

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 fully reviewed Plaintiff's "Motion for Partial Summary Judgment on the Issue of Paragraph 6(H) in the Standard Form Purchase Contract, i.e., Motion to Strike Paragraph 6(h) from Standard Form Contract." 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 does not find that paragraph 6(h) in the contract is contrary to Arizona law. Although the paragraph does in part read like a disclaimer, it does put buyers on notice of their need to fully investigate any issues that are of concern to them before entering into such a

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significant contract. Additionally, the provision only relates to those conditions that “could have been discovered by inspection or investigation.” It does not prevent a buyer from pursuing action against those conditions that were not readily discoverable by her investigation or inspection.

Lastly, Plaintiff admitted during her deposition that she read, reviewed and understood documents before she signed them and that she understood that she could strike terms if she did not agree with them. Instead of striking paragraph 6(h), she initialed it to indicate her agreement with and understanding of it.

IT IS ORDERED denying both the Motion for Summary Judgment and the Motion to Strike Paragraph (6) (h).

The Court declines to award attorney fees in this this matter until the end of litigation.