

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

The Court has considered the fully briefed “Motion for Summary Judgment on Duty to Investigate.” 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 has 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.”

A real estate broker has a confidential and fiduciary relationship with their client that requires the broker and/or agent to be held to the highest ethical standards and to deal fairly and honestly with their clients. *Marmis v. Solot Co.*, 117 Ariz. 499, 501-02; 573 P.2d 899, 901-02 (App. 1997). Thus a broker must disclose all material facts known to them to their clients. They

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MARICOPA COUNTY

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are required to be truthful and accurate when responding to their client's inquiries. They must relay any information that is in their possession accurately and completely. However, they do not have a duty to independently investigate the conditions of a property. They do not have a duty to have expertise in areas other than those required to receive their broker's/salesperson's license nor should they advise on matters outside of their expertise or field of competence. They do, however, have a duty to take reasonable steps in assisting their client in confirming that information relevant to the transaction is reliable and accurate. A.R.S. §§ 32-2101, 2122. A.A.C.R4-28-11-1 (H) and (I).

Plaintiff cites to no facts indicating that the KW Defendants failed disclose all material facts known to them or that they were untruthful in their responses to Plaintiff's inquiries. No facts were raised to indicate that KW Defendants failed in their duty to Plaintiff via acts of omission.

The Court finds that the KW Defendants and Farrell Defendants were under no duty to independently investigate the condition of the property.

**IT IS ORDERED** granting the "Motion for Summary Judgment on Duty to Investigate."

The Court will not assess attorney fees and costs at this time. At the end of the litigation or, at a minimum, when all the various dispositive motions have been ruled upon, the Court will reconsider the appropriateness of whether to award attorney fees and costs and how much to award.