

STATE OF MICHIGAN
COURT OF APPEALS

FLAGSTAR BANK FSB,

Plaintiff/Counter-Defendant-
Appellee,

v

THERESE M IRVINE,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellant,

v

ACCURATE APPRAISALS & REALTY INC,
and JERE D NEILL,

Third-Party Defendants,

v

HERITAGE INVESTMENTS LLC,

Third-Party Plaintiff,

and

HERITAGE POINTE INVESTMENTS LLC,

Counter-Plaintiff.

UNPUBLISHED
January 31, 2013

No. 306613
Macomb Circuit Court
LC No. 2010-004493-CK

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

MEMORANDUM.

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellant Therese M. Irvine appeals by right the circuit court's grant of summary disposition in favor of Plaintiff/Counter-Defendant-Appellee Flagstar Bank FSB.¹ This case arises out of a real estate transaction in which Heritage Pointe Investments LLC (of which Irvine was the sole member) purchased a parcel of undeveloped property with a loan from Flagstar. Flagstar conditioned the loan on the outcome of an appraisal it commissioned. When the appraisal determined that the property was worth approximately \$2.4 million, Flagstar issued the loan. Irvine guaranteed the loan. Heritage Pointe eventually fell into default, and Irvine subsequently determined that the appraisal—which she did not read until well after the purchase was consummated—was flawed and allegedly grossly overstated the value of the property. Flagstar sued Irvine on the guarantee, for the outstanding amount of the loan plus fees and interest; Irvine counterclaimed, asserting that Flagstar was liable for the improper and incorrect appraisal. The trial court concluded that the appraisal was for the benefit of the bank, not the person seeking the loan, and granted summary disposition to Flagstar. We affirm.

Irvine relies primarily on Restatement Torts, 2d, § 552, which this Court adopted in *Stockler v Rose*, 174 Mich App 14, 35-36; 436 NW2d 70 (1989). That section provides as follows:

(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

¹ It appears to us that “Heritage Investments LLC” may not be a real party, but instead is actually “Heritage Pointe Investments LLC” and was somehow improperly captioned. Additionally, it appears to us that Heritage Pointe Investments LLC may never have been properly added as a party in the trial court.

Flagstar was not under any public duty to provide the appraisal information, and neither party suggests that Flagstar had any such duty. Otherwise, Irvine simply fails to provide any conceivable basis for concluding that Flagstar provided the appraisal information “for the guidance of others in their business transactions.” Flagstar’s employee stated that he would expect a borrower to rely on the accuracy of the appraisal, but in context, his statement appears to be only that a borrower would reasonably expect a bank employee not to lie about the contents of the appraisal.²

In other words, Flagstar neither commissioned nor shared the appraisal for the purpose of providing Irvine with knowledge upon which to make any kind of decision. Rather, as the trial court correctly stated, Flagstar sought the appraisal for its own purposes. Consequently, Irvine’s reliance on Restatement Torts, 2d, § 552 is misplaced. The trial court did not consider any of the arguments pertaining to waiver or release, and it is likewise not necessary for this Court to consider any of those arguments.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra

² The evidence in this case establishes that neither Irvine nor Heritage Pointe relied on, or even read, the appraisal, but instead simply assumed that Flagstar would not have issued the loan unless the appraisal was favorable.