

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-------------------------------|---|--------------------------|
| SUNRISE VENTURES, LLC, | § | |
| DISABATINO VENTURES, LLC, | § | No. 169, 2010 |
| and LAWRENCE J. DISABATINO, | § | |
| | § | |
| Plaintiffs Below, | § | |
| Appellants, | § | Court Below: |
| | § | |
| v. | § | Court of Chancery of the |
| | § | State of Delaware |
| REHOBOTH CANAL VENTURES, | § | |
| LLC; VENTURES II, LLC; ROXY'S | § | C.A. No. 4119 (VCS) |
| REAL ESTATE, LLC; JAMES J. | § | |
| KIERNAN; VERONICA T. | § | |
| KIERNAN; RONALD T. MOORE | § | |
| BUSINESS TRUST; 1B | § | |
| VENTURES, L.L.C.; HOUSTON | § | |
| VENTURES and RONALD T. | § | |
| MOORE, | § | |
| | § | |
| Defendants Below, | § | |
| Appellees. | § | |

Submitted: September 15, 2010

Decided: November 1, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 1st day of November, 2010, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Lawrence J. DiSabatino and related entities (collectively DiSabatino) appeal from the Court of Chancery's decision dismissing their complaint against James J. Kiernan, Ronald T. Moore, and related entities.

2) The parties' dispute concerns a parcel of land in Rehoboth Beach (the Brown Parcel) that DiSabatino acquired from Kiernan and Moore in two transactions consummated in 2004 and 2006. Kiernan and Moore never alerted DiSabatino that a Phase One environmental study, completed in 2002, revealed serious environmental contamination on the Brown Parcel. The 2004 Agreement did provide that the sellers would transfer to DiSabatino all studies, including the Phase One environmental study. But, DiSabatino never asked for the study, and he did not conduct any environmental studies or property inspections of his own. As a result, it was not until 2007, during site development, that DiSabatino learned about the contamination.

3) In October 2008 he filed this suit. The Amended Complaint seeks rescission of the 2004 and 2006 transactions, and other relief, for alleged breaches of fiduciary duty, breach of contract, negligent misconduct, and equitable fraud. In addition, the complaint seeks indemnification under the terms of certain loan agreements guaranteed by Kiernan, Moore, and related entities.

3) The Court of Chancery dismissed the complaint on several grounds. The trial court found that DiSabatino was on inquiry notice of the environmental contamination in 2004, at the time he was negotiating the 2004 Agreement. As a result, the court held that his equitable claims were barred by laches. The trial court also dismissed DiSabatino's legal claims, which were based on the loan agreements,

for failure to state a claim. Lastly, the trial court allowed DiSabatino to transfer two of the legal claims to the Superior Court and replead.¹

4) Although we do not necessarily agree that there is a sufficient record to decide DiSabatino's fraudulent concealment and joint venture claims, we are satisfied that the Court of Chancery correctly determined that the claims either were time-barred or that the complaint failed to state a cognizable claim. Accordingly, we affirm on the basis of the Court of Chancery's January 27, 2010 Memorandum Opinion and its March 4, 2010 Letter Decision denying reargument.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹DiSabatino argues that the trial court lacked authority to dismiss the legal claims, as it had divested itself of jurisdiction before considering the merits. It would have been preferable for the court to structure its decision to avoid this issue. But DiSabatino's argument lacks merit. The trial court, in essence, retained jurisdiction of those legal claims that were dismissed with prejudice, and declined to exercise jurisdiction over the two claims that were dismissed without prejudice.