

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/24/2017

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 reviewed Defendants Echo E. Farrell, Robert Farrell, Farrell Fine Homes, LLC and Karen Warren's Motion for Summary Judgment – Release. 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.”

The Court in a previous ruling has determined that the Buyer Acknowledgment section of the Purchase Contract was not illegal nor was it to be struck from the contract. The Court does find that said provision applies to this contract. However, the Court declines to relieve all the

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brokers involved in this matter of liability. It is a question of fact for the jurors to determine which defects or condition that could have been discovered by inspection or investigation. Although well after Plaintiff purchased the property, her expert opined that there were many defects and red flags that should have been discovered, the jury must determine to what extent these defects could have been discovered at the time Plaintiff executed the contract. Plaintiff has set forth alleged material facts, when interpreted in the light most favorable to her, such as whether Defendant Kelly knew of and failed to disclose a previous inspection report that would have exposed known defects to Plaintiff and whether she was given poor advice regarding making an all cash offer, that a jury may question the extent to which this paragraph applies to this transaction.

IT IS ORDERED denying Defendants Echo E. Farrell, Robert Farrell, Farrell Fine homes, LLC and Karen Warren's Motion for Summary Judgment – Release.

The Court declines to make an award of attorney's fees at this point in the litigation and will wait until the matter is resolves to address these fee requests in context of the totality of the litigation.