

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PHILIP COURTRIGHT and	:	
TRI COUNTY REALTY COMPANY,	:	DOCKET NO. 12-01,264
Plaintiffs	:	CIVIL ACTION – LAW
	:	
vs.	:	
	:	
SCOTT YOUNG,	:	
Defendant	:	

OPINION AND ORDER

This matter comes before the Court on Defendant’s Preliminary Objections. Initially, the Court notes that all of Defendant’s objections are in the form of a demurrer. In deciding a demurrer, this Court must:

resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer. In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.

Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. Ct. 1994) (citations omitted). With this standard in mind, the Court will address Defendant’s objections.

Defendant’s objection to Plaintiffs’ fraud claim is SUSTAINED. In this instance, Defendant argues that Plaintiffs’ fraud claims are barred by the gist of the action doctrine. The Court agrees. In *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10 (Pa. Super. Ct. 2002), our Superior Court adopted the gist of the action doctrine as it pertains to tort and contract claims. *Id.* at 19. In that case, the Court outlined the scope of the doctrine as follows:

[p]ersuasive authority interpreting Pennsylvania law has restated the gist of the action doctrine in a number of similar ways. These courts have held that the doctrine bars tort claims: (1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; or (4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract.

Id. at 19. *See Mirizio v. Joseph*, 4 A.3d 1073, 1081 (Pa. Super. Ct. 2010). That Court concluded that a fraud claim is collateral to a contract claim if the fraud alleged relates to the performance of the contractual duties of the parties; if the fraud claim is collateral to the contract claim, the gist of the action doctrine bars the fraud claim. 811 A.2d at 19-20. *See* 4 A.3d at 1081. In this matter, Plaintiffs allege that Defendant committed fraud by selling them a “worthless” clock and by promising to deliver the clock’s weights and pendulum to them when these items were never in his possession. Complaint, ¶¶ 26-28. All of these actions arise out of the parties’ contractual relationship and occurred during the course of that relationship. These allegedly fraudulent actions are interwoven with Plaintiffs’ breach of contract claims. Because Plaintiffs’ fraud claims are grounded in the parties’ contractual relationship, the Court finds that the fraud claims are collateral to the parties’ contract; thus, the fraud count is barred by the gist of the action doctrine. Therefore, this objection is SUSTAINED, and Count II (Fraud) is hereby STRICKEN.

Defendant’s objection to the inclusion of Tri County Realty Company on all counts is SUSTAINED. In this instance, Defendant argues that Tri County Realty Company lacks standing to bring the action. The Court agrees. In *In Re: Francis Edward McGillick Foundation*, 642 A.2d 467 (Pa. 1994), our Supreme Court addressed the issue of standing; particularly, that Court provided:

[s]tanding requires that an aggrieved party have an interest which is substantial, direct, and immediate. ... That an interest be direct requires that an aggrieved party “must show causation of the harm to his interest by the matter of which he complains.” To find an immediate interest, we examine “the nature of the causal connection between the action complained of and the injury to the person challenging it.”

Id. at 469 (citing *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269, 282-83 (Pa. 1975)). In this matter, the only relationship alleged between Tri County Realty and Defendant is that Plaintiff Courtright used a Tri County Realty business check to pay for the clock.

Complaint, ¶ 10. The Court believes that this connection, alone, does not establish standing for Tri County Realty. Therefore, this objection is SUSTAINED. Tri County Realty Company is DISMISSED from this action.

By agreement of the parties, Defendant's objection to Plaintiffs' claim under Section 201-2(4)(xiv) of Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§ 201-1 – 201-9.3, is SUSTAINED. Any claim pursuant to 73 P.S. § 201-2(4)(xiv) is STRICKEN. *See* Complaint, ¶ 36.

Defendant's objections to Plaintiffs' claim under Section 201-2(4)(v) of the UTPCPL is OVERRULED. That section provides that when one represents that goods have characteristics or uses that they do not have one engages in unfair or deceptive acts or practices. 73 P.S. § 201-2(4)(v). In this instance, the crux of Plaintiffs' complaint is that Defendant represented to Plaintiffs that the sale price of the clock included its weights and pendulum. Complaint, ¶¶ 6-8, 11, 19. The Court believes that Plaintiffs' allegations form the basis of an action under 73 P.S. § 201-2(4)(v). Therefore, this objection is OVERRULED.

Additionally, Defendant's objection to Plaintiffs' claim under Section 201-2(4)(xxi) of the UTPCPL is OVERRULED. This catchall provision states that engaging in deceptive or other fraudulent conduct that creates a likelihood of misunderstanding or confusion is a violation of the UTPCPL. 73 P.S. § 201-2(4)(xxi). This catchall provision was amended in 1996; prior to this amendment, Plaintiffs were required to state a claim for common law fraud to bring an action under the UTPCPL catchall. *See Prime Meats, Inc. v. Yochim*, 619 A.2d 769, 773 (Pa. Super. Ct. 1993), *appeal denied*, 646 A.2d 1180 (Pa. 1994). *See also Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 152 (Pa. Super. Ct. 2012). However, pursuant to the 1996 Amendment, Plaintiffs are no longer held to this pleading requirement. *See Bennett*, 40 A.3d at

153-54 (holding that misleading and deceptive conduct may be the basis for a claim under the catchall provision of the UTPCPL). In this instance, Plaintiffs allege that Defendant misled and deceived them into believing that the purchase price of the clock included the price of the weights and pendulum and that Defendant had access to these parts. Complaint, ¶¶ 6-8, 11, 19. These averments may be the basis of a claim under the catchall section of the UTPCPL. *Id.* at 154-55. Therefore, this objection is OVERRULED.

The Court enters the following Order.

ORDER

AND NOW, this 24th day of October, 2012, following oral argument on Defendant's preliminary objections, it is hereby ORDERED and DIRECTED as follows:

1. Defendant's objection to Count II (Fraud) is SUSTAINED. Count II is hereby STRICKEN.
2. Defendant's objection to the standing of Plaintiff Tri County Realty Company is SUSTAINED. Tri County Realty Company is DISMISSED from this action.
3. Upon agreement, Defendant's objection to Plaintiffs' claim pursuant to 73 P.S. § 201-2(4)(xiv) is SUSTAINED; any claim brought pursuant to this section is STRICKEN.
4. Defendant's objection to Plaintiffs' claim pursuant to 73 P.S. § 201-2(4)(v) is OVERRULED.
5. Defendant's objection to Plaintiffs' claim pursuant to 73 P.S. § 201-2(4)(xxi) is OVERRULED.

Additionally, Plaintiffs requested permission to amend their complaint to include a count for breach of express and implied warranties under the Uniform Commercial Code. The Court

GRANTS this request. Plaintiff Courtright shall file an amended complaint within twenty (20) days, consistent with this Order.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Christian Frey, Esq.
Jessica Harlow, Esq.
Gary Weber, Esq.