

ROY McELROY and  
TINA McELROY,  
Plaintiffs

vs.

JON PHILLIP HALL and  
CHRISTINE HALL,  
Defendants

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:  
:  
: NO. 03-00,691  
:  
:  
:  
: PRELIMINARY OBJECTIONS

*Date: December 30, 2003*

**OPINION and ORDER**

Before the Court for determination are the Preliminary Objections of Additional Defendants Anna M. Falat, t/a Action Abstract Associates and First American Title Insurance Company filed August 14, 2003. The present case arises out of the sale of property. Plaintiffs Roy and Tina McElroy (“the McElroys”) have averred that they purchased three parcels from Defendants Jon Phillip and Christine Hall (“the Halls”). The McElroys have alleged that the Halls represented to them that the total acreage of the three parcels was at least 2.5 acres. The McElroys have further alleged that the total acreage of the parcels is actually less than one acre.

The McElroys filed a Complaint on May 1, 2003 and an Amended Complaint on June 16, 2003. In the Amended Complaint, the McElroys have asserted misrepresentation and fraud causes of actions against the Halls. On July 7, 2003, the Halls filed an Additional Defendant Complaint against Falat and First American alleging that any injury suffered by the McElroys was caused by Falat and First American’s failure to perform their duties as title insurers.

In their Preliminary Objections, Falat and First American assert that the Halls have failed to state a cause of action against Falat and First American and that the Halls’

Complaint lacks the requisite level of specificity. Falat and First American argue that the Halls have failed to state a cause of action because they did not owe the McElroys any duty. Specifically, Falat and First American contend that they did not owe a purchaser of title insurance a duty to advise him of the acreage or lot size of the property being purchased. Falat also asserts that if there was a duty, then the Complaint should still be stricken because the Additional Defendant Complaint fails to specifically plead what that duty is.

In response, the Halls assert that they have stated a cause of action against Falat and First American. The Halls contend that Falat and First American had a duty to conform their actions to the standards of title insurers. It is the Halls' position that the allegations in Paragraph 19 demonstrate how Falat and First American fell below those standards.

The issue before the Court is what duty, if any, does a title insurer and its agent owe an individual who purchases title insurance from it. The Court concludes that a title insurer and its agent do owe a purchaser of title insurance a duty. That duty is to render title insurer services in accordance with the knowledge and skill ordinarily possessed by title insurers in similar communities.

A preliminary objection in the nature of a demurrer should only be granted when it is clear from the facts that the party has failed to state a claim upon which relief can be granted. *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1185, 1191 Pa. 2001). The Court must admit as true all well pleaded material, relevant facts and any inferences fairly deducible from those facts. *Willet v. Pennsylvania Med. Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997). If the pleaded facts set forth a claim for relief, which may be granted under any theory of law, then the demurrer should be denied. *Ibid.*

There are four elements to a negligence cause of action. A plaintiff must prove:

- (1) a duty or obligation recognized by the law that requires an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks;
- (2) failure on the part of the defendant to conform to that standard conduct, i.e. a breach of duty;
- (3) a reasonably close causal connection between the breach of duty and the injury sustained; and
- (4) actual loss or damages that result from the breach.

*Gutteridge v. A.P. Green Servs., Inc.*, 804 A.2d 643, 654 (Pa. Super. 2002). In a negligence claim, the issue of whether the defendant owed the plaintiff a duty is of primary significance. *Id.* at 655. The existence of a duty is a question of law for the court to determine. *Emerich v. Philadelphia Ctr. For Human Dev.*, 720 A.2d 1032, 1044 (Pa. 1998). However, determining whether there has been a neglect or breach of that duty is a question for the jury. *Ibid.*

A person who renders professional services is required to “exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.” *Robert Wooler Co. v. Fidelity Bank*, 479 A.2d 1027, 1031 (Pa. Super. 1984) (quoting Restatement (Second) of Torts §299A (1965)). A title insurer and its agent would be classified as a professional having certain knowledge and expertise pertaining to title searches and title insurance. Therefore, a title insurer and its agent have a duty to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities when rendering their professional services.

In *Bodine v. Wayne Title & Trust Company*, the Superior Court held that an individual who contracts with a party to do a title search could sue that party for negligence. 33

Pa. Super 68, 75 (1907). The plaintiff had entered into an agreement to purchase a home. Subsequent to entering into that agreement, the plaintiff employed the Wayne Title & Trust Company to perform a title search to ensure that it was free and clear of encumbrances and to insure the title after it vested in him. *Id.* at 73. The defendant performed the title search and delivered a title insurance policy to the plaintiff. In the process of conducting the title search, the defendant failed to discover a recorded agreement that would require the plaintiff to erect a fence along his property line. *Ibid.*

The Superior Court stated that the business of a conveyancer “requires an acquaintance with the general principles of the law of real property, and a large amount of practical knowledge, which can only be derived from experience . . . .” *Bodine*, 33 Pa. Super. at 75. As such, the conveyancer will be responsible to his client for the loss resulting from the conveyancer’s lack of knowledge, failure to use proper means, or from careless application of those means to the client’s situation. *Ibid.* In other words, the conveyancer is negligent if he falls below the standard of care required of conveyancers.

It cannot be said as a matter of law that Falat and First American owed no duty to the McElroys. Whether Falat was required to inform the McElroys of the discrepancy in the acreage is not a question of duty. It is a question for the jury to determine whether such an alleged failure fell below the standard of care required of a title insurer and its agent. The McElroys employed Falat and First American to provide them with professional services - to perform a title search and provide title insurance for the property they were purchasing from the Halls. Similar to the conveyancer in *Bodine*, Falat and First American had a duty to render

title insurer services in accordance with the knowledge and skill ordinarily possessed by title insurers. Halls have sufficiently pleaded their claim.

The Court also finds that the Additional Defendant Complaint sets forth the negligence claim against Falat and First American with the requisite level of specificity so as to permit them to prepare a defense.

Accordingly, Falat and First American's Preliminary Objections are denied.

**ORDER**

It is hereby ORDERED that the Preliminary Objections of Additional Defendants Anna M. Falat, t/a Action Abstract Associates and First American Title Insurance Company (Falat) filed August 14, 2003 are denied.

BY THE COURT:

William S. Kieser, Judge

cc: J. Howard Langdon, Esquire  
Richard C. Scheib, Esquire  
Kristine L. Waltz, Esquire  
James L. Goldsmith, Esquire  
3631 North Front Street; Harrisburg, PA 17110-1533  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)