

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-175
JON-YOR-10/10/2013

JEANNETTE M. ROSS,)
)
Plaintiff,)
)
v.)
)
CHRISTOPHER J. PONTE, et al.,)
)
Defendants.)

ORDER

Before the Court is Defendant Roberts’ Motion for Summary Judgment and Plaintiff Ross’ Motion to Amend Compliant.

I. Background

Plaintiff brought a ten count complaint against seven defendants for damages sustained as a result of purchasing a property that Plaintiff alleges has numerous defects that Defendants were aware of or should have been aware of and failed to disclose prior to Plaintiff’s purchase. Plaintiff alleges that she relied on the misrepresentations of the sellers, the real estate brokers, and the home inspectors in purchasing a home that had significant deficiencies. Defendant Roberts’, sole owner of Southern Maine Home Inspections, LLC, moves the court for Summary Judgment. Plaintiff moves the court to allow amendment of the complaint in order to pierce the corporate veil and allege fraud against Defendant Roberts.

II. Standard of Review for Summary Judgment

When a defendant moves for summary judgment, “the plaintiff must establish a prima facie case for each element of [the] cause of action that is properly challenged in

the defendant's motion." Flaherty v. Muther, 2011 ME 32, ¶ 38, 171 A.3d 640. The burden then shifts to the defendant to show that there is no genuine issue of material fact. Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Beal v. Allstate Ins. Co., 989 A.2d 733, 738 (Me. 2010); Dyer v. Department of Transportation, 951 A.2d 821, 825 (Me. 2008). When reviewing a motion for summary judgment, the court reviews the parties' statements of material facts and the cited record evidence in the light most favorable to the non-moving party. Id.

A genuine issue of material fact exists where the fact finder must make a determination between differing versions of the truth. Reliance National Indemnity v. Knowles Industrial Services Corp., 2005 ME 29, ¶7, 868 A.2d 220; citing Univ. of Me. Found. V. Fleet Bank of Me., 2003 ME 20, ¶20, 817 A.2d 871. Furthermore, "a fact is material if it could potentially affect the outcome of the case." Id.

III. Discussion

a. Summary Judgment – Negligent Misrepresentation

In order to survive a motion for summary judgment on a cause of action of negligent misrepresentation, a plaintiff must make a prima facie showing of the following:

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.

Langevin v. Allstate Ins. Co., 2013 ME 55, 66 A.3d 585, 590; citing St. Louis v. Wilkinson Law Offices, P.C., 2012 ME 116, 118, 55 A.3d 443; see Chapman v. Rideout,

568 A.2d 829, 830 (Me.1990) (adopting the definition articulated in the Restatement (Second) of Torts § 552(1) (1977)). A review of the affidavits indicates there are material facts in dispute about whether the business card indicating the Defendant was insured was either supplied by the Defendant to the Plaintiff or whether he should have been aware it was being supplied. While it is the law that absent exceptional circumstances, an agent may not be personally responsible for negligent misrepresentations, given the court's reasoning below, there are facts in dispute regarding whether this was an innocent misstatement or otherwise. Accordingly, the Motion for Summary Judgment is denied.

b. Amendment

A party may amend a pleading once prior to the filing of a response, within 20 days of the initial filing, or "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." M.R. Civ. P. 15(a). Plaintiff would like to amend the pleadings in order to pierce the corporate veil of Southern Maine Home Inspections, LLC and allege fraud against Defendant Roberts.

A person is liable for fraud if the person (1) makes a false representation (2) of a material fact (3) with knowledge of its falsity or in reckless disregard of whether it is true or false (4) for the purpose of inducing another to act or to refrain from acting in reliance on it, and (5) the other person justifiably relies on the representation as true and acts upon it to the damage of the plaintiff.

Grover v. Minette-Mills, Inc., 638 A.2d 712, 716 (Me. 1994). Plaintiff alleges that Defendant Roberts fraudulently misrepresented that his company was insured, for the purpose of inducing Plaintiff to hire him, that Plaintiff hired him in reliance on the company being insured and his failure to be insured is now to her detriment. Plaintiff argues that she should be able to amend the pleading and attempt to pierce the corporate veil in order to hold Defendant Roberts liable as the sole owner of Southern Maine Home Inspections, LLC, because he fraudulently misrepresented that the company was insured. Plaintiff alleges that because she only recently learned that Southern Maine Home Inspections, LLC, was not insured the court should allow amendment of the pleadings now, at the summary judgment stage, in order to assert this claim.

A review of the Plaintiff's Second Affidavit indicates that there are material facts in dispute about whether the business card in question was directly supplied to the Plaintiff by the Defendant given the Plaintiff recalls it being stapled to his report. Further, there appear to be facts alleged which concern the issue of failure to correct a misstatement of fact even if the card was not given directly to the Plaintiff from the Defendant.

Accordingly, the court grants the Plaintiff's Motion to Amend the Complaint.

IV. Conclusion

The court DENIES Defendant Roberts' Motion for Summary Judgment and GRANTS Plaintiff's Motion to Amend.

DATE: 10/15/13



/s/ John H. O'Neil

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