

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

**ERIKA GUTRIDGE,** )  
Plaintiff, )

v. )

C.A. No. 03C-06-052 PLA

**JOHN IFFLAND and** )  
**CAROL SZUIELSKI** )  
Defendants. )

Submitted: May 31, 2005  
Decided: June 1, 2005

UPON DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
**GRANTED**

David A. Jenkins, Esquire, Smith Katzenstein & Furlow LLP, Wilmington, Delaware, Attorney for Plaintiff.

Neil R. Lapinski, Esquire, Swartz Campbell LLC, Wilmington, Delaware, Attorney for Defendant.

ABLEMAN, JUDGE

## ORDER

Defendant's Motion For Summary Judgment is hereby **GRANTED**. It appears to the Court that:

1. Plaintiff Erika Gutridge purchased a home from Defendants John Iffland and Carol Szubielski. The sale contract included a standard disclosure form that required Defendants to acknowledge any known problems with the house before the sale. Iffland falsely represented that Defendants knew of no problems with the house's roof and electrical system. In fact, the house's roof had been leaking during the relevant period, and fuses would repeatedly blow out, causing Iffland to ask a friend to make some electrical repairs.
2. As is required by FHA, Plaintiff engaged a home inspector to examine the house before she entered the sales contract. Plaintiff's inspector discovered the roofing and electricity problems, as well other plumbing, heating, and structural problems. Plaintiff demanded that Defendants hire licensed contractors to inspect and, where necessary, correct these problems as a condition of sale. Defendants agreed in a written addendum to the sale contract.<sup>1</sup> Defendants then contracted the repairs and inspections, and provided Plaintiff with receipts for the work done.
3. Plaintiff completed the sale and took possession of the house, only to find that some of the repairs were unsatisfactory. While the majority of the roof was

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<sup>1</sup> Def. Mot. For Summ. J., Ex. C.

repaired, a leak remained over the kitchen. The contracted roofer subsequently repaired this problem, seemingly at no cost. Plaintiff claims that the electrical repairs were ineffectual and that those problems remain. However, if this allegation is true, it seems that work is also still under warranty. Plaintiff also discovered a leak in the house's oil tank and corrosion on its gas line, the latter of which was ultimately condemned by Connective. Plaintiff does not dispute, however, that a qualified contractor certified the heating system as properly operating on the date of sale.

4. The standard for summary judgment is, taking all the facts in a light most favorable to the non-moving party, whether there is a genuine issue of material fact requiring a trial.<sup>2</sup> Plaintiff cannot meet this minimal burden.

5. This is a simple case about Defendants' contractual obligation. Specifically, what performance was required of Defendants under the addendum to the sales contract? To answer this question, one must look to the text of the agreement. That addendum lists six obligations for Defendants in order to complete the contract. Obligation Three is indicative:

Qualified heating contractor to evaluate boiler and replace if necessary to certify functioning properly.<sup>3</sup>

Similar conditions applied to the roof, plumbing, and electricity.

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<sup>2</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

<sup>3</sup> Def. Mot. For Summ. J., Ex. C.

The addendum only required Defendants to procure “qualified,” and in some cases “licensed,” contractors to perform repairs. Nothing in the words of the addendum required Defendants to warranty the work performed by those contractors. This makes sense because the repairs came at the behest of Plaintiff’s inspector. Plaintiff was therefore in just as good a position as Defendants, if not better, to ensure that the work performed met minimum specifications by, for example, having her inspector sign off on the work before she took possession. Moreover, since Defendants were imminently surrendering the house to Plaintiff, she was clearly the intended beneficiary of the repairs, and therefore had a breach of warranty claim directly against the contractors if the work performed was deficient. At least one contractor, the roofer, acknowledged this and made touch-up repairs for free.<sup>4</sup> There was simply no reason for Defendants to take up the burden of guaranteeing the contractor’s work, and the text does not say that they did so. In short, the sale contract does not support Plaintiff’s claim.

6. Plaintiff also complains of other problems with the house, such as the gas line, the oil tank, a sewer clog, and a leaky bathtub. The record offers no evidence that Defendants knew of these problems before the sale, despite the fact that Defendants have already been deposed and subjected to cross-examination, and that they admitted misrepresenting the condition of the roof and electrical system.

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<sup>4</sup> Pl. Opp. To Def. Mot. For Summ. J. Ex. E.

The sewer clog and leaky bathtub occurred after Plaintiff took possession of the house, are readily explained by a clogged toilet, and were quickly and easily fixed. While Plaintiff claims that the oil tank problem was evident due to a strong odor of oil, neither her inspector nor the qualified heating contractor reported any such concern. Plaintiff's complaints regarding these other problems are nothing more than naked allegations devoid of record support.

7. Plaintiff's complaint regarding the roofing, heating, and electrical problems fails because (a) Defendants had no duty to warranty those repairs, (b) Plaintiff's failure to inspect the repairs preclude reasonable reliance, and (c) because Plaintiff has a warranty claim against the contractors, some of whom have already acknowledged and corrected their mistakes, Plaintiff has suffered no real damages. Plaintiff's complaint about other problems fails because nothing in the record indicates that Defendants knew of the problems before the sale, or even that the problems actually occurred before Plaintiff took possession. For these reasons, Defendants' Motion For Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Original to Prothonotary – Civil

**cc:** David A. Jenkins, Esquire  
Neil R. Lapinski, Esquire