

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD FLEISHMAN : CIVIL ACTION
 :
 v. :
 :
 DOROTHY M. SCILLEY, as Trustee :
 of the Joseph F. Donchez Trust :
 & Natalie R. Donchez Trust, :
 et al. : NO. 03-4639

MEMORANDUM AND ORDER

Fullam, Sr. J.

September , 2004

Defendants moved to dismiss Plaintiff's *pro se* complaint. By order dated May 12, 2004, I converted the motions to motions for summary judgment and gave all parties an opportunity to submit additional evidentiary material. A hearing was held on June 21, 2004. For the reasons that follow, I will grant the motions for summary judgment and deny the motion for sanctions.

Plaintiff previously filed a similar *pro se* complaint concerning the 1998 land transaction at issue here. I dismissed that action for lack of diversity jurisdiction, and Plaintiff then filed the present action, omitting the non-diverse entities. Both that action and this one fail to set forth intelligible claims. The complaint and Plaintiff's other submissions allege that Plaintiff paid \$1.1 million for what he thought was 96.7 acres of land but turned out to be only 83 acres. Plaintiff has sued the sellers, the real estate agents, and the providers of

title insurance. The complaint seeks damages for fraud, emotional distress, and breach of contract.

The order of May 12, 2004, specifically contemplated that Plaintiff produce: (a) a copy of the deed which conveyed the property to Plaintiff; (b) information as to whether the metes-and-bounds description in the deed of conveyance differs from what is disclosed on the survey obtained by plaintiff after the settlement; and (c) a list of all allegedly false representations made to Plaintiff concerning the acreage, specifying by name the person who made the alleged misrepresentation, the time, place and circumstances, and whether the misrepresentation was oral or written. Plaintiff provided very little of this information.

The sales contract does not guarantee any amount of acreage, and contains a provision that the buyer does not rely on any representations (which would include the advertisement Plaintiff submitted). Under Pennsylvania law, unless there is fraud or the grantor has guaranteed the number of acres, there is no claim for deficiency. See Karlsson v. FDIC, 1996 WL 27830 (E.D. Pa. Jan. 29, 1996); Estate of Warner, 446 A. 2d 293 (Pa. Super. Ct. 1982).

Plaintiff alleges violations of the wire and mail fraud statutes, 18 U.S.C. §§ 1341 and 1343. There is no private right of action under these statutes, however. See Stern v. Prudential Property and Casualty Ins. Co., 1994 U.S. Dist. LEXIS 9022 (E.D. Pa. July 1, 1994). In any event, the fraud allegations fall far

below the standards required under Federal Rule of Civil Procedure 9, even for a *pro se* plaintiff. Under Pennsylvania law, “[i]n real estate transactions, fraud arises when a seller knowingly makes a misrepresentation, undertakes a concealment calculated to deceive, or commits non-privileged failure to disclose.” Blumenstock v. Gibson, 811 A.2d 1029, 1034 (Pa. Super. Ct. 2004). Plaintiff has been given multiple opportunities to explain in detail how the Defendants defrauded him and has not done so.

Plaintiff’s tort claims, in addition to being unsupported by any evidence, appear barred by the doctrines of the gist of the action and economic loss. See Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 20 (Pa. Super. Ct. 2002); Ellenbogen v. PNC Bank, 731 A.2d 175, 188 (Pa. Super. Ct. 1999).

Finally, I will deny the motion by certain Defendants for Rule 11 sanctions. Although Plaintiff’s complaint has failed, he sincerely seems to believe that he has been wronged, and I cannot say that sanctions are appropriate here.

An order follows.

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ORDER

AND NOW, this day of September, 2004, upon consideration of Defendants' Motions to Dismiss, converted into motions for Summary Judgment, and the response thereto, and following a hearing,

IT IS hereby ORDERED that the Motions are GRANTED. Judgment is entered IN FAVOR OF DEFENDANTS **Dorothy M. Scilley, individually and as trustee** of the Joseph F. Donchez Trust and Natalie R. Donchez Trust; **Curtis J. Reiss, individually and as trustee** of the Joseph F. Donchez Trust and Natalie R. Donchez Trust; **Joan T. Woodcock, individually and as trustee** of the Joseph F. Donchez Trust and Natalie R. Donchez Trust; **PNC Bank, National Association; Doylestown Transfer & Abstract Co., Inc.; First American Title Insurance Company; Carol C. Dorey; Laura H. Gardiner;** and **Carol C. Dorey Real Estate** and AGAINST PLAINTIFF, **Howard Fleishman.**

It is FURTHER ORDERED that the Motion for Rule 11 Sanctions is DENIED.

The Clerk is directed to mark the case CLOSED.

BY THE COURT:

Fullam, Sr. J.