ms. Van Winkle seeking referrals for a repair person to repair a door frame and repair/replace windows. The home inspection also indicated issues with condensation between window panes, floor tiles and grout.

For ease of keeping track of the dates when the statute of limitations would run, the Court will use the latest date of January 12, 2012 when she contacted the home inspector.

The Court finds that Plaintiff knew or should have known of the injuries as alleged in Counts I, II and III of Plaintiff's Verified Second Amended Complaint in excess of two years prior to filing suit in this matter.

IT IS ORDERED granting "Defendants' Echo E. Farrell, Robert Farrell, Farrell Fine Homes, LLC and Karen Kelly's Motion for Partial Summary Judgment (Statute of Limitations) on Counts I, II and III of Plaintiff's Claims Against Defendants".