

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

JASON AND DOMONIE BOCHNIAK,	)	
jointly and severally,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. N10C-12-245 EMD
	)	
BLENHEIM AT BAY POINTE, LLC,	)	
	)	
Defendant.	)	

**ORDER DENYING DEFENDANT BLENHEIM’S MOTION FOR SUMMARY  
JUDGMENT**

Upon consideration of the Motion for Summary Judgment (the “Motion”) filed by Defendant Blenheim at Bay Pointe, LLC (“Blenheim”); the response to the Motion filed by Plaintiffs Jason and Domonie Bochniak; the record before the Court; for the reasons set forth on the record at the pretrial conference held on February 27, 2013; and for the reasons which follow,

**IT IS FOUND AND DETERMINED** that:

1. In an Opinion issued on May 31, 2011, the Court declined to find that an arbitration provision contained in the Home Buyer’s Warranty was applicable and a basis for dismissal of the Bochniaks’ Complaint because the Bochniaks presented a colorable argument that the Home Buyer’s Warranty is unconscionable. The Court determined that further factual development was necessary on the validity of the arbitration provision and whether the Home Buyer’s Warranty provided the Bochniaks an exclusive remedy. In its holding, the Court also considered that the question of whether a contract or a contractual provision is unconscionable is ordinarily one for a trier of fact. Neither party has since presented evidence relating to the unconscionability of the Home Buyer’s Warranty to the

Court. Therefore, a genuine issue of material fact remains as to whether the Home Buyer's Warranty executed by the parties was unconscionable in whole or in part.

2. The Bochniaks allege that Blenheim committed fraudulent misrepresentation, fraudulent concealment, and consumer fraud with respect to the quality of Blenheim's workmanship and whether it corrected defects. The Bochniaks filed their Complaint five years and seven months after Blenheim conducted a one-year post-closing inspection of the Bochniaks' home. Because the Agreement of Sale was executed under seal, it is subject to a twenty-year statute of limitations.<sup>1</sup> The Home Buyer's Warranty was not executed under seal and is subject to the three-year statute of limitations for contracts.<sup>2</sup> Since the Bochniaks' allegations of fraudulent misrepresentation, fraudulent concealment, and consumer fraud remain unresolved, a genuine issue of material fact exists as to whether the three-year statute of limitations applicable to claims arising from the Home Buyer's Warranty was tolled by the discovery rule;<sup>3</sup> and

3. Based upon the Affidavit of Jason E. Bochniak,<sup>4</sup> Mr. Bochniak notified Blenheim of various defects, and Blenheim, in response, attempted to repair the defects and provided assurances that the defects were cured. The Limited Warranty, Representations and Disclaimer and the Home Buyer's Warranty call for the Bochniaks to submit complaints of defects to Blenheim in writing. Blenheim contends that summary judgment is appropriate because Blenheim did not receive written complaints from the Bochniaks until January 31, 2010. However, a genuine issue of material fact exists as to

---

<sup>1</sup> *Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 14 (Del. 2009).

<sup>2</sup> 10 *Del. C.* § 8106 (2012).

<sup>3</sup> A statute of limitations is tolled until the time of discovery where fraudulent concealment occurs and prevents a plaintiff from discovering his cause of action by reasonable diligence. *DiBiase v. A & D, Inc.*, 351 A.2d 865, 868 (Del. 1976). Fraudulent concealment requires an affirmative act or misrepresentation on the part of the defendant to put the plaintiff off the trail of discovery. *Id.*; *Halpern v. Barran*, 313 A.3d 139, 143 (Del. Ch. 1973).

<sup>4</sup> Pls.' Resp. to Def.'s Mot. for Summary J. Ex. A.

whether Blenheim acquiesced in deviating from the terms of the Limited Warranty, Representations and Disclaimer and the Home Buyer's Warranty by making repairs and providing assurances in response to the Bochniaks' oral complaints of defects.

4. The Court therefore has determined that genuine issues as to material facts exist and that Blenheim is not otherwise entitled to judgment as a matter of law.

**IT IS SO ORDERED** that, for the reasons set forth in this Order and on the record at the February 27, 2013 pretrial conference, the Motion is **DENIED**.

Dated: February 28, 2013  
Wilmington, Delaware

*/s/ Eric M. Davis*

Eric M. Davis  
Judge