

SUPERIOR COURT
of the
State of Delaware

William L. Witham, Jr.
Resident Judge

Kent County Courthouse
38 The Green
Dover, Delaware 19901
Telephone (302) 739-5332

October 1, 2010

William W. Pepper, Sr., Esquire
Schmittinger and Rodriguez, P.A.
P.O. Box 497
Dover, Delaware 19903-0497

Kashif I. Chowdhry, Esquire
Parkowski Guerke & Swayze, P.A.
115 West Water Street
Dover, Delaware 19901

Re: *Yencer Builders, Inc. v. John A. Fabi, Jr. & Jean Fabi*
C.A. No. 10C-03-053 WLW
Letter Order Upon Defendants' Motion to Dismiss

Dear Counsel:

Defendants John and Jean Fabi ("the Fabis") filed a Motion to Dismiss on June 11, 2010. Plaintiff Yencer Builders, Inc. ("Yencer") filed a response on July 12, 2010. Based upon the reasons set forth below, the Fabis' motion must be denied.

FACTS

On or about March 31, 2010, Yencer filed a Complaint alleging that the Fabis made certain misrepresentations regarding the suitability of certain land for a full depth LPP septic system. The alleged misrepresentations were made during the course of a real estate transaction, wherein Yencer purchased the relevant real estate

from the Fabis. The parties confirmed the sale via two agreements of sale, one for each lot.

Standard of Review

The Court's standard of review on a motion to dismiss is well-settled. When deciding a motion to dismiss, all factual allegations in the complaint are accepted as true.¹ If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.² That is, a motion to dismiss is decided on "whether a plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint."³ Consequently, dismissal will only be warranted when "under no reasonable interpretation of the facts could the complaint state a claim for which relief might be granted."⁴

The Fabis' Arguments

The Fabis maintain that Yencer's allegations cannot be proven because evidence, other than the precise language of the two sales agreements, is barred by the parole evidence rule. The Fabis further contend that Yencer's claims are barred by the applicable three year statute of limitations. The Fabis note that the agreements were executed in late 2005 and early 2006, respectively. Yencer's Complaint, however, was filed in March of 2010.

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Id.*

³ *Id.*

⁴ *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super.).

Yencer's Arguments

Yencer contends that parole evidence is admissible in the case *sub judice* under the fraud exception to the parole evidence rule. Yencer further asserts that its Complaint is not barred by the statute of limitations because the time did not begin to run until the misrepresentations were discovered. Yencer discovered that the lots were not suitable for the system in April 2007. Yencer therefore maintains that the statute of limitations did not run until April 2010.

Discussion

The general rule is that courts interpreting an integrated contract should not consider prior or contemporaneous communications that are not within the four corners of the document.⁵ However, there are exceptions. The exception most relevant to this case is implicated when a party claims that he has been fraudulently induced into entering a contract.⁶ The reason for the exception is apparent. It would be impossible to evaluate the merits of a fraud claim without examining the allegedly fraudulent behavior.

In this case, Yencer has alleged that the Fabis knowingly misrepresented the suitability of the lots in question for full depth LPP systems. Consequently, the exception to the parole evidence rule applies, and Yencer is permitted to introduce extrinsic evidence to support its allegations.

The applicable statute of limitations here is set forth in 10 *Del. C.* § 8106 ("Section 8106"). Section 8106 provides that no action shall be brought "after the expiration of 3 years from the accruing of the cause of . . . action."⁷ The parties do not dispute that the relevant statute of limitations is Section 8106's three year period. The question for the Court, therefore, is when the period began to run.

⁵ *Id.* (citing *Seidensticker v. Gasparilla Inn, Inc.*, 2007 WL 4054473, at *1 (Del. Ch.)).

⁶ *Anglin v. Bergold*, 1989 WL 88625, at *2 (Del. Supr.).

⁷ 10 *Del. C.* § 8106.

In *Boerger v. Heiman*, the Delaware Supreme Court reiterated the so-called “time of discovery” rule.⁸ The *Boerger* Court noted,

Generally, a cause of action in tort “accrues” at the time the tort is committed . . . Ignorance of the cause of action will not toll the statute [of limitations], absent concealment or fraud, or unless the injury is inherently unknowable and the claimant is blamelessly ignorant of the wrongful act In the latter circumstance, the statute of limitations begins to run upon the discovery of facts “constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery” of such facts.⁹

Yencer maintains that it had no reason to know that the lots purchased were not suitable for a full depth LPP system until April 2007. Specifically, Yencer asserts that the Fabis provided it with documentation from the Department of Natural Resources and Environmental Control indicating that a full depth LPP system was approved for the lots in question.

As noted above, the standard on a motion to dismiss is simply “whether a plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint.”¹⁰ Accepting all factual allegations in the Complaint as true, the Court concludes that dismissal is not appropriate at this stage in the proceedings. It is conceivable that the Fabis’ alleged misrepresentations made it unreasonable for Yencer to second guess or reconfirm the conclusions of the Department of Natural Resources and Environmental Control, thereby essentially concealing the injury until April 2007.

⁸ 965 A.2d 671, 674-75 (Del. 2009).

⁹ *Id.* (emphasis in original) (citing *Coleman v. Pricewaterhousecoopers, LLC*, 854 A.2d 838, 842 (Del. 2004).

¹⁰ *Id.*

CONCLUSION

For the foregoing reasons, the Fabis' Motion to Dismiss is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Counsel