

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NAGUIB T. HABIB AND ELEANOR)
HABIB,)
)
Plaintiffs,)
)
v.)
)
NVR, INC. d/b/a RYAN HOMES,)
)
Defendant.)

C.A. No.: CPU4-09-006604

Submitted: October 25, 2012
Decided: November 28, 2012

Mr. Naguib T. Habib
Mrs. Eleanor Habib
420 Caledonia Way
Townsend, DE 19773
Self-represented Plaintiffs

Mr. Seth Reidenberg, Esq.
Tybout, Redfearn & Pell
750 Shipyard Dr., Suite 400
Wilmington, DE 19801
Attorney for Defendant

DECISION AFTER TRIAL

Plaintiffs, Naguib Habib and Eleanor Habib (collectively, “the Habibs”), on August 24, 2009 filed this *de novo* appeal from the Justice of the Peace Court. The Complaint on Appeal alleges that the house which the Habibs purchased from Defendant, NVR, Inc. d/b/a Ryan Homes (“Ryan Homes”), was uninhabitable for forty days after closing due to warped siding. Additionally, the Habibs allege that the sunroom built by Ryan Homes was smaller than the sunroom promised. The Habibs seek damages in the amount of \$4,720.00 for the forty days that they were allegedly unable to occupy their property, \$13,958.00 for the value of the sunroom, and hardwood flooring purchased for the sunroom, totaling \$18,678.00. On January 27, 2010, Ryan Homes filed an answer denying liability to each claim.

On October 25, 2012, a trial was held before the Court. The Habibs were self-represented and Ryan Homes was represented by Mr. Seth Reidenberg, Esquire. Both Mr. and Mrs. Habib testified during trial. The Habibs introduced seventeen (17) exhibits into evidence. The Division Manager Vice President for Ryan Homes, Jonathan Moats (“Mr. Moats”), testified on behalf of Ryan Homes. Ryan Homes introduced five (5) exhibits into evidence. After trial, the Court reserved decision. This is the Court’s Decision following consideration of the evidence and exhibits submitted.

FACTS

Mr. Habib testified that he and his wife entered into a purchase agreement (the “contract”) with Ryan Homes on June 27, 2006 to acquire Lot #91 in Odessa National, located in Townsend, Delaware.¹ Mr. Habib acknowledged that he and his wife were represented by an attorney at settlement who advised them not to settle on the property due to melting siding discovered two days before the closing date.² On December 21, 2006, the Habibs settled on the property despite their attorney’s advice, and paid Ryan Homes \$356,000.00 in cash. Mr. Habib contends there were two problems regarding the purchase of the property.

First, Mr. Habib stated that Ryan Homes offered them a free sunroom as an incentive to purchase the home. Mr. Habib testified that Ryan Homes told them that the sunroom was going to be 142 square feet, but the sunroom as built is only 127 square feet. Mr. Habib introduced a “Master Selection Sheet” from Ryan Homes, which listed specific items the Habibs chose to have included in their new house. The Master Selection Sheet listed the value of the 142 square foot sunroom at

¹ Plaintiff’s Exhibit #2.

² Plaintiff’s Exhibit #17 (letter from Habib’s attorney advising them not to settle due to the melting siding).

\$12,800.00, and listed the value of the hardwood flooring in the sunroom at \$1,150.00.³ The contract stated that “Seller reserves the right to make changes in the plans and specifications, for the purposes of mechanical installations, building code and site requirements, and reasonable architectural design improvements subsequent to the date of this Agreement.”⁴ Mr. Moats testified that the Habibs did not pay \$12,800.00 for the sunroom and it was not included in the price of the property.

Second, Mr. Habib testified that he and his wife were unable to live in their home for forty days after settlement due to safety concerns caused by warped siding. On December 19, 2006, two days prior to closing, the Habibs inspected the property and observed warped siding on the left side of the house, which they reported to the Ryan Homes project manager. Mr. Habib introduced photographs showing the warped siding.⁵ Mr. Motes testified that this phenomenon is called “thermal distortion,” and was caused by concentrated light reflected from a neighbor’s window.

Mr. Habib testified that he was told by Ryan Homes’ project manager that the vinyl siding would be corrected within two weeks. Mr. Habib acknowledged that the problem was fixed by January 30, 2007. Additionally, Mr. Motes testified that on December 20, 2006, one day before closing and after final inspection, New Castle County issued a Certificate of Occupancy for the property. The Habibs settled on December 21, 2006 and received the deed to the house. After settlement, the Habibs stayed at their primary residence in New York and at a relative’s home in the Delaware area because they believed the new house was unsafe. The Habibs decided not to live in the new house while Ryan Homes was repairing the vinyl siding and taking precautions to prevent further thermal distortion.

³ Plaintiff’s Exhibit #3.

⁴ Plaintiff’s Exhibit #2, pg. 3, ¶ 7.

⁵ Plaintiff’s Exhibit # 10.

Lastly, the Habibs testified that they were forced to settle on the house. They rely upon a contract provision which states:

In the event Purchaser fails to take title to the Property on the Actual Settlement Date as required in this Agreement, then the Seller may, in its sole discretion, agree to extend the time of Settlement. In the event Purchaser does not settle on the Actual Settlement Date, regardless of whether or not Seller has agreed to extend the time of Settlement, Purchaser shall pay a late settlement charge computed at the rate of 1-1/2% of the unpaid balance of the Purchase Price per month.⁶

Mr. Habib admitted that Ryan Homes never threatened him or his wife, but that they felt compelled to go through with the settlement so they did not have to pay a late settlement fee and risk losing the house.

DISCUSSION

The trial left the Court with three questions to resolve. First, the Court must decide whether Ryan Homes forced the Habibs to go through with settlement on the home. Second, whether Ryan Homes breached the contract with the Habibs regarding the defective vinyl siding. Lastly, the Court must decide whether Ryan Homes breached the contract with the Habibs regarding the smaller than promised sunroom. The following is the Court's resolution of these issues.

A. Duress Claim

The Court finds no merit to the Habibs' allegations that Ryan Homes forced them to settle on the house. In essence, the Habibs argued that they went to settlement under economic duress. The Habibs do not raise the allegation of duress to excuse their performance under the contract, but as a cause of action against Ryan Homes.

The party "alleging actionable coercion or duress must plead (i) a wrongful act; (ii) which overcomes the will of the aggrieved party; and (iii) that the party has no adequate remedy to protect

⁶ Plaintiff's Exhibit #2.

itself.”⁷ The Superior Court has defined a wrongful act as acts that are “wrongful in a moral sense, though not criminal or tortuous or in violation of a contractual duty. . .”⁸

At trial, there was no evidence of a wrongful act committed by Ryan Homes which overcame the will of the Habibs. Further, Mr. Habib admitted that Ryan Homes never made any threats. Mr. Habib argued that he felt compelled to go to settlement because the terms of the contract stated that the Habibs would have to pay a late fee in the event of a delayed settlement. The Habibs, however, voluntarily entered into the contract and voluntarily chose to disregard their attorney’s advice to delay settlement. Therefore, Ryan Homes is not liable for duress or coercion.

B. Breach of Contract Claims

In order to prove a breach of contract, the plaintiff must show by a preponderance of the evidence: (1) that a contract exists; (2) a breach of performance under the contract; and (3) resulting damages.⁹ The formation of a contract requires an offer, acceptance, mutual assent to the terms of the contract, and existence of consideration.¹⁰ In Delaware, compensatory damages are awarded for breach of contract claims and the “purpose is to compensate plaintiff for its proven, actual loss caused by defendant’s conduct.”¹¹ To achieve that purpose, compensatory damages are measured by the plaintiff’s ‘out-of-pocket’ actual loss.”¹²

⁷ *Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at *15 (Del.Ch. Oct.10, 2006).

⁸ *Fowler v. Mumford*, 102 A.2d 535, 538 (Del. Super. 1954). *See also Way Road Development Co. v. Snavely*, 1992 WL 19969, *at 4 (Del. Super. January 31, 1992).

⁹ *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

¹⁰ *Faw, Casson & Co. v. Cranston*, 375 A.2d 463, 466 (Del. Ch. 1977).

¹¹ *Wirt v. Matthews*, 2002 WL 31999360, at *6 (Del. Com. Pl. Feb. 7, 2002) (quoting, *Strausberger v. Early*, 752 A.2d 557, 580 (Del. Ch. 2002)).

¹² *Id.*

1. The Vinyl Siding

There is no dispute that a contract existed between the parties for the purchase of Lot #91 in Odessa National. The Habibs contend that Ryan Homes breached the contract by providing a house with warped siding, promising to have it corrected within two weeks of December 19, 2006, and then failing to correct the problem until January 30, 2007. The Habibs argue that they are entitled to damages in the amount of \$4,720.00 for the forty days after closing that they could not live in their new home.

The Court finds that Ryan Homes did not breach the contract with the Habibs. Ryan Homes performed under the contract by providing the deed to the house at closing on December 21, 2009. The Habibs, after disregarding the advice from their attorney, chose to proceed with settlement. Ryan Homes' promise to have the siding fixed within two weeks, weather permitting, was substantially complied with because the siding was ultimately fixed by January 30, 2007. The construction work was promptly completed in a little over a month. This is reasonable, taking into consideration that it was the middle of winter, and work had to be done on a neighbor's window to correct the thermal distortion which caused the siding damage. Further, it was the Habibs who chose not to occupy the house for forty days. New Castle County, despite the warped siding, issued a certificate of occupancy that the house was fit for occupancy as of December 20, 2006.

Moreover, even if Ryan Homes had breached the contract, the Habibs suffered no damages as a result of not living in the new home. The Habibs chose to stay at their primary residence in New York and with a relative who lives in the Delaware area. There is no evidence that the Habibs suffered any actual out-of-pocket expenses while they did not occupy their home at Odessa National. Ryan Homes repaired the siding in a manner which was timely and is not liable for breach of contract on this claim.

2. The Sunroom

The Court finds that a contract existed between the parties for a sunroom. Ryan Homes offered the sunroom as an incentive to purchase the home, and the Habibs accepted the sunroom. Even though the sunroom was free, the consideration for the sunroom was the purchase of Lot #91. Even though the contract to buy the home does not specify what size the sunroom was going to be, Ryan Homes told the Habibs that their sunroom would be 142 square feet and the Master Selection Sheet lists the sunroom as 142 square feet. Therefore, Ryan Homes breached the agreement to provide a 142 square foot sunroom in exchange for the Habibs' purchase of Lot #91. Further, Ryan Homes did not even disclose to the Habibs that the room was smaller; the Habibs had to measure the room and discover the shortcoming themselves. Apparently, Ryan Homes' failure to disclose that the sunrooms were smaller than promised has been a pattern in the neighborhood of Odessa National.

The Court does not agree with the Habibs' contention that they are entitled to damages for the entire value of the sunroom plus the amount they paid for the hardwood flooring. Mr. Moats testified that the Habibs did not pay \$12,800.00 for the sunroom because it was an incentive to purchase the home. Further, the purchase agreement between the parties grants Ryan Homes the authority to change building plans and specifications "for reasonable architectural improvements" after the date of the purchase agreement. However, the Habibs entered into the purchase agreement believing that they were going to receive the 142 square foot sunroom listed on the Master Selection Sheet. However, Moats testified that the dimension of the sunroom was modified because of New Castle County building setback requirements. This modification is permissible by the contract language, thus there is no basis for the Court to find a breach by Ryan Homes on this claim.

The Master Selection Sheet also shows that the Habibs paid \$1,150.00 for hardwood flooring for the sunroom by reducing the size they did not receive what they purchased. The Court

finds that Ryan Homes is liable for the price of 15 square feet of hardwood flooring—*i.e.*, the difference between the 142 square feet of hardwood flooring less the hardwood flooring for a 127 square foot sunroom, which is \$121.48.

CONCLUSION

Accordingly, judgment is entered for the Habibs in the amount of \$121.48, cost of the proceedings, and post-judgment interest at 5.5% until paid.

The Honorable Alex J. Smalls
Chief Judge