

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

HELKA HEDENBERG, :  
 : C.A. No. 04C-05-035 HDR  
Plaintiff, :  
 :  
v. :  
 :  
TROY D. RABER, BETHANY M. :  
RABER, LISA M. ANDERSON, :  
ESQUIRE, JOE WELLS, AND :  
HARRINGTON ERA REALTY, INC.:  
 :  
Defendants. :

Oral Argument Heard: August 20, 2004  
Decided: August 20, 2004  
Order Issued: August 24, 2004

Upon Defendants' Motions to Dismiss. Denied.

Helka Hedenberg, *pro se*.

A. Dean Betts, Esquire of Betts & Betts, P.A., Georgetown, Delaware; attorneys for Defendants Raber.

Paul Cottrell, Esquire of Tighe Cottrell & Logan, P.A., Wilmington, Delaware; attorneys for Defendant Lisa M. Anderson, Esquire.

C, Scott Reese, Esquire and Noriss E. Cosgrove, Esquire of Cooch and Taylor, Wilmington, Delaware; attorneys for Joe Wells and Harrington ERA Realty, Inc.

WITHAM, J.

Before the Court are three motions to dismiss filed by Defendants Lisa M. Anderson, Joe Wells on behalf of Harrington Realty, Inc., and Troy D. and Bethany M. Raber,<sup>1</sup> respectively. In the first motion, Anderson claims the Plaintiff Helka Hedenberg has failed to state a claim and has filed a vague complaint, and thus moves to dismiss or for a more definite statement under Superior Court Civil Rules 12(b)(6) and 12(e). In the second, the Rabers seek dismissal under the same rules. Finally, Wells moves to dismiss under Rule 12(b)(6) and the particularity requirements of Rule 9(b).

Because the proper remedy for a vague complaint is amendment, not dismissal, the Court denies Anderson, Wells and the Rabers' motions to dismiss and grants their requests for a more definite statement.

I.

Hedenberg purchased a home in early 2004 from the Rabers, who were represented by Wells, a real estate broker, and Anderson, an attorney. Through an April 2004 disclosure statement, Hedenberg alleges that all Defendants lied or failed to disclose various defects in the property. Thereafter, Hedenberg filed an action in this Court, asserting in Count One a claim of fraud under "Delaware Law Chapter 25, Title 6." In Count Three, she claims a "Violation of Contract Privity." There is no second count. Defendants now move to dismiss the complaint, claiming it fails to state a claim, pleads without particularity, and is too vague to frame a response.

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<sup>1</sup> Bethany Raber is variously referred to as "Bethany Lewallan" throughout the motion papers.

II.

A Rule 12(b)(6) motion to dismiss requires the Court to determine whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible to proof under the complaint.<sup>2</sup> Dismissal is warranted where the plaintiff has failed to plead facts supporting an element of the claim, or that under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.<sup>3</sup> Although the trial court need not “accept every strained interpretation of the allegations[,]” a plaintiff is “entitled to all reasonable inferences that logically flow from the face of the complaint.”<sup>4</sup> Thus, vagueness and lack of detail alone provide insufficient grounds for dismissal.<sup>5</sup> If a pleading is “so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading,”<sup>6</sup> a motion for a more definite statement under Rule 12(e) is appropriate.

Rule 9(b) requires all pleadings in fraud and negligence to state the factual circumstances surrounding such claims with particularity.<sup>7</sup> In the fraud context, a plaintiff must refer to the time, place, and contents of the false representations, as well

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<sup>2</sup> *Evans v. Perillo*, 2000 Del. Super. LEXIS 243, at \*5-6.

<sup>3</sup> *Id.*

<sup>4</sup> *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

<sup>5</sup> *Evans*, 2000 Del. Super. LEXIS 243, at \*6.

<sup>6</sup> SUPER CT. CIV. R. 12(e).

<sup>7</sup> SUPER. CT. CIV. R. 9(b).

as the identity of and benefit to the person making the alleged misrepresentations.<sup>8</sup> To sufficiently plead negligence, a defendant must be apprised of what duty was breached, who breached it, the breaching act, and the party upon whom the act was performed.<sup>9</sup>

### III.

Initially, the Court must note that Hedenberg is represented by counsel neither admitted to this state's bar, nor before the Court *pro hac vice*. When these motions were before then-President Judge Ridgely in July, he continued the motions to permit Hedenberg to obtain local counsel. However, Hedenberg's attorney again failed to appear before this Court for the present motions and has not been admitted *pro hac vice* at this time.<sup>10</sup>

As to attorney Anderson, the Complaint fails to clearly establish an action for negligence. In it, Hedenberg contends:

The Contract was drafted and executed without benefit of an attorney who represented Plaintiff. The note prepared by Lisa M. Anderson, Esquire, and signed by the Plaintiff clearly benefits sellers. Plaintiff's attorney does business on a regular basis with Sellers' Broker. Plaintiff's attorney was negligent at closing [sic] for not protecting Plaintiff from the negligent acts of the broker, agent, title company[,]

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<sup>8</sup> *Nutt v. A.C. & S., Inc.*, 466 A.2d 18 (Del. Super. Ct. 1983); *see also Autrey v. Chemtrust Industries Corp.*, 362 F.Supp. 1085, 1092, 1093 (D. Del. 1973).

<sup>9</sup> *Myer v. Dyer*, 542 A.2d 802 (Del. Super. Ct. 1987).

<sup>10</sup> Hedenberg explained that her attorney was in four trials today and was unable to travel for this motion. However, the attorney failed to contact this Court on his own.

and the appraiser.<sup>11</sup>

This language fails to state a claim of negligence with particularity. However, a motion to dismiss is not the proper remedy at this point. Rather, the Court will give Hedenberg an opportunity to clarify her complaint.

The Rabers move to dismiss on similar grounds, but include several documents and an affidavit purportedly disproving each of Hedenberg's allegations of defect. Accordingly, the Rabers seek, in the alternative, summary judgment under Rule 56. Specifically, the Rabers argue that each of Hedenberg's allegations are disproved by their affidavits and documents. The Court, however, has discretion under Rule 12(b) in deciding whether to accept extrinsic materials.<sup>12</sup> Given that the Rabers have submitted a number of photocopied documents, supported only by their own affidavit, the Court will not consider the affidavits and exhibits. Accordingly, the Court will consider each of the motions as motions to dismiss.

Addressing Wells and the Rabers' insufficiency contentions, while vague, Hedenberg nonetheless delineates specific instances of fraud. She does not indicate the time the allegedly fraudulent statements were made with particularity. One allegation, detailing a violation of a consumer protection statute, is not identified. She also fails to note which section of Title 25 the defendants breached. Given the present state of the complaint, the defendants cannot "reasonably be required to frame

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<sup>11</sup> Pl. Compl. ¶ 9, at 4.

<sup>12</sup> SUPER. CT. CIV. R. 12(b) (noting that where "matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment.").

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a responsive pleading” as contemplated in Rule 12(e). The Court therefore will decline to strike the pleading and grants Wells’ and the Rabers’ motion for a more definite statement.<sup>13</sup>

IV.

As to the Rabers, the Court, in the exercise of its discretion, declines to credit the extrinsic documents, and denies summary judgment as contemplated by the transfer provisions of Rule 12(b). Similarly, because the parties cannot reasonably be expected to answer the Complaint in its current state, the Court will deny the motions to dismiss filed by Anderson, the Rabers and Wells, and grants their motions for a more definite statement under Rule 12(e). Thus, Hedenberg is required to obtain new counsel and/or file an amended complaint alleging her cause of action against the parties by way of a more definite statement under Rule 12(e) on or before November 22, 2004.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

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<sup>13</sup> See *Davidson v. Kalmbacher*, 74 A.2d 821 (Del. Super. Ct. 1950) (holding that motion for more definite statement is proper where allegations are so ambiguous that a party cannot adequately frame a response).