

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

March 8, 2016

Brian T. Murray, Esq.
Brian T. Murray, P.A.
903 S. College Avenue
Newark, DE 19713

Mr. Donovan A. Sewell
Ms. Melissa M. Firlein
9703 Marlinton Lane
Port Richey, FL 34668

RE: Donovan A. Sewell and Melissa M. Firlein v. Christopher Coviello
C.A. No.: CPU5-15-001302

Decision on Defendant's Motion to Dismiss

Dear Mr. Murray, Mr. Sewell and Ms. Firlein:

The Court is in receipt of the Motion to Dismiss that has been filed by the defendant, Christopher Coviello. The motion was filed pursuant to Court of Common Pleas Civil Rule 12(b)(6). After careful consideration by the Court of all written submissions, the defendant's motion is DENIED for the reasons discussed below.

On November 2, 2015, the plaintiffs, Donovan Sewell and Melissa Firlein, filed this civil action *pro se* against the defendant to recover money damages based on an oral agreement between the parties. The Complaint includes a memorandum, written by Melissa Firlein, which was filed as an exhibit to the Complaint pursuant to Court of Common Pleas Civil Rule 10(c).¹

According to the Complaint, the plaintiffs were tenants of Willow Tree Mobile Home Park (hereinafter "Willow Tree") where they owned a mobile home and leased land located at

¹ Court of Common Pleas Civil Rule 10(c) which states in part, "[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." Court of Common Pleas Civil Rule 10(c) is identical to Rule 10(c) of the Chancery Court Rules, Superior Court Civil Rules and the Federal Rules of Civil Procedure. "Because Rule 10(c) provides that the writing becomes part of the pleading for all purposes, the contents of any attached writing must be considered . . . in determining the sufficiency of the statement of a claim for relief or a defense on a motion to dismiss under Rule 12(b)(6) . . ." 5A WRIGHT & MILLER, *Federal Practice and Procedure: Civil* § 1327; see also *Spring Real Estate, LLC v. Echo/RT Holdings, LLC*, 2013 WL 6916277, at *2-3 (Del. Ch. 2013). Therefore, the Court will consider the memorandum as a part of the Complaint in determining the defendant's Motion to Dismiss.

#15 Weeping Willow Court, Dover, DE 19901. The land in Willow Tree is owned by Willow Tree Mobile Home Park, LLC, a Delaware entity owned by the defendant. In preparation of moving to Florida for medical reasons, the plaintiffs allege they contacted the defendant, after a potential buyer for their home had backed out, for assistance in selling their home.

It is alleged that on or about July 17, 2015, the defendant orally agreed to sell the plaintiffs' mobile home at the market price of \$15,000 and that he would mail them a check of the proceeds minus the costs for payment of the accrued taxes on the home. In order for the defendant to legally sell the mobile home, the plaintiffs signed over the title to their home to the defendant to be placed in the name of his business Chris' Mobile Home Sales, LLC, which is a licensed dealer for mobile homes in Delaware. Approximately two weeks later, the defendant mailed the plaintiffs a \$375 security deposit check and a notice stipulating that the plaintiffs abandoned their home. The plaintiffs allege that as a result of the defendant's misrepresentations, they lost their home and the defendant, who has rented out the plaintiffs' home, is profiting from a home for which he did not pay.

In response to the plaintiffs' Complaint, the defendant filed the instant Motion to Dismiss on or about December 2, 2015. In his motion, the defendant denies entering into an oral agreement with the plaintiffs. The defendant contends that the plaintiffs abandoned their home and as a result he placed the title in the name of his business Chris' Mobile Home Sales. Furthermore, the defendant contends that pursuant to 6 *Del. C.* §18-303(a) he cannot be held personally liable for the debts, obligations, and liabilities of Willow Tree Mobile Home Park, LLC, and Chris' Mobile Home Sales, LLC, solely by reason of being a member or manager of the LLC.

The plaintiffs have filed a response to the Motion to Dismiss. In their response, the plaintiffs have additionally asked the Court to award them triple damages for a claim of unlawful ouster.

STANDARD OF REVIEW

“When deciding a motion to dismiss, the Court must examine the complaint and accept all well-pleaded allegations as true.” *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at *2 (Del. Super. June 23, 2015) (citations omitted). “If the facts alleged in the complaint are sufficient to support a claim for relief, the motion should be denied.” *Id.* “The test for sufficiency is a broad one, that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.” *Id.* “An allegation, though vague or lacking in detail, is nevertheless ‘well-pleaded’ if it puts the opposing party on notice of the claim being brought against it.” *Id.*

DISCUSSION

I. Plaintiffs Sufficiently Assert A Claim for Fraud

The defendant’s motion solely rests on 6 *Del. C.* §18-303(a) which states:

Liability to Third Parties

“Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.”

Although the defendant denies any oral agreement, he contends that he cannot be held personally liable for any claimed breach of contract by Willow Tree or Chris’ Mobile Home Sales, LLC.

Under Delaware laws of agency, Delaware courts have held corporate officials and directors liable for their participation in tortious conduct, such as fraud, even if they are acting in an official capacity. *Sens Mechanical, Inc. v. Dewey Beach Enter., Inc.*, 2015 WL 4498900, at *3 (Del. Super. June 23, 2015); *see also T.V. Spano Bldg. Corp. v. Wilson*, 584 A.2d 523, 530 (Del. Super. 1990).

The defendant contends that the plaintiffs’ Complaint “basically alleges breach of contract.” However, the plaintiffs sufficiently allege facts showing that they are entitled to relief

under a theory of fraud. Def.'s Mot. Dismiss ¶ 5. It is only required that a complaint gives the defendant fair notice of a claim in a civil action and, therefore, a plaintiff is not required to expressly set out a legal theory at the pleadings stage. *Michelson v. Duncan*, 407 A.2d 211, 217 (Del. 1979); *see also Andrews v. Monroe Cty. Transit Auth.*, 523 F. App'x 889, 891 (3d Cir. 2013) (explaining the standards of 'notice pleading' under the Federal Rules of Civil Procedure Rule 8(a)(2), which is identical to Court of Common Pleas Civil Rule 8(a)(2)). Although the plaintiffs in this case did not expressly state fraud, they sufficiently alleged facts showing that they are entitled to relief.

1. Plaintiffs' Fraud Claim

To state a claim upon which relief can be granted for common law fraud, the plaintiffs must plead the following elements: 1) a false representation of material fact; 2) the defendant's knowledge of or belief as to the falsity of the representation or the defendant's reckless indifference to the truth of the representation; 3) the defendant's intent to induce the plaintiffs to act or refrain from acting; 4) the plaintiffs' action or inaction taken in justifiable reliance upon that representation; and 5) damage to the plaintiffs as a result of such reliance. *Sens Mechanical, Inc.*, 2015 WL 4498900, at *3. Court of Common Pleas Civil Rule 9(b) requires circumstances requiring fraud to be stated with particularity. However, knowledge may be pled generally. Ct. Com. Pl. Civ. R. 9(b).

In order to meet the particularity requirement, the plaintiffs' Complaint must allege: "1) the time, place and contents of the false representation; 2) the identity of the person making the representation; and 3) what the person intended to gain by making the representation." *Sens Mechanical, Inc.*, 2015 WL 4498900, at *3.

In the instant case, the plaintiffs allege that on or about July 17, 2015, while in their home, Willow Tree's park manager, Mr. Curry, had the defendant on the telephone. The defendant directly represented to the plaintiffs that he would sell their mobile home for \$15,000 minus the costs of taxes and that he had no intention of scamming them. The plaintiffs relied on his representation and signed over the title to their home. The defendant placed the title in his business' name and claims that the plaintiffs abandoned their home. The plaintiffs allege

damages and that the defendant is profiting from a home for which he did not pay. The Court finds that the plaintiffs sufficiently pled with particularity a claim for fraud and, therefore, the defendant's motion is denied.

II. Plaintiffs' Claim for Unlawful Ouster

In their response to the defendant's Motion to Dismiss, the plaintiffs raised a claim of unlawful ouster and damages pursuant to 25 *Del. C.* § 5313. Where a tenant has abandoned the leased premises or owes back rent, the landlord may file a summary proceeding for possession in a Justice of the Peace Court. 25 *Del. C.* §§ 5502, 5702(2), 5507(d); *Drylie v. Woods*, 1991 WL 53434, at *2 (Del. Super. Mar. 18, 1991). Failure to obtain a court order in a summary proceeding authorizing possession may result in the landlord being liable to the tenant in damages. 25 *Del. C.* § 5313; *Drylie*, 1991 WL 53434, at *2.

The plaintiffs have failed to plead sufficient facts to state a claim for unlawful ouster. Furthermore, the plaintiffs failed to plead a claim for unlawful ouster in their Complaint as required by Court of Common Pleas Civil Rule 8(a). Because the Complaint failed to state a claim upon which relief can be granted, the Court hereby dismisses the unlawful ouster claim without prejudice.

CONCLUSION

In accepting all well-pleaded allegations in the Complaint as true, the facts in the Complaint are sufficient to support a claim for fraud and, therefore, the defendant's Motion to Dismiss is DENIED.

Furthermore, the plaintiffs failed to state a claim for unlawful ouster pursuant to Civil Rule 8(a) and, therefore, plaintiffs' unlawful ouster claim is DISMISSED without prejudice.

IT IS SO ORDERED this 8th day of March, 2016.

Sincerely,



Charles W. Welch, III

CWW:mek