

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-011845

03/20/2017

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 Farrell and Farrell Fine Homes’ Motion for Partial Summary Judgment on Counts I through IV of Plaintiffs’ Verified Second Amended Complaint (Negligence, Negligent Misrepresentation, Consumer Fraud, Common Law Fraud). 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 has read and reread Plaintiff’s Response to this Motion numerous times in an effort to establish how she relied on information that was purportedly inaccurately published in

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the MLS listing. Without reliance, even if the listing was inaccurate and contain information was fraudulently misrepresented, to prevail on Counts II – IV, Plaintiff must demonstrate her reliance on the statements and that she was harmed by said reliance. Plaintiff's deposition testimony is that she did not rely on the MLS listing in deciding whether to purchase the home. Thus a critical element to her claims is lacking.

For this reason, **IT IS ORDERED** granting the Motion for Summary Judgment re: Negligent Misrepresentation, Consumer Fraud and Common Law Fraud as to the Farrell Defendants only.

As to the Motion for Summary Judgment re: Negligence, **IT IS FURTHER ORDERED** granting the Motion solely regarding claims of Farrell Defendants engaging in acts of negligence by making misrepresentations in the MLS listing. However, with regard to the acts of their employee/independent contractor, there are sufficient facts within the record for a jury to consider whether the Farrell Defendants failed to supervise Defendant Kelly and if said failures led to harm to the Plaintiff.