IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RIVERBEND COMMUNITY, LLC, a Delaware limited liability company, and FOX CHASE REALTY, LLC	)	
Plaintiffs,	)	C.A. No. N10C-07-042 MMJ
v.	)	
GREEN STONE ENGINEERING, LLC, a Delaware limited liability company and BRUCE JONES,	)	
Defendants.	)	

Submitted: February 20, 2012
Decided: April 4, 2012

On Defendants' Motion for Summary Judgment
GRANTED

OPINION

Adam Balick, Esquire, Melony Anderson, Esquire (argued), Balick & Balick, LLC, Wilmington, DE, Attorneys for Plaintiffs

Paul Cottrell, Esquire (argued), Justin P. Callaway, Tighe & Cottrell, P.A., Wilmington, DE, Attorneys for Defendants

JOHNSTON, J.

Defendants Green Stone Engineering, LLC ("Green Stone") and Bruce Jones ("Jones") move for summary judgment against Plaintiffs Riverbend Community, LLC ("Riverbend") and Fox Chase Realty, LLC ("Fox Chase"). Plaintiffs hired Defendants to perform civil and environmental engineering services associated with the planning and construction of a residential development on property in the City of New Castle. Plaintiffs claim that Defendants failed to perform under the contract. The Complaint alleges negligence, breach of contract, and professional negligence.

Defendants filed this Motion for Summary Judgment, arguing that Plaintiffs' negligence claims are barred by the economic loss doctrine. Defendants further argue that Plaintiffs' breach of contract claim is barred by the general release signed by Plaintiffs. The Court held oral argument on Defendants' Motion on February 20, 2012.

Viewing the facts in the light most favorable to Plaintiffs, the nonmoving party, the Court finds that Plaintiffs negligence claims are barred by the economic loss doctrine. The Court further finds that Plaintiffs' breach of contract claim must be dismissed because Plaintiffs executed a general release exculpating Defendants from any liability.

FACTUAL BACKGROUND

The subject property (the "Property") is located next to the Delaware River within the city limits of New Castle. The Property contains wetlands that fall within the definition of "waters of the United States," as defined by the Clean Water Act ("CWA").[1] Under the CWA, all waters of the United States are within the jurisdiction of the U.S. Army Corps of Engineers (the "ACE"). Pursuant to federal regulations, a permit from the ACE is required for work or structures in navigable waters of the Unites States, as well as for the discharge of dredged or fill material into navigable waters of the United States.

In 2003, Greggo and Ferrara, Inc., the owners of the Property at the time, commissioned Duffield Associates to evaluate the Property in order to obtain a Jurisdictional Determination ("JD") from the ACE. A JD is the process by which the ACE locates and identifies regulated areas – *i.e.*, wetlands – on a particular piece of land. In 2004, a JD was obtained for the Property. The 2004 JD identified a wetlands area running along and across a dirt road on the Property.

On August 5, 2005, in contemplation of purchasing the Property for development of a residential community (hereinafter referred to as the "Old

[1] 33 U.S.C. § 1251 *et seq.*

New Castle Subdivision"), Fox Chase retained Green Stone.[2] Green Stone was engaged to provide civil and environmental engineering services so that Plaintiffs could obtain preliminary site approval for construction of the Old New Castle Subdivision. On March 22, 2006, Fox Chase and Green Stone entered into a second contract. Under the March 2006 contract, Green Stone was to provide design computations and final construction plans for the Old New Castle Subdivision.

In order to satisfy its obligations under the March 2006 contract, Green Stone retained the services of JCM Environmental ("JCM") on July 16, 2006. The contract provided that JCM would flag additional wetlands on the property and prepare a report for the appropriate regulatory agencies. JCM was required to coordinate with the ACE for a JD. In July 2006, JCM completed the wetlands delineation and flagging.

On November 13, 2006, Riverbend was formed.[3] On November 15, 2006, Riverbend purchased the Property. Thereafter, construction of the Old New Castle Subdivision commenced.

Plaintiffs allege that on August 8, 2007, Green Stone contacted JCM and informed JCM that no wetlands areas were impacted by the proposed

[2] Co-defendant Bruce Jones serves as the principal of Green Stone Engineering, LLC.

[3] Joseph Capano serves as the principal of Fox Chase and Riverbend.

development on the Property and that no permits were needed from the ACE. JCM, therefore, did not perform any subsequent work specified in the contract. Specifically, JCM did not coordinate with the ACE to obtain a JD for the Property.

On December 4, 2007, Fox Chase signed a general release (the "Release") exculpating Green Stone of any and all liability in connection with the engineering services provided for the Old New Castle Subdivision. The Release, entitled "Receipt and General Release," provides:

> **Fox Chase Realty, LLC** ("FCR") for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, for itself and its successors, and assigns hereby remises, release, [sic] acquits, and forever discharges **Green Stone Engineering, LLC** and its respective agents, officers, employees, representatives, successors and assigns and any and all other persons, associations, and/or corporations, whether herein referred to or not, ("Releasees"), of and from all known or unknown, suspected or unsuspected, past, present, and future claims, demands damages, interest, penalties, legal fees and all other actions, third-party actions, causes of action, or suites [sic] at law or in equity, including claims for contribution and/or indemnity or/of whatever nature, for or because of any matter or thing done, omitted, or suffered to be done, on account of or arising from Green Stone's use or reliance upon any plans, engineering calculations, drawings, specifications, surveys or any other work product of any nature whatsoever produced by **Green Stone Engineering, LLC** in connection with professional engineering services provided **Fox Chase Realty, LLC for the Riverbend at Old New Castle project** (the "Work Product"). This document further confirms FCR's receipt of all Work Product produced [by] **Green Stone**

Engineering, LLC on behalf of **Joseph L. Capano, Sr. and FCR.**

This release is made with advice of counsel or after knowingly declining advice of counsel.

On March 18, 2009, Riverbend received a cease and desist letter from the ACE. The letter stated that a recent inspection by the ACE revealed that unauthorized work had been performed on a regulated wetlands area. Riverbend was ordered to cease and desist from conducting or permitting any further work in areas subject to federal jurisdiction. Riverbend immediately complied with the order.

On October 26, 2009, a second cease and desist letter was issued by the ACE. Riverbend was advised that it could "legalize" the unauthorized work by: (1) removing all unauthorized dredged and/or fill materials in regulated areas and restoring the areas to their former condition; or (2) applying for and receiving an after-the-fact permit for the work already performed.

Riverbend contends that the work already performed on the Property is necessary for development of the Old New Castle Subdivision. Riverbend claims that it has no choice but to apply for and receive an after-the-fact permit from the ACE. Thereafter, Plaintiffs filed the instant action.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[4] All facts are viewed in a light most favorable to the non-moving party.[5] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[6] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[7] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[8]

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[4] Super. Ct. Civ. R. 56(c).

[5] *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).

[6] Super. Ct. Civ. R. 56(c).

[7] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[8] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

DISCUSSION

Negligence Claims

Parties' Contentions

Defendants claim that Plaintiffs' negligence claims are purely economic in nature, and, therefore, barred by the economic loss doctrine. Defendants further argue that Plaintiffs may not avail themselves of the exception to the economic loss doctrine found in Restatement (Second) of Torts Section 552 because Defendants are not in the "business of supplying information."

Plaintiffs concede that their damages are purely economic in nature, but assert that their negligence claims fall within Section 552's exception to the economic loss doctrine. According to Plaintiffs, Defendants were retained not only to design the Old New Castle Subdivision, but also to provide wetlands consultation. By retaining Defendants to "accurately depict the wetlands on the property," Defendants were functioning as "information providers."

Analysis

I. Plaintiffs' Negligence Claims are Barred by the Economic Loss Doctrine.

The economic loss doctrine "prohibits recovery in tort for losses unaccompanied by a bodily harm or a property damage."[9] In other words, the doctrine bars a plaintiff from recovering in tort for losses that are purely economic in nature.[10] Economic loss is "any monetary loss, costs of repair or replacement, loss of employment, loss of business or employment opportunities, loss of good will, and diminution in value."[11]

The Restatement (Second) of Torts Section 552, which Delaware explicitly has adopted,[12] provides an exception to the economic loss doctrine's bright-line rule. Section 552 provides, in relevant part:

> One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

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[9] *Christiana Marine Serv. Corp. v. Texaco Fuel and Marine Mktg*., 2002 WL 1335360, at *5 (Del. Super.).

[10] *Id.*

[11] *Id.*

[12] *Guardian Constr. Co. v. Tetra Tech Richardson, Inc.*, 583 A.2d 1378, 1386 (Del. Super. 1990).

In order to utilize the Section 552 exception, a plaintiff must demonstrate two elements. First, the plaintiff must show that defendant supplied the information to the plaintiff for use in business transactions with third parties.[13] In other words, the information must have been used in a transaction not involving the defendant as a party.[14] Plaintiffs have satisfied this element. The undisputed record establishes that Defendants prepared and provided Plaintiffs with engineering plans associated with development of the Old New Castle Subdivision. Plaintiffs, in turn, used this information to enter into various transactions with third parties, including potential homeowners and lenders.

Therefore, the Court's analysis will focus on the second element of the exception to Section 552, which provides that the plaintiff must show that the defendant is in the business of supplying information.[15] In determining whether a defendant is "in the business of supplying information," a "'case-specific inquiry' must be made, 'looking to the nature

[13] *Millsboro Fire Co. v. Constr. Mgmt. Servs., Inc*., 2006 WL 1867705, at *2 (Del. Super.).

[14] *Danforth v. Acorn Structures, Inc.*, 1991 WL 269956, at *2 (Del. Super.).

[15] *Millsboro*, 2006 WL 1867705, at *2.

of the information and its relationship to the kind of business conducted.'"[16]

As noted by this Court in *Danforth v. Acorn Structures*:

> Obviously, a great many businesses involve an exchange of information as well as of tangible products – manufacturers provide operating or assembly instructions, and sellers provide warranty information of various kinds. But if we ask what the product is in each of these cases, it becomes clear that the product (a building, precipitator, roofing material, computer or software) is not itself information, and that the information provided is merely incidental.[17]

In Delaware, a defendant is considered to be an "information provider" when information is the "end and aim" product of the defendant's work.[18] However, when the "information supplied is merely ancillary to the sale of a product or service ... defendant will not be found to be in the business of supplying information."[19]

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[16] *Delaware Art Museum v. Ann Beha Architects, Inc*., 2007 WL 2601472, at *2 (D. Del.).

[17] *Danforth*, 1991 WL 269956, at *3 (citing *Rankow v. First Chicago Corp*., 870 F.2d 356, 364 (7th Cir. 1989)).

[18] *Kuhn Const. Co. v. Ocean and Coastal Consultants, Inc*., 2012 WL 591753, at *6 (D. Del.) (citing *Delaware Art Museum*, 2007 WL 2601472, at *2); *see Millsboro*, 2006 WL 1867705, at *3 (Del. Super.) ("In Delaware, only surveyors and those expressly in the business of supplying information such as accountants, financial advisors, and title searchers, can be liable in tort for purely economic losses.") (internal citations omitted).

[19] *Christiana Marine*, 2002 WL 1335360, at *7.

Engineers, as a class of defendants, may fall on both sides of Section 552.[20] Engineers who provide calculations, specifications or reports for a project are considered "information providers."[21] However, when an engineer produces designs or plans as a component of a construction project, any information supplied is ancillary to the finished product and will not fall within Section 552.[22]

In *Millsboro Fire Co. v. Construction Management Service, Inc.*,[23] this Court addressed the application of Section 552's exception to engineers. The Court first noted that although there was no bright-line rule in determining whether a party is "in the business of supplying information," Delaware employs a "narrow application and strict construction" of Section 552.[24] The Court concluded that an engineer, who provides plans and design drawings in connection with a construction project, is not in the business of supplying information.[25] Such information, the Court found, is

[20] *Delaware Art Museum*, 2007 WL 2601472, at *3.

[21] *Id.*

[22] *Kuhn*, 2012 WL 591753, at *5-6; *Delaware Art Museum*, 2007 WL 2601472, at *3; *Millsboro*, 2006 WL 1867705, at *3.

[23] 2006 WL 1867705 (Del. Super.).

[24] *Id.* at *3.

[25] *Id.*

more aptly categorized as information incidentally supplied as part of a construction project.[26]

Following this Court's decision in *Millsboro*, the United States District Court for the District of Delaware consistently has declined to extend Section 552's exception to engineers and architects who provide plans and design drawings in connection with a construction project.[27] That court reasoned: "Because the focus of an engineer's or architect's work is usually tangible – a building, a structure, or a product – it is not in the business of providing information. Any information provided is merely incidental to the finished product."[28] In other words, the "end and aim" product of the engineer's work is not the provision of information, but rather information provided as part of a construction project.[29]

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[26] *Id.*

[27] *See, e.g., Kuhn*, 2012 WL 591753, at *6 ("'[I]n the usual course of events, architects and engineers provide information, plans, and specifications that are incorporated into a tangible product, building or structure' and consequently, 'the… exception to the economic loss doctrine does not generally apply.'"); *RLI*, 556 F.Supp.2d 356, 362 (D. Del. 2008) (finding that the architect who supplied drawings, plans and specifications in connection with construction project was not an "information provider"); *Delaware Art Museum*, 2007 WL 2601472, at *3 ("When an engineer's responsibility involves more, such as designing components of a project, … his role will not fall within the exception to the economic loss doctrine.").

[28] *Kuhn*, 2012 WL 591753, at *6 (quoting *Tolan and Son, Inc. v. KLLM Architects, Inc.*, 719 N.E.2d 288, 291 (Ill. App. 1999)).

[29] *Id.* at *6.

In *RLI Insurance Co. v. Indian River School District*,[30] the District Court reaffirmed this Court's narrow application of Section 552's exception. There, the District Court barred tort recovery against an architect[31] tasked with providing a number of services, at least one of which was purely the provision of information, in connection with the construction of a high school.[32] The District Court noted that while the architect did provide information to the plaintiff, such information was not the "end and aim" of the architect's work.[33] Instead, the "end and aim" was the construction of the high school, and any information supplied by the architect was "in connection with achieving completion of the [p]roject."[34] In reaching this conclusion, the District Court rejected the notion that a defendant, who supplies pure information as well as tangible goods, automatically falls within the definition of an "information provider."

In the present case, Defendants entered into two contractual agreements with Plaintiffs. In order to determine whether Defendants were

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[30] 556 F.Supp.2d 356 (D. Del.).

[31] Although *RLI* addresses the application of Section 552's exception to architects, the Court finds there to be no substantive difference between the duties relegated to the architect in *RLI* and those provided by the engineer in the instant matter.

[32] 556 F.Supp.2d at 360-61.

[33] *Id.* at 362.

[34] *Id.*

"information providers," the Court must analyze the nature of the work performed by Defendants under each contract. The first contract, dated August 5, 2005, required Defendants to: (1) visit the Property to evaluate its potential for stormwater best-management practices, environmental improvement and wetlands enhancement opportunities; (2) meet with environmental permitting agencies to discuss the feasibility of the proposed project; (3) develop wetlands restoration alternatives to compliment the proposed land development plan; (4) develop a conceptual stormwater wetlands restoration layout to be used for regulatory meetings and preliminary site approval; and (5) meet with local and federal authorities to present the conceptual design and discuss environmental or other regulatory issues. There is no record evidence to suggest that Defendants were retained to survey or delineate the wetlands area on the Property. Indeed, the wetlands area on the Property already had been delineated the prior year in the 2004 JD.

Viewing the facts in the light most favorable to Plaintiffs, the nonmoving party, the Court finds that Defendants were not acting as "information providers" under the August 2005 contract. The record establishes that Defendants were retained to produce designs for the Property that would assist Plaintiffs in getting preliminary site approval.

Once Plaintiffs obtained this approval, these designs ultimately would be incorporated into construction of the Old New Castle Subdivision. As such, the "end and aim" of Defendants' work was the construction of the Old New Castle Subdivision. Any information that Defendants *may* have supplied was provided in connection with achieving completion of the Old New Castle Subdivision, or, as stated in *Millsboro*, was information "more aptly categorized as information incidentally supplied … as part of the construction"[35] of the Old New Castle Subdivision.

Turning to the second contract, executed on March 14, 2006, Defendants were required to perform design computations and final construction plans for the Old New Castle Subdivision. Specifically, Defendants were requested to: (1) create site and roadway design; (2) develop stormwater collection and conveyance system design and layout; (3) provide design and layout for a gravity sanitary sewer system; (4) design water supply piping system; (5) prepare stormwater management design, plans and report addressing management of runoff quality and quantity; (6) provide sediment and erosion control design and plans; and (7) design a landscape plan. In order to complete these tasks, Defendants contracted

[35] 2006 WL 1867705, at *3.

JCM to perform additional flagging and delineation of wetlands areas. It is undisputed that JCM performed the flagging and wetlands delineation.

The Court finds, as a matter of law, that Defendants were not acting as "information providers" in performing their duties under the March 2006 contract. Defendants were retained to provide designs, plans, and drawings for specific components that would be incorporated into the Old New Castle Subdivision. In other words, the "end and aim" of Defendants' work was the construction of the Old New Castle Subdivision. Therefore, any information that Defendants may have provided was ancillary to the finished product.

In any event, at oral argument, Plaintiffs were unable to present any evidentiary proffer or factual scenario, that could be demonstrated through discovery, which would alter the Court's analysis regarding Section 552's exception. As such, Plaintiffs' negligence claims are barred by the economic loss doctrine.

Breach of Contract Claim

Parties' Contentions

Defendants argue that the Release clearly and unambiguously releases Defendants from all claims related to work performed by Defendants in connection with the Property.

In response, Plaintiffs assert three bases for invalidating the Release. First, Plaintiffs claim that the release is ambiguous because it is subject to differing interpretations.[36] Secondly, Plaintiffs contend that they executed the Release under economic duress. Finally, Plaintiffs claim the parties were operating under a mutual mistake when the Release was signed.

Analysis

I. The General Release is Clear and Unambiguous.

Delaware courts recognize the validity of general releases.[37] In construing a release, the intent of the parties as to its scope and effect is controlling. Intent will be ascertained from the overall language of the

[36] In their briefing, Plaintiffs claim: "[T]he release absolves Green Stone from liability if it makes a mistake in interpreting or transmitting its own drawings or plans. It does *not* absolve Green Stone from liability if the plans themselves are in error or negligently prepared, as was the case here."

[37] *Adams v. Jankouskas*, 452 A.2d 148, 155 (Del. 1982) (citing *Chakov v. Outboard Marine Corp.*, 429 A.2d 984, 985 (Del. 1981)).

document.[38] Where the language of the release is clear and unambiguous, it will only be set aside "where there is fraud, duress, coercion, or mutual mistake concerning the existence of the party's injuries."[39] The party seeking to nullify the release bears the burden of demonstrating by clear and convincing evidence that the release is invalid.[40]

The Court finds the Release to be valid. The Release clearly and unambiguously defines the scope of the Release's coverage. The Release clearly states that Fox Chase Realty "remise[s], release[s], acquits, and forever discharges" Green Stone Engineering, LLC from *all* claims in connection with services provided for the Old New Castle Subdivision. The only logical reading of the Release is that the parties intended to release all potential claims against Defendants. No record evidence was presented to suggest that Plaintiffs did not understand the terms of the release,[41] or that

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[38] *Adams*, 452 A.2d at 156. *See also Junge v. Smyrna Rental & Repair, Inc.,* 1998 WL 960716, at *2 (Del. Super.) ("It is settled law, in Delaware, that a release must be read as a whole with the intent derived from the entire agreement.").

[39] *Edge of the Woods v. Wilmington Sav. Fund Soc'y, FSB*, 2001 WL 946521, at *4 (Del. Super.). *See also Adams*, 452 A.2d at 156 ("[W]here the language of the release is clear and unambiguous, it will not lightly be set aside.").

[40] *Edge of the Woods*, 2001 WL 946521, at *4.

[41] *Deuley v. DynCorp Intern., Inc.*, 8 A.3d 1156, 1163 (Del. 2010) (noting that for a release to be clear and unambiguous, it must appear that the plaintiff or a reasonable person in the plaintiff's position understood the terms of the release).

the Release was "reasonably or fairly susceptible of different interpretations."[42]

II. The Release was Not Executed Under Economic Duress.

The Court finds Plaintiffs' claim of economic duress unconvincing. Economic duress exists where one is deprived of the free exercise of will through wrongful threats or acts directed against a party's business interests.[43] A claim for economic duress will not lie, however, where the party "has a reasonable alternative to succumbing and fails to take advantage of it."[44]

Here, Plaintiffs contend that they had no choice but to sign the Release because Defendants were wrongfully withholding work product. According to Plaintiffs, Defendants refused to release any designs, plans, or specifications unless Plaintiffs executed the Release exculpating Defendants from *all* liabilities.[45]

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[42] *See Rhone-Poulenc Basic Chemicals Co. v. American Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992) ("[A] contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.")

[43] *Edge of the Woods*, 2001 WL 946521, at *5.

[44] *Id.* at *6.

[45] In the same argument, Plaintiffs claim that they didn't intend to release Defendants from all liabilities when they signed the Release. Rather, Plaintiffs believed they were executing a partial release. As previously noted by the Court, the Release clearly and unambiguously released Defendants from *all* liabilities for services performed in

While Defendants may have driven a hard bargain in refusing to release work product unless Plaintiffs executed the Release, aggressive negotiation is insufficient to constitute duress.[46] "In every contract negotiation there is an implied threat that the party will not perform unless his terms are accepted. This type of implied threat is a necessary part of the bargaining process."[47]

Additionally, the Court notes that Plaintiffs' principal, a sophisticated and seasoned businessman, executed the Release.[48] Further, Plaintiffs were free to consult an attorney prior to executing the Release.[49] Therefore, it cannot be said that Plaintiffs were under economic duress at the time they signed the Release.

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connection with the Old New Castle Subdivision. Therefore, any misunderstanding as to the scope or effect of the Release is unavailing.

[46] *See Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.,* 769 F.Supp. 671, 739 (D. Del. 1991).

[47] *Id.* at 738.

[48] *See id*., at *6 (denying plaintiff's duress claim in part because plaintiff was a commercially sophisticated party); *Sabatoro Const. Co., Inc. v. Formosa Plastics Corp. USA*, 1996 WL 453460, at *4 (Del. Super.) (same).

[49] *Edge of the Woods*, 2001 WL 946521, at *6 ("In Delaware, 'the availability of disinterested advice' is a consideration in analyzing whether a threat broke the will and caused the assent of the aggrieved party.")

III. There was No Mutual Mistake as to the Scope and Effect of the Release.

Plaintiffs' claim of mutual mistake is equally unpersuasive. "A mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts."[50] In order to determine whether a mutual mistake of fact has occurred, the Court must examine the facts as they existed at the time of the agreement.[51]

Plaintiffs claim that, at the time the Release was executed, the parties were mutually mistaken as to the existence of potential wetlands violations. In essence, Plaintiffs argue that the parties did not intend to release Defendants of future unknown claims.

As previously noted by the Court, the Release clearly and unambiguously releases Defendants of liability for *all* claims, including those which were "known or unknown, suspected or unsuspected, past, present, and future." The Release plainly covers the claims that Plaintiffs now raise, which, the Court notes, were not wholly unforeseeable. The alleged failure of the parties to understand the scope and effect of the Release, despite the unambiguous language, does not support a finding of

[50] *Mehan v. Travelers Ins. Co*., 1988 WL 62793, at *2 (Del. Ch.) (citation omitted).

[51] *Williams v. White Oak Builders, Inc*., 2006 WL 1668348, at *8 (Del. Ch.).

mutual mistake.[52] Clearly, the parties anticipated the possibility of future unknown claims that might arise, and expressly waived all such claims.[53] Plaintiffs' extensive experience in the construction business casts grave doubt on any claimed "mistake" as to the scope and effect of the Release.[54] Consequently, Plaintiffs' mutual mistake argument must fail.

CONCLUSION

The Court finds that because Plaintiffs seek to recover for losses that are purely economic in nature, Plaintiffs' negligence claims are barred by the economic loss doctrine. Plaintiffs have failed to demonstrate that they fall within Section 552's narrow exception to the economic loss doctrine.

The Court further finds that Plaintiffs' breach of contract claim is barred because Plaintiff executed the Release exculpating Defendants of all liability in connection with services provided for the Old New Castle Subdivision. Plaintiffs presented no basis upon which the Release should be invalidated.

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[52] The Court notes that no evidence has been presented to suggest that Defendants were "mistaken" as to the scope and effect of the Release. If any "mistake" did, in fact, occur, it was a unilateral mistake on the part of the Plaintiffs that, under the facts of the case, would not invalidate the Release.

[53] *See White v. Grinfas,* 809 F.2d 1157, 1160 (5th Cir. 1987) ("The agreement may not be set aside for mutual mistake simply because the parties made a poor prediction.").

[54] *See Progressive Intern. Corp. v. E. I. DuPont de Nemours & Co.*, 2002 WL 1558382 (Del. Ch.) ("Sophisticated parties are bound by the unambiguous language of the contracts they sign.").

THEREFORE, Defendants' Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston