

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/17/2017

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 "Plaintiffs' Motion for Partial Summary Judgment on the Issue of Duty of a Real Estate Licensee". 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."

Candidly, the Court has reviewed this Motion and the responses a number of times. Clearly the Defendants owe Plaintiff duties as outlined under the statutes and administrative code. How those duties are to be observed will be question for the experts to discuss as part of their standard of care testimony. Thus the Court is reticent to define the

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Defendants' duties toward the Plaintiff other than to affirm that the duties are as spelled out under the Arizona statutes and administrative codes. The Court and counsel will then work together to determine the appropriate wording of jury instructions that will be presented to the jurors before they deliberate to determine if these duties have been violated and if any harm has been caused to the Plaintiff by the alleged violations.

Thus rather than applying the facts as set forth thus far in the record to the applicable statutes and case law, the Court will refrain from granting this motion and rather wait until trial to craft jury instructions that address the parties' duties and responsibilities to one another.

IT IS ORDERED denying "Plaintiffs' Motion for Partial Summary Judgment on the Issue of Duty of a Real Estate Licensee".