IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAVID LAMPER and ALICE LAMPER	**:**	
Plaintiffs	**:**	
	:	**No. 04-01258**
vs.	**:**	
	:	
JAMES RYAN and TINA RYAN	**:**	**Plaintiffs' Motion for Summary Judgment**
Defendants	**:**	**on Defendants' Cross-Complaint**

ORDER

AND NOW, this ____day of April 2006, the Court GRANTS Plaintiffs' Motion for Summary Judgment with respect to Defendants' First Amended Cross-Complaint.

Counts I and II assert claims of breach of warranty of fitness and/or breach of warranty of habitability. The Court finds that Pennsylvania law does not recognize such causes of action in the context of commercial property leases. Pennsylvania's Uniform Commercial Code contains a provision for an implied warranty of fitness. 13 Pa.C.S. §2315. This warranty, however, only applies to the sale or lease of goods. The definition of goods does not include real estate. Kaplan v. Cablevision of Pa., Inc., 671 A.2d 716, 723 (Pa. Super. 1996); Lobianco v. Property Protection Inc., 292 Pa. Super. 346, 350, 437 A.2d 417, 419 (Pa. Super. 1981); see also Ritchey v. Patt, 431 Pa. Super. 219, 222, 636 A.2d 208, 210 (Pa. Super. 1994)(breach of warranty cases for sale or lease of goods under UCC "in no way analogous" to a third-party beneficiary claim for personal injuries under a commercial real estate lease). In Pennsylvania, the implied warranty of habitability only applied to residential leases. Lindstrom v. Penns Wood Village, 417 Pa. Super. 495, 502, 612 A.2d 1048, 1051 (Pa. Super. 1992).

In Count III, Defendants asserted Plaintiffs owed them a contractual duty to

provide non-defective premises and/or to remediate the mold problems. It appears undisputed that mold was not visibly present when the parties entered the lease agreement. Although there is a factual dispute about whether the premises developed a mold problem shortly after Defendants moved into the premises and whether Plaintiffs were made aware of the alleged mold problem, in any event, the lease agreement did not require Plaintiffs to repair the premises. Paragraph 8 of the lease stated that Defendants agreed to keep the premises in good repair. Although Defendants' obligation to repair did not include damage by accidental fire or other casualty not occurring through the negligence of lessee, in such circumstances Plaintiff had the **option**, not the duty, to repair the demised premises.

In Count IV, Defendants contend Plaintiffs negligently planned, constructed and/or renovated the premises allowing the mold problem to develop. These theories would require expert testimony. Defendants have not provided any expert reports on this subject. Defendants also assert Plaintiffs failed to warn them of the dangers of mold exposure and Plaintiffs failed to investigate and remediate the dangerous mold conditions once they had been brought to their attention. Defendants, however, have failed to show that Plaintiffs had a duty to do these things. Plaintiffs were landlords out of possession. The general rule in Pennsylvania is that "a lessor of land is not liable to the lessee or to others, including business invitees, for the physical harm caused by either natural or artificial conditions on the land which existed when the land was transferred or which arise after the transfer of possession. Deeter v. Dull Corp., Inc., 617 A.2d 336, 338 (Pa. Super. 1992). Although there are several exceptions to this rule, the Court does not believe any are applicable to this case. The only two exceptions Defendants even argue could be applicable are where the lessor contracts to repair and where the land is leased for

the purpose of inviting the public. As previously discussed, although Plaintiffs had the **option** to repair (assuming the mold problem amounted to an "other casualty"), Plaintiffs were **not contractually required** to repair the premises. Defendant James Ryan's deposition transcript shows the premises were leased for the sales staff to have office space. Although a customer would occasionally walk in, Defendants generally obtained customers by cold calling customers or pounding the pavement. Dep. of James Ryan, pp. 23-24. Therefore, the court finds that neither exception applies to this case.

Even if Defendants could show Plaintiffs had a duty under any of the four theories, they could not prevail in this case because they lack expert testimony to show that James and Kevin Ryan's sinus conditions were caused by the alleged mold problem. Dr. Olenginsky refused to testify on Defendants behalf and the case was continued as a result. Dr. Clerico's report is insufficient to establish causation for Defendants' personal injury claims.[1]

By The Court,

_____

Kenneth D. Brown, P.J.

cc: David Shipman, Esquire
Douglas Engelman, Esquire
Bernard Walter, Esquire
20 N Memorial Hwy, Shavertown, PA 18708

1 This ruling is limited to Defendants' personal injury claims and does not affect Defendants claim of abatement of the lease due to the mold on the premises. If Plaintiffs believe Dr. Clerico's report is insufficient for him to be called as a defense witness on the abatement claim, Plaintiffs should file a motion in limine.