

**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

**MEMORANDUM**

**Baylson, J.**

**December 8, 2006**

In this diversity case in which the Plaintiffs have claims pending against the Defendant on three counts alleging breach of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. § 201 et seq. (Count I), breach of Pennsylvania's Real Estate Disclosure Law, 68 Pa. Cons. Stat. § 7301 et seq. (Count II), and common law fraud (Count III), Defendant moved for summary judgment on all counts, and Plaintiffs moved for partial summary judgment on liability as to the second count.

After briefing was completed, the Court heard oral argument on December 7, 2006. At the conclusion of the argument, the Court ruled that there were numerous disputes of fact concerning claims arising out of water damage, leaky roof and other incidents of alleged liability and damage relating to the consequences of a tree falling on the roof of the house (as to which there is no dispute), and whether there was leakage as a result of this event that was not disclosed, or other water damage or leakage from other causes that was not disclosed.

At the hearing counsel reviewed the evidence of record, and the Court concluded that

there were issues of credibility of both the Plaintiffs and Defendant, there were issues of whether certain representations or actions were reasonable, and considering that in Pennsylvania law, there is a somewhat unique parol evidence standard as to statements made in connection with the sale of residential real estate, *see* Blumenstock v. Gibson, 811 A.2d 1029 (Pa. Super. Ct. 2003) (*citing* LeDonne v. Kessler, 389 A.2d 1123 (Pa. super. Ct. 1978)), the Court concluded that this issue would have to go to trial.

However, the Court concludes that as to other claims that Plaintiffs have made in this case, the Defendant's Motion for Summary Judgment should be granted because the Plaintiffs have come forward with insufficient evidence to show a material dispute warranting a trial. Plaintiffs have alleged misrepresentations as to the condition of the house's air conditioners, electrical system, kitchen stove, and a section of the plumbing. In their briefs Plaintiffs argue that Defendant either knew, or should have known, about the condition of the air conditioners, electrical system, kitchen stove, and the plumbing. As offer of proof Plaintiffs point to Defendant's deposition testimony in which she claims, generally, intimate knowledge of the house based on her long-time ownership and residence. At argument, Plaintiff's counsel could not provide evidence of Defendant's specific knowledge as to the unsatisfactory condition of these items. Plaintiff's counsel pointed to record evidence showing that the contractors who serviced the air conditioners suggested they be replaced, however the same documents also indicate that the air conditioners were functioning properly after they had been serviced. The Court finds that evidence of Defendant's general knowledge of the condition of the house is insufficient evidence of knowledge of the alleged defects in the air conditioners, electrical system, kitchen stove, or the plumbing. Finally, Plaintiff complains of "structural and general

defects” in the house. Plaintiffs have failed to produce evidence of the nature of these defects, instead relying solely on the fact that Defendant sought additional compensation from her insurance company after the falling tree damaged her house. Accordingly, summary judgment shall be granted to the Defendant as to claims relating to the condition of these items.

An appropriate Order follows.

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**ORDER**

AND NOW, this 8<sup>th</sup> day of December, 2006, it is hereby ORDERED that Defendant's Motion for Summary Judgment (Doc. No. 33) is GRANTED in part and DENIED in part as set forth in the foregoing Memorandum and Plaintiffs' Motion for Partial Summary Judgment (Doc. No. 30) is DENIED.

The trial on the remaining claims will be begin on Wednesday, December 13, 2006 in Courtroom 3A. The Court will hear argument on Motions in Limine beginning at 9:00 a.m., and counsel will pick a jury immediately thereafter. Plaintiffs' total amount of direct testimony will be limited to eight (8) hours with Defendant having an equal amount of hours for cross examination of Plaintiffs' witnesses, which time limits are subject to modification as the evidence and issues develop during the trial. Defendant's case will be similarly limited.

BY THE COURT:

/s/ **Michael M. Baylson**

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Michael M. Baylson, U.S.D.J.