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

RONALD R. ROCK, et al.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
FAY VOSHELL	:	NO. 05-1468

Baylson, J. **May 18, 2006**

MEMORANDUM

Plaintiffs Ronald R. Rock and Janet Rock ("Plaintiffs" or "Rocks") bring this suit against Defendant Fay Voshell ("Defendant" or "Voshell") for breach of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Cons. Stat. § 201 et seq. (Count I), breach of Pennsylvania's Real Estate Seller Disclosure Law ("RESDL"), 68 Pa. Cons. Stat. § 7301 et seq. (Count II), Fraud (Count III), Negligence (Count IV), and Negligence Per Se (Count V). This Court has jurisdiction pursuant to 28 U.S.C. § 1332 due to the diversity of citizenship of the parties, and venue is appropriate pursuant to 28 U.S.C. § 1391.

Presently before the Court is Defendant's Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Federal Rule 12(b)(6) and Motion to Strike Pursuant to Federal Rule 12(f) (Doc. No. 17) filed on December 12, 2005. Plaintiffs filed a response (Doc. No. 18) on December 29th, and Defendant submitted her reply memorandum (Doc. No. 20) on January 5, 2006. Finally, Plaintiffs filed a Motion for Leave to File a Sur-Reply on January 10th, which was granted by the Court on January 18th, and Plaintiffs' sur-reply memorandum (Doc. No. 23) was entered on the docket the same day.

I. Background

A. Factual Background

The factual allegations contained in the original Complaint in this case were set forth at length in the Court's Memorandum and Order of November 10, 2005. Since the allegations contained in a complaint are the centerpiece of the analysis of a motion to dismiss, the Court will again state the factual background in the present Memorandum, providing appropriate updates to reflect the changes included in the Amended Complaint.

Defendant is a citizen of the State of Delaware. Plaintiffs, husband and wife, are citizens of the Commonwealth of Pennsylvania and reside within the Eastern District. The property at issue in the case is located within the Eastern District at 8700 Montgomery Avenue, Wyndmoor, Pennsylvania (the "Home"). This case concerns the sale of a residence. A Seller's Property Disclosure Statement (the "Disclosure Statement"), dated February 25, 2004, was provided to Plaintiffs by Defendant. On or about March 9, 2004, Mr. Rock executed a Standard Agreement for the Sale of Real Estate (the "Agreement of Sale") in order to purchase the Home. Plaintiffs declined the use of professional home inspector. Plaintiffs purchased the Home from Defendant on or about August 27, 2004, for $1.35 million.

Plaintiffs were aware that previously, on or about September 2003, a large tree had fallen and struck the Home, causing damage. Several inspections of the Home were conducted by representatives of Defendant and her insurance company in October 2003. In the Disclosure Statement, Defendant stated that "due to tree damage, roof and some gutters and downspouts damaged. All repairs expected to be done by mid-April-mid-May depending on contractor's schedule." The other material defect noted in the Disclosure Statement was the presence of lead-

based paint in some areas of the Home. No further disclosures were made by Defendant regarding the condition of the roof, and Plaintiffs believed that all work had been completed on the roof prior to closing and that there were no material defects with the roof by that time.

Plaintiffs allege, however, that Defendant knew of substantial defects in the condition of the roof prior to closing. On August 25, 2004, days before closing the sale of the Home to Plaintiffs, Defendant brought an action in this Court against Allstate Insurance Company alleging that Allstate failed to compensate her properly for the damage suffered to the Home. Voshell v. Allstate Ins. Co., 04-CV-4041.[1] In connection with this suit, Defendant, based on a report (the "Project Estimate") stemming from the August 25th inspection, claimed that $872,168 in repairs to the Home were necessary. In fact, Plaintiffs aver that Defendant never, in any discussion with them or their realtor, discussed the dispute with Allstate.

Plaintiffs allege that, in addition to the defects listed in the Disclosure Statement, there were other material defects in the Home known to Defendant that were not disclosed to Plaintiffs, including erosion and leaking of the pipes in the third floor bathroom, for which Defendant had allegedly received insurance money to repair but only repaired sufficiently to conceal the existence of the problem. According to Plaintiffs, the drains underneath the floor of the third floor bathroom had rotted and the bathroom could not be used without substantial repairs. In addition, Plaintiffs allege additional leaks in four different rooms in the Home and claim that Defendant, in a February letter to her adjuster, acknowledged substantial defects in the Home, even noting that "new leaks have appeared, creating further damage." The Amended Complaint also notes problems with the stove, the air conditioners, and the electrical system, all

[1] After a settlement was reached, this suit was dismissed on May 4, 2005.

of which, according to Plaintiffs, required repair or replacement after the sale. Finally, Plaintiffs allege that Defendant falsely promised to provide a "historical restoration" of the Home but never did so due to inadequate funds.

Therefore, Plaintiffs allege that Defendant failed to make lawful and proper disclosures, that Plaintiffs have spent a substantial sum of money to repair defects which Defendant failed to disclose, that Plaintiffs reasonably relied on Defendant's disclosures, and that the omissions regarding the defects in the Home had a material impact on the price of the Home.

B. Procedural History

In its November 10, 2005 Memorandum and Order, this Court addressed the Plaintiffs' first Motion to Dismiss and Motion to Strike. The Court granted the Motion to Dismiss as to Counts I, II, and III without prejudice and as to Counts IV, V, and VI with prejudice. The Motion to Strike was denied as moot. See Rock v. Voshell, 397 F. Supp. 2d 616 (E.D. Pa. 2005). On November 23, 2005, Plaintiffs filed a Motion for Reconsideration of the Court's decision. The Court denied that Motion in a Memorandum and Order dated December 29, 2005. See Rock v. Voshell, 2005 WL 3557841 (E.D. Pa. Dec. 29, 2005).

II. Parties' Contentions

A. Defendant's Motion

Defendant's Motion to Dismiss argues that Plaintiffs' claims under the UTPCPL (Count I) and for Fraud (Count III) should be dismissed because the alleged misrepresentations by Defendant are barred by the parol evidence rule. Defendant argues that the integration clause at ¶ 26 of the Agreement of Sale between Plaintiffs and Defendant precludes Plaintiffs from demonstrating reliance, an element of fraud necessary to make out a claim under the UTPCPL.

Defendant also argues that the UTPCPL claim is barred by the economic loss doctrine because Plaintiffs are seeking only economic damages. As to Plaintiffs' claim for breach of RESDL (Count II), Defendant contends that the claim is also barred by the parol evidence rule, because the Disclosure Statement was not incorporated into the Agreement of Sale.

Defendant asserts that the Negligence claim (Count IV) should be stricken since it was already dismissed with prejudice in the Court's November 10, 2005 Memorandum and Order. Defendant argues further that the claim should be dismissed because Plaintiffs cannot establish any duty owed to them by Defendant and because recovery under a negligence theory is barred by the economic loss and gist of the action doctrines. Similarly, Defendant contends that the Negligence Per Se claim (Count V) should be stricken, since it, too, was dismissed with prejudice by the Court. Moreover, Defendant asserts that even if Plaintiffs do aver that a statute was violated, the claim should still be dismissed because Plaintiffs cannot show that the violation of a law was the proximate cause of their alleged damages. Notwithstanding the proximate cause issue, Defendant also maintains that the Negligence Per Se claim is barred in this case by the economic loss and gist of the action doctrines.

Finally, Defendant's Motion to Strike asks that Plaintiffs' request for attorneys' fees and treble damages be stricken for all but the UTPCPL claim because Plaintiffs have no common law or statutory right to those forms of relief. Defendant also contends that Plaintiffs' request for punitive damages should be stricken because punitive damages are not recoverable absent outrageous behavior. Defendant similarly moves to strike Plaintiffs' request for prejudgment interest because only a party who succeeds on a claim to pay a definite sum of money is entitled to that remedy.

B. Plaintiffs' Response

Plaintiffs first argue that the parol evidence rule is not applicable to any fraudulent statements made after the execution of the Agreement of Sale. They maintain that Defendant made multiple fraudulent statements in March and April of 2004 in an effort to ensure that the transaction closed, and therefore these statements are admissible as evidence of fraud.

Plaintiffs also note that because their realtor will testify that the Disclosure Agreement was, consistent with industry practice and custom, expressly incorporated into the Agreement of Sale, the Motion to Dismiss should be denied. Plaintiffs assert that, even if the Disclosure Statement was not to be incorporated into the Agreement of Sale, Plaintiffs' fraud claim is not barred by the parol evidence rule, since that doctrine does not apply when a party was induced by fraud or duress to enter the contract. Plaintiffs also contend that their decision to waive the home inspection should not impact their right to rely on Defendant's misrepresentations. Because the Amended Complaint includes specific allegations that the misrepresentations involved acts of concealment by the Defendant and that certain defects would not have been discovered in a reasonable inspection, Plaintiffs argue that the parol evidence rule cannot prevent a showing of reliance upon such fraudulent statements and writings.

In addition to the exception based on fraudulent inducement, Plaintiffs also argue that parol evidence should be admitted to explain the ambiguity in the Agreement of Sale, since that document is ambiguous on a central issue — the condition of the Home when transferred. Pl's Resp. at 19. Plaintiffs contend that both parties expected repairs on the Home to be completed and that parol evidence is thus required to determine what the parties agreed were the necessary improvements.

Plaintiffs also reassert the argument contained in their Motion for Reconsideration, claiming that the economic loss doctrine is not applicable because a decision by the Supreme Court of Pennsylvania which held that the economic loss doctrine does not apply to the negligent misrepresentation claims like the one in this case. They argue that the economic loss doctrine does not apply to actions against individuals in a "transaction in which they have a pecuniary interest." Pl's Br. at 21. Plaintiffs also maintain that fraudulent inducement functions as an exception to the gist of the action doctrine, thus preventing any application of that doctrine in this case.

Turning to the RESDL claim, Plaintiffs argue that while Defendant rightfully asserts that she had no duty to investigate her property, the statute does impose a duty to disclose all defects of which Defendant had knowledge. Because Defendant is alleged to have failed to disclose multiple defects in the Home and an exception to the parol evidence rule has been properly invoked, Plaintiffs argue that they have sufficiently set forth a case under the RESDL.

Plaintiffs also argue that the Negligence claim is not barred by the economic loss and the gist of the action doctrines because this case sounds primarily in tort. In addition, the Negligence Per Se claim must succeed because, had Defendant not violated the RESDL and failed to disclose the repairs she was claiming in her lawsuit against Allstate, Plaintiffs would not have purchased the Home for $1.35 million. Therefore, Defendant's unlawful failure to disclose was the proximate cause of Plaintiffs' injuries.

Regarding the Motion to Strike, Plaintiffs state that the claims for treble damages and attorneys' fees are made only in relation to the UTPCPL claim. Plaintiffs argue that the imposition of punitive damages is appropriate, given Defendant's blatant disregard for the law in

representing to Plaintiffs that all repairs relating to the fallen tree had been made, when she was simultaneously making a claim against her homeowner's policy for significant repairs.

C. Defendant's Reply

In Defendant's Reply, she first contends that the alleged misrepresentations made after the execution of the Agreement of Sale are irrelevant, since that document required Plaintiffs to close on the Home. Defendant contends that she simply did not need to take any action to ensure that Plaintiffs would close on the property, as they were bound to do so in any case. Moreover, she contests each of the alleged fraudulent statements and argues that they simply should not be construed as misrepresentations.

Defendant also argues that the alleged statements made before the execution of the Agreement of Sale are not actionable and are barred by the parol evidence rule. She asserts that the Court's November 10, 2005 Memorandum and Order specifically found that the Disclosure Statement was not incorporated into the Agreement of Sale. Defendant also states that Plaintiffs' argument for express incorporation of the Disclosure Statement by "industry custom and practice" has no support and is simply a conclusory statement made to circumvent the Court's prior ruling.

Defendant contends that the alleged misrepresentations made prior to the execution of the Agreement of Sale are inadmissible, since the Plaintiffs failed to perform any inspection of the property. Defendant argues that because Plaintiffs failed to take advantage of their inspection rights, they should be foreclosed from engaging in the test set forth in LeDonne. Even if the LeDonne test was applied, however, Defendant argues that Plaintiffs' claims must fail, because a reasonable home inspection would have involved a roof inspection.

Next, Defendant asserts that Plaintiffs' waiver of a professional home inspection releases any claims as to the condition of the property. Because Plaintiffs agreed to purchase the Home in its then current condition and they waived their right to a professional inspection, representations made by the Defendant should not be admissible in this case. Defendant asserts that parol evidence should not be admitted due to ambiguity or mistake because there was neither mutual mistake nor ambiguity in the agreement at issue. Even to the extent that there was any ambiguity, Pennsylvania law dictates that an ambiguous contract should be construed against the party that drew it, and in this case it was Plaintiffs' broker who drafted the Agreement of Sale.

Finally, Defendant turns to the various issues raised in her Motion to Strike, noting first that Plaintiffs did not address her demand to strike the request for prejudgment interest. Because Defendant's arguments were not discussed in Plaintiffs' response, Defendant contends that her Motion to Strike that prayer for relief should be granted. As to the request for punitive damages, Defendant argues that Plaintiffs have pled insufficient facts alleging evil motive or reckless indifference and that punitive damages should thus be excised from this case.

D. <u>Plaintiffs' Sur-Reply</u>

Plaintiffs argue that Defendant should not be able to escape liability for fraudulent statements made after the execution of the Agreement of Sale, as the leaks and other defects referenced in the misrepresentations did not develop after the execution but existed prior to it. Plaintiffs also argue that for purposes of a motion to dismiss, Defendant's contention that there was no need for her to secure the closing on the Home is misplaced, since Defendant is providing additional facts contrary to those included in the Amended Complaint. As for the disagreement between the parties on whether the Disclosure Agreement was expressly incorporated into the

Agreement of Sale, Plaintiffs characterize it as a dispute of fact. Because the Court at this stage of the case must accept as true all well-pleaded allegations in the Amended Complaint and view them in the light most favorable to the Plaintiffs, Plaintiffs believe the Court should treat the Disclosure Agreement as expressly incorporated.

Plaintiffs again assert that the parol evidence rule should not bar their fraud claim even if there is no express incorporation. They argue that the Defendant's characterization of the LeDonne test is incorrect and that the introduction of outside information regarding home inspection standards is improper during consideration of a motion to dismiss. As for the matter of the waiver of the home inspection, Plaintiffs argue that while they may have forgone their opportunity to engage a professional, Defendant's contention that Plaintiffs never looked through the Home at all is incorrect and contrary to the allegations contained in the Amended Complaint. Plaintiffs also contend that parol evidence should be admitted to help explain the ambiguous term "in its present condition," as both parties understood at the time of the execution of the Agreement of Sale that the Home would be repaired and those repairs would continue during the spring of 2004.

Finally, Plaintiffs contend that under Pennsylvania law, fraudulent inducement functions as an exception to the gist of the action doctrine, and based on the fraudulent conduct alleged in the Amended Complaint, Plaintiffs' claims should not be barred by this doctrine.

III. Motion to Dismiss

A. Legal Standard

When deciding a motion to dismiss pursuant to F.R. Civ. P. 12(b)(6), the Court must accept as true all well-pleaded allegations in the complaint and view them in the light most

favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

B. Discussion

1. Count I: Failure to State a Claim Under the Pennsylvania Unfair Trade Practices and Consumer Protection Law

While there is some uncertainty as to the requirements in proving a UTPCPL case under the so-called "catch all" provision, Pennsylvania courts have recently held that all of the fraud elements are still required, even with the recent changes to the statutory language. See Booze v. Allstate Ins. Co., 750 A.2d 877, 880 (Pa. Super. Ct. 2000). Defendant's Motion to Dismiss argues that due to the invocation of the parol evidence rule, Plaintiffs have failed to demonstrate the reliance element under fraud.

To recover on a claim of fraud in Pennsylvania a plaintiff must show six elements by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Youndt v. First Nat'l Bank, 868 A.2d 539, 545 (Pa. Super. Ct. 2005) (citing Gibbs v. Ernst, 647 A.2d 882, 889 (Pa. 1994)).

In this case, the integration clause is found in ¶ 26 of the Agreement of Sale and provides as follows:

> [T]his 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.

Furthermore, under ¶ 8 of the Agreement of Sale, Plaintiffs waived their right to inspection of the property and thereby (pursuant to ¶ 25 of the same document) released Defendant from "any and all claims, losses or demands, including, but not limited to . . . any defects or conditions on the property." The Agreement of Sale also contains a very broad disclaimer about representations:

> 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 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.

Agreement of Sale at ¶ 26A.

The Amended Complaint alleges that Defendant knew of defects in the Home prior to its sale and that Plaintiffs have since spent considerable sums in repairing such defects. Amended Complaint at ¶¶ 39, 41. Plaintiffs claim that Defendant's failure to disclose relevant defects in the Home had a material impact on its sale price and that Plaintiffs had no reason to know that Defendant omitted material facts concerning the condition of the Home.

The Court, in its November 10, 2005 Memorandum and Order, wrote at length about the incorporation of the Disclosure Statement into the Agreement of Sale, concluding that Plaintiffs'

argument for express incorporation lacked sufficient basis.[2] Rock, 397 F. Supp. 2d at 623. As for Plaintiffs' attempt to refer to the Disclosure Statement, the Court concluded that considering the allegations contained in the Complaint and the breadth of the integration clause in ¶ 26 of the Agreement of Sale, the parol evidence rule precluded such reference. Plaintiffs were, however, permitted to replead, and the Court will now consider the UTPCPL claim in light of the allegations contained in the Amended Complaint.

Plaintiffs again claim that even without express incorporation of the Disclosure Statement into the Agreement of Sale, reference to the former document is not barred by the parol evidence rule. In order to resolve this issue, the Court will again turn to the "home inspection" cases. In Ledonne v. Kessler, 389 A.2d 1123 (Pa. Super. Ct. 1978), and its progeny, the Pennsylvania courts have set out a test whereby the courts must balance "the extent of the parties' knowledge of objectionable conditions derived from a reasonable inspection against the extent of the coverage of the contract's integration clause in order to determine whether that party could justifiably rely upon oral representations without insisting upon further contractual protection or the deletion of an overly broad integration clause." 1726 Cherry Street P'ship v. Bell Atlantic Props., Inc., 653 A.2d 663, 669–70 n.6 (Pa. Super. Ct. 1995) (quoting LeDonne, 389 A.2d at 1130); see also Mancini v. Morrow, 458 A.2d 580 (Pa. Super Ct. 1983) (applying LeDonne test). While this Court previously held that "given the terms of the Agreement of Sale and considering

[2] Plaintiffs now contend that pursuant to industry practice and custom, the Disclosure Statement was expressly incorporated into the Agreement of Sale. Pl's Resp. at 9–10. Plaintiffs note that they expect to present evidence from their realtor that she "intentionally and deliberately included the [Disclosure Statement] as part of the [Agreement of Sale]." Id. at 9. The Court will not rule on Plaintiffs' latest express incorporation argument in light of its determinations, infra, regarding the application of the fraudulent misrepresentation exception to the parol evidence rule.

that Plaintiffs waived the inspection rights provided therein, the allegations in the complaint fail to specify fraudulent statements in sufficient detail to come under the principles stated in LeDonne," the new allegations contained in the Amended Complaint change the outcome of the analysis.

While the Superior Court of Pennsylvania in Blumenstock v. Gibson, 811 A.2d 1029 (Pa. Super. Ct. 2002), found that the lower court had correctly concluded that "a reasonable inspection of the property by Buyers and Property Examiners provided the information needed to ascertain the existence of the 'objectionable condition,'" the instant case is distinguishable. Id. at 1038. Blumenstock involved the purchase of a residence containing sump pumps in the basement. Though the buyers in that case alleged that they were induced to purchase the property based on misrepresentations by the seller as to the sump pumps, the buyers alleged only that they had asked about the pumps and were told that they were merely "precautionary." From this response, the buyers assumed that the pumps were unnecessary, but the court subsequently found that the buyers "failed to demonstrate justifiable reliance." Id.

Here, though the integration clause is quite broad and the Agreement of Sale also included a release clause, Plaintiffs have sufficiently pled fraudulent inducement so as to permit reference to the alleged misrepresentations. In the Disclosure Statement, Defendant only included the fallen tree and presence of lead paint, and Plaintiffs have alleged various imperfections in the Home which should have been but were not included in the document. Specifically, Plaintiffs have alleged problems with the roof, the electrical system, the air conditioners, the third floor bathroom, as well as leakage in several rooms within the Home. See Amended Complaint at ¶¶ 21–23, 28, 37. Plaintiffs allege both that they would not have

purchased the Home for $1.35 million if they had been aware of these problems and that the various imperfections in the Home could not have been ascertained from a reasonable inspection of the property. Amended Complaint at ¶¶ 14, 16, 28, 37, 41. While the integration clause in the Agreement of Sale in this case contains broader language than the one at issue in LeDonne, the Court finds that the various allegations of leakage and the alleged problems with the air conditioners and the plumbing in the third floor bathroom, if substantiated during discovery and if proved at trial, might allow a jury to find that they all constitute misrepresentations as to defects in the Home which would not have been discovered upon a reasonable inspection by the buyer.[3]

Therefore, Plaintiffs, in averring that there were defects in the Home which would not have been discovered in a reasonable inspection, have set forth a claim under the UTPCPL, since the parol evidence rule does not apply in instances of fraudulent inducement. The Court holds only that Plaintiffs have included in the Amended Complaint allegations sufficient under LeDonne to overcome the parol evidence rule for purposes of Defendant's Motion to Dismiss. Defendant's Motion to Dismiss Count I will therefore be denied.[4]

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[3] The Court finds that the inability of Plaintiffs to discover these problems upon a reasonable inspection was established due to allegations that the defects were either: (1) located in areas of the Home which could not have been investigated upon a reasonable inspection or (2) concealed intentionally by Defendant. For example, Plaintiffs allege that erosion and leaking of pipes in the third floor bathroom were known to Defendant, and that she intentionally misinformed Plaintiffs as to why she did not use that bathroom. Amended Complaint at ¶ 37. This pipe problem, according to Plaintiffs, was not apparent in a visual inspection and had in fact been "actively concealed" by Defendant. Id. Similarly, Plaintiffs allege that there were several leaks in the Home of which Defendant was aware, and the resulting cracks in the walls and other instances of water damage were concealed through the application of paint. Id. at ¶¶ 21, 28.

[4] The combination of the lack of prior knowledge and a general uncertainty as to whether an inspection would have revealed these alleged defects is enough, at least for purposes of a Motion to Dismiss, to allow Plaintiffs' invocation of the fraud in the inducement exception to the parol evidence

2. Count II: Failure to State a Claim Under the Pennsylvania Real Estate Seller Disclosure Law

Under the RESDL, a seller transferring real property "must disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement . . ." 68 Pa. Cons. Stat. § 7303. Plaintiffs allege that Defendant seller failed to make disclosures of the true condition of the Home in the Disclosure Statement. Amended Complaint at ¶¶ 52–53. The RESDL requires that the seller "not make any representations that the seller or the agent of the seller knows or has reason to know are false, deceptive or misleading and shall not fail to disclose a known material defect." Id. § 7308.

As mentioned in the analysis of the UTPCPL claim above, Plaintiffs allege various defects in the Home separate and apart from the damage caused by the fallen tree. The Amended Complaint notes that the third floor bathroom leak was the subject of a separate homeowner's policy claim years prior to the tree damage. Amended Complaint at ¶ 37. Plaintiffs' claim that there were significant problems with the air conditioning and the electrical system and even allege that the inner workings of the stove were "rotted out and in need of replacement in their entirety." Id. at ¶¶ 22–24.

Under the RESDL, "[a] buyer shall not have a cause of action under this chapter against the seller or the agent for either or both of the seller or the buyer for: (1) material defects to the property disclosed to the buyer prior to the signing of an agreement of transfer by the seller and buyer." 68 Pa. Cons. Stat. § 7314. While this language serves to protect Defendant from suit as

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rule. The Court obviously reaches no conclusion as to whether Plaintiffs will ultimately prevail on their claims, and because the Court has yet to hold that the Disclosure Agreement is expressly incorporated into the Sales Agreement, it notes that, under LeDonne, the parol evidence rule will still apply to all defects which would have been discovered in a reasonable home inspection.

to the items listed in the Disclosure Statement (namely, the lead paint and tree damage), the other alleged problems were not disclosed and suit on those issues under the RESDL is therefore not precluded as a matter of law. And while the alleged defects in the electrical system, the air conditioners, and the stove may not, after discovery or at trial, necessarily meet the "reasonable inspection" standard set forth in LeDonne (and thus surpass the significant parol evidence hurdle), for purposes of the Motion to Dismiss, the Court will allow the RESDL claim to proceed.[5] Since Plaintiffs have alleged that there were material defects in the Home which were not included in the Disclosure Statement, the Motion to Dismiss Count II will be denied.[6]

3. Count III: Failure to State a Claim for Fraud

Plaintiffs allege in Count III that Defendant omitted material defects in the Home in her Disclosure Statement and that such misrepresentations were justifiably relied upon by and caused damage to Plaintiffs. In its November 10, 2005 Memorandum and Order, the Court previously held that the analysis of Plaintiffs' UTPCPL claim was equally applicable to the Fraud count, as

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[5] Because the Court accepts as true all well-pleaded allegations in the Amended Complaint and views them in the light most favorable to Plaintiffs, the alleged defects in the Home not included on the Disclosure Statement will not be considered barred by the parol evidence rule, as Plaintiffs generally aver that they were concealed or hidden during a visual inspection. If confronted again with this analysis, the Court will, of course, reassess the situation in light of further factual developments and in accordance with the relevant standard of law.

[6] The Court in its November 10, 2005 Memorandum and Order dismissed Plaintiffs' RESDL claim based on the invocation of the parol evidence rule. Plaintiffs' attempt to utilize the Project Estimate from Defendant's previous homeowner's policy suit as a basis for sustaining the RESDL claim was also rejected. The Court held that "the listed cost for the complete replacement of the roof, $370,505.01, does not necessarily indicate the repairs performed on the roof were inadequate, and Plaintiffs have failed to allege any current problems with the roof as repaired." Rock, 397 F. Supp. 2d at 626. While Plaintiffs have included various allegations as to the Project Estimate and the prior suit in the Amended Complaint, the Court notes that the denial of the Motion to Dismiss the RESDL claim in Count II is based only on the additional (and specific) allegations in the Amended Complaint and in no way indicates that the prior disagreement between Defendant and her insurance company over repair costs necessarily creates liability in this case.

Plaintiffs were barred by the parol evidence rule from relying upon misrepresentations in the Disclosure Statement concerning the known damage to the roof. In the Amended Complaint, however, Plaintiffs have alleged certain defects in the Home which might not have been discovered during a reasonable inspection and have therefore established the required element of reliance. Defendant's Motion to Dismiss Count III will therefore be denied.[7]

4. Counts IV and V: Failure to State a Claim for Negligence and for Negligence Per Se

While Plaintiffs have again included claims for Negligence and Negligence Per Se in their Amended Complaint, the Court's November 10, 2005 Memorandum and Order dismissed both counts with prejudice. The Court is aware that the filing of the Amended Complaint and the response to the Motion to Dismiss the Amended Complaint predated the resolution of Plaintiffs' Motion for Reconsideration of the November 10th Order, but if it is not now clear, the Court takes this opportunity to state again that Counts IV and V have been dismissed with prejudice based on the application of the economic loss doctrine. Counts IV and V of the Amended Complaint will therefore be dismissed with prejudice.

IV. Motion to Strike

A. Legal Standard

Federal Rule of Civil Procedure 12(f) provides that the court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." F.R. Civ. P. 12(f). Motions to strike are generally disfavored. See, e.g., DiPietro v.

[7] The Court will again note that it has yet to hold that the Disclosure Agreement was expressly incorporated into the Agreement of Sale, and, just as for the UTPCPL claim, Plaintiffs should recognize that misrepresentations as to defects in the Home which would have been discovered upon a reasonable inspection will, under LeDonne, still be barred by the parol evidence rule.

Jefferson Bank, 1993 WL 101356, at *1 (E.D. Pa. Mar. 30, 1993). This Court has observed that the "standard for striking under Rule 12(f) is strict" and that "only allegations that are so unrelated to plaintiffs' claims as to be unworthy of any consideration" should be stricken. Id. (quoting In re Catanella & E.F. Hutton & Co., 583 F. Supp. 1388, 1400 (E.D. Pa. 1984)).

B. Discussion

1. Treble Damages and Attorneys' Fees

Defendant argues that Plaintiffs' Prayer for Relief in the form of treble damages and attorneys' fees, see Amended Complaint, Prayer for Relief at ¶¶ 4, 6, should be stricken except as to Count I for breach of the UTPCPL. Defendant argues that without specific statutory authorization in Pennsylvania, treble damages and attorneys' fees cannot be recovered. Inasmuch as Plaintiffs have agreed with this argument in their response, the Court will grant the Motion to Strike with the result that Plaintiffs' Prayer for Relief in the form of attorneys' fees and treble damages should be stricken except as to Count I, where the UTPCPL specifically provides for such relief. 73 Pa. Cons. Stat. § 201-9.2(a).

2. Punitive Damages

Plaintiffs contend that Defendant's selling her house while at the same time filing a lawsuit against her insurance company over expenses incurred in repairing tree damage to the very same structure warrants the imposition of punitive damages in this case. The Supreme Court of Pennsylvania adheres to the Restatement of Torts (Second) § 908(2), which states that "punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." See Feld v. Merriam, 485 A.2d 742, 747–48 (Pa. 1984).

Plaintiffs argue that Defendant's homeowner's policy suit constitutes an admission as to undisclosed defects in the Home, and also allege that Defendant failed to disclose under the RESDL known defects in the structure. Though the Court has reached no conclusion as to whether the alleged actions of the Defendant constitute "blatant disregard for the law" or "deceptive conduct," see Pl's Resp. at 22, if Plaintiffs' allegations are taken as true, as they must be at this early stage in the litigation, then there remains the possibility that the Court could find Defendant's actions to be sufficiently outrageous to permit punitive damages. Given the strict standard of Rule 12(f) and the importance of allowing Plaintiffs' discovery to develop their case, Defendant's Motion to Strike Plaintiffs' request for relief in the form of punitive damages is premature and will be denied.

3. Prejudgment Interest

Finally, Defendant argues that Plaintiffs' prayer for relief in the form of prejudgment interest should be stricken, since their claims do not involve a contract to pay a definite sum of money. Plaintiffs never addressed the issue in their briefs, and the Court will therefore grant as unopposed the Motion to Strike relief in the form of prejudgment interest.

V. Conclusion

For the reasons stated above, Defendant's Motion to Dismiss the Amended Complaint will be granted in part and denied in part. Defendant's Motion to Strike will similarly be granted in part and denied in part.

An appropriate Order follows.

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

RONALD R. ROCK, et al.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
FAY VOSHELL	:	NO. 05-1468

ORDER

AND NOW, this 18th day of May, 2006, it is hereby ORDERED that Defendant's Motion to Dismiss the Amended Complaint (Doc. No. 17) is GRANTED IN PART and DENIED IN PART. The Motion to Dismiss is GRANTED as to Counts IV and V, which have already been dismissed with prejudice, and DENIED as to Counts I, II, and III. Defendant's Motion to Strike is GRANTED IN PART and DENIED IN PART. Plaintiffs' Prayer for Relief in the form of prejudgment interest is stricken in its entirety, while relief in the form of attorneys' fees and treble damages is stricken for all claims except Count I. Defendant's Motion to Strike punitive damages from the Amended Complaint is denied.

BY THE COURT:

s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.

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