

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOUTHSIDE DEVELOPERS, INC.,	: NO. 08 – 02,184
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	:
	:
PATRICIA E. ALBERTS, PAUL T. ALBERTS,	:
JR., CHRISTINE F. BOWER, DANIEL R. BOWER,	:
Defendants	: Preliminary Objections

**OPINION AND ORDER**

Before the Court are preliminary objections filed by Defendants on October 30, 2008. Argument thereon was heard December 12, 2008.

In its Complaint, Plaintiff contends it entered into an agreement with Defendants for the sale of real estate in Duboistown Borough with the intention of implementing a residential subdivision, that unbeknownst to Plaintiff part of the land had been claimed by Armstrong township (the zoning in which will not allow for Plaintiff’s plan to be implemented), that Defendants knew of this claim but failed to reveal such to Defendants, and that as a result, Plaintiff has been damaged in various ways. Plaintiff seeks rescission of the contract and return of the purchase price, and also seeks additional damages for certain sums spent. In their preliminary objections, Defendants Paul Albert and Daniel Bower seek to be dismissed on the basis that they are not signatories to the agreement, and all defendants seek dismissal of the claim for “additional damages”, as well as the complaint in its entirety. Each objection will be addressed seriatim.

First, with respect to the request to be dismissed from this action by Defendants Paul Albert and Daniel Bower, while indeed these defendants were not signatories to the agreement of sale, the Complaint contends they made misrepresentations and warranties outside of the agreement. Therefore, the Court is constrained to overrule this objection, but notes that these defendants may still move for partial summary judgment if discovery does not support the allegations.

Second, Defendants seek to dismiss Count II, “Additional Damages”, arguing there is no cause of action for such in this Commonwealth. It is apparent from a reading of the Complaint, however, that Plaintiff is seeking “special damages”, which are allowed. Such have not been pled with particularity, though, and the Court will therefore require Plaintiff to file an amended pleading which sets forth these items of special damages with particularity, pursuant to Pa.R.C.P. 1019(f).

Next, Defendants seek dismissal of the Complaint on the basis that Plaintiff has failed to state a cause of action for which relief can be granted. The Complaint sets forth two theories of liability: misrepresentation and breach of warranty. With respect to the claim of misrepresentation, which asserts that Defendants knew the property could not be developed as planned but did not disclose that to Plaintiff, Defendants point to Paragraph 24 of the agreement of sale, which provides as follows:

24. REPRESENTATIONS (1-00)

- (A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement, unless expressly incorporated or stated in this Agreement. It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.
- (B) It is understood that Buyer has inspected the property before signing this agreement (including fixtures and any personal property specifically included herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that the Brokers, their licensees, employees, officers, or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

Defendants argue that since Plaintiff signed a contract which indicates that it was not relying on any representations of the sellers, Plaintiff is precluded by the parole evidence rule from now introducing evidence to prove that it did rely on such representations. The Court agrees as the current state of the law prevents parole evidence from being introduced to prove fraud in the inducement of a fully integrated contract. *See, e.g., Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425 (Pa. 2004). Plaintiff contends the real estate exception applies, citing National Building Leasing, Inc. v. Byler, 381 A.2d 963 (Pa. Super. 1977), but that exception applies only to cases involving the sale of real property where the buyer would be unable, upon visual inspection, to determine that the representations of the seller were false. HCB Contractors v. Liberty Place Hotel, 652 A.2d 1278 (Pa. 1995). In the instant case, a reasonable investigation by the buyers would have led to discovery of the zoning issues, and thus the general rule applies and Plaintiff is precluded from attempting to prove its misrepresentation claim. This claim will, therefore, be dismissed.

Finally, Defendants contend the warranty claim must be dismissed on the basis that “nowhere in the Complaint does Plaintiff aver that any warranty was made by any Defendant.” Plaintiff does aver, however, in Paragraph 15 of the Complaint, that “Defendant’s (sic) deed to Plaintiff warrants the ownership and location of the tract, and that warranty has been violated by intentional misrepresentation.” While it is the Court’s understanding that most warranties relate to title, since Plaintiff has pled the existence of a warranty which could support its claim, this objection will be overruled. Plaintiff will be required, however, to attach a copy of the deed upon which its claim is based.

### **ORDER**

AND NOW, this 30<sup>th</sup> day of December 2008, for the foregoing reasons, Defendants’ preliminary objections are sustained in part and overruled in part, as follows:

1. Plaintiff’s claim for misrepresentation is hereby DISMISSED.
2. Plaintiff shall file an amended complaint within twenty (20) days of this date more specifically setting forth its claims for special

damages, and attaching a copy of the deed in support of its warranty claim.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc Drier, Esq.  
Joseph Musto, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson