

AN APPRAISER OWES NO DUTY OF CARE TO A SELLER IF THE APPRAISER DOES NOT INTEND THE SELLER TO RECEIVE AND RELY UPON THE APPRAISAL

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Southwest Non-Profit Housing Corp. v. Novak
Arizona Ct. Appeals, Div. Two, March 31, 2014

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In this consolidated appeal, the three defendants performed appraisals in connection with the sale of three residential properties. In all three cases, the appraisals were appreciably lower than the properties' contracted sales price, leading the buyers to cancel the sales because their lenders would not fund the purchase loans. The seller of all three properties sued the appraisers for negligent misrepresentation in performing the appraisals. The appraisers were either dismissed or granted summary judgment on the ground they could not be liable for negligent misrepresentation under Restatement (Second) of Torts § 552.

The court of appeals affirmed in all three cases. Under Restatement § 552, an appraiser may be liable for negligent misrepresentation if the appraisal is intended to reach and influence a third party, even if the appraiser does not know the third party's specific identity. But an appraiser is not liable to everyone who might foreseeably receive and rely upon an appraisal. In this case, the sales agreements were entered into before the appraisals were commissioned. There was no evidence the appraisers intended for the seller to receive and rely upon their appraisals. The appraisers therefore owed no duty of care to the seller.

The court also found that even if the appraisers owed the seller a duty, there was no evidence the seller relied on the appraisals as was required to establish liability. The court therefore affirmed the trial courts' dismissal of claims against one appraiser and grant of summary judgment to the other two.