

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

GREENCORT CONDOMINIUM ASSOCIATION,	:	January Term 2004
	:	
Plaintiff,	:	No. 004045
v.	:	
GREENCOURT PARTNERS, CHRISTOPHER J. CLARK, LAMAR KILGORE, RICHARD L. CANTORE, JEROME MILLER, PAUL E. OBERKIRCHER, CHARLES G. ROACH, ROBERT ROACH, JOHN C. SNYDER, ROBERT J. TARLECKY, LENTZ, CANTOR & MASSEY, LTD, HISTORICAL PROPERTIES, INC., FOX & ROACH, L.P., KISE, STRAW & KOLONDER, INC.,	:	COMMERCE PROGRAM Control Numbers 060619, 060683, 060885, 060856, 073682, 074067, 080809.
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 22nd day of December, 2004, upon consideration of the Preliminary Objections of Defendant Kise, Straw & Kolonder's (cn 074067¹ and 080809), Defendants Fox & Roach, L.P. d/b/a F. Linda Schaal (cn 060683), Defendants R. Lamar Kilgore and John C. Snyder (cn 060856), Defendants Paul Oberkircher and the Estate of Robert Roach (cn 073682), Defendants Greencort Partners and Christopher J. Clark (cn 060619) and Defendant Estate of Charles Roach (cn 060885), all responses in opposition, memoranda, all matters of record and in accord with the Memorandum Opinion being contemporaneously filed of record, it hereby is **ORDERED** and **DECREED** that

1. The Preliminary Objections of Kise, Straw & Kolander, Inc. (cn 080809) are **Sustained** and the complaint is dismissed against this defendant only.

¹ This set of preliminary objections filed by KSK became moot with the filing by KSK of amended preliminary objections cn 080809.

2. The Preliminary Objections of Defendants R. Lamar Kilgore and John C. Snyder (cn 060856), Greencort Partners and Christopher J. Clark (cn 060619), Paul Oberkircher and the Estate of Robert Roach (cn 073682) and the Estate of Charles Roach (cn 060885) are **Sustained** and Count IV is stricken.
3. The Preliminary Objections of Defendants Fox & Roach d/b/a Prudential Fox & Roach and Linda Schaal are **Sustained** and Count IX-A is stricken.

The defendants are ordered to file an answer to the remaining averments within twenty days.

BY THE COURT,

GENE D. COHEN, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

GREENCORT CONDOMINIUM ASSOCIATION,	:	January Term 2004
	:	
Plaintiff,	:	No. 004045
v.	:	
GREENCOURT PARTNERS, CHRISTOPHER J. CLARK, LAMAR KILGORE, RICHARD L. CANTORE, JEROME MILLER, PAUL E. OBERKIRCHER, CHARLES G. ROACH, ROBERT ROACH, JOHN C. SNYDER, ROBERT J. TARLECKY, LENTZ, CANTOR & MASSEY, LTD, HISTORICAL PROPERTIES, INC., FOX & ROACH, L.P., KISE, STRAW & KOLONDER, INC.,	:	COMMERCE PROGRAM Control Numbers 060619, 060683, 060885, 060856, 073682, 074067, 080809.
Defendants.	:	

MEMORANDUM OPINION

COHEN, J.

Presently before the court is the second wave of preliminary objections. This matter arises from the sale of condominium units to individual unit owners. Plaintiff Greencort Condominium Association instituted suit against defendants alleging numerous causes of action including but not limited to breach of fiduciary duty, fraud, negligent misrepresentation, violation of the Unfair Trade Practices Consumer Protection Law (“UTPCPL”) and conspiracy. In response, defendants Kise, Straw & Kolonder, Inc. and Fox & Roach d/b/a Prudential Fox and Roach and Linda Schaal filed preliminary objections. The court sustained the preliminary objections and granted the plaintiff leave to amend the fraud and conspiracy counts and dismissed the claims under the UTPCPL. The defendants have now filed preliminary objections to plaintiff’s amended complaint.

A. The Preliminary Objections of Kise, Straw & Kolonder, Inc. (cn 074067) are Sustained.

Kise Straw & Kolonder (“KSK”) is a licensed architectural and engineering firm which was allegedly retained by Defendant Greencort Partners to prepare a Condition Report for Greencort Condominium as required by the Uniform Condominium Act, 68 Pa. C. S. § 3101 *et. seq.*

Plaintiff alleges that KSK did not exercise reasonable competence in obtaining or communicating information about the condition of the building and its financial implications and also alleges liability under the Pennsylvania Uniform Condominium Act, In Count X-A of the amended complaint plaintiff purports to state a claim under § 552 of the Restatement (Second) of Torts, Information Negligently Supplied for the Guidance of Others.² In David Pflumm Paving & Excavating, Inc. v. Found. Servs. Co., 816 A.2d 1164, 1186 (Pa. Super. 2003), the Superior Court held that the economic loss doctrine barred recovery in an action brought pursuant to § 552 of the Restatement (Second) of Torts where the misrepresentation results in solely economic loss. Id.

A review of the allegations contained within the amended complaint demonstrates that plaintiff is solely seeking an economic recovery. Based on the foregoing, plaintiff’s claim for negligent misrepresentation (Count X-A) is barred by the economic loss doctrine and Defendant KSK’s preliminary objection to Count X-A is Sustained.

Plaintiff also purports to state a claim against KSK for aiding and abetting violations of the Pennsylvania Uniform Condominium Act in Count X-B. KSK maintains that the

² In Count X-A of the amended complaint, plaintiff identifies said count as fraud, misrepresentation and nondisclosure. In its memorandum of law in opposition to defendant KSK’s preliminary objections, plaintiff specifically states that it is not making a claim for fraud or intentional misrepresentation but rather is stating a claim for negligent misrepresentation.

duties regarding the condition statement apply to the declarant and not to KSK and therefore Count X-B should be stricken. The court agrees.

The drafters of the Pennsylvania Uniform Condominium Act did not intend to impose liability upon an independent registered architect, like KSK, who provides a report to the declarant pursuant to 68 Pa. C.S.A. § 3404. Section 3404 (a)(1) unambiguously states that the declarant has the duty to provide a statement concerning the condition of the buildings. Although the declarant's statement concerning the condition of the building is based on a report prepared by an independent registered architect or professional engineer, it is the declarant who bears the ultimate burden under § 3404 (a)(1) to provide the information to the purchaser. Thus, the buyers' recourse lies directly against the declarant. Based on the foregoing Count X-B is stricken and KSK is dismissed as a defendant.³

B. The Preliminary Objections of R. Lamar Kilgore and John C. Snyder (cn 060856), Greencort Partners and Christopher J. Clark (cn 060619), Paul Oberkircher and the Estate of Robert Roach (cn 073682) and the Estate of Charles Roach (cn 060885) are Sustained.

Greencort Partners, a general partnership, was the sole unit owner of Greencort Condominium which operated as a multi-family rental community from December 1986 to sometime in 2001. (Amended Complaint ¶¶ 13, 17). Plaintiff alleges that from the time the Declaration was recorded until 2002, Greencort Partners exploited the condominium for its profit potential as a rental property, deferred maintenance and allowed the condominium to deteriorate, commingled the funds and affairs of the Association and itself, failed to maintain records for the Association and failed to organize and administer the Association as required by the Act, bylaws and Declaration.

³ KSK's remaining preliminary objections are moot.

(Amended Complaint ¶ 18-21). Plaintiff also alleges that in 2000, Greencort Partners prepared and distributed a Public Offering Statement which contained false statements concerning among other things the condition of the property as well as the budget and financial condition of the Association. (Amended Complaint ¶ 27). According to the amended complaint, Christopher J. Clark, R. Lamar Kilgore, John C. Snyder, Paul E. Oberkircher and the Estates of Robert Roach and Charles Roach. (Id. ¶ 4).

Defendants Greencort Partners, Christopher J. Clark, R. Lamar Kilgore, John C. Snyder, Paul Oberkircher and the Estates of Robert Roach and Charles Roach have now filed preliminary objections to the amended complaint seeking to dismiss Count IV alleging fraud and misrepresentation and Count XI alleging violations of the Unfair Trade and Consumer Protection Law (“UTPCPL”). Defendants’ preliminary objections are sustained.

With respect to the fraud claim defendants argue that plaintiff’s amended complaint fails to comply with the pleading requirements for fraud. In order to maintain a cause of action for fraud, a plaintiff must allege the following elements: (1) a representation; (2) which is material to the transaction; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by reliance. Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999). Absent from the amended complaint are any allegations that plaintiff materially relied on the misrepresentations contained within the Public Offering Statement. Based on the foregoing, defendants preliminary objections with respect to Count IV is Sustained. With respect Count XI alleging violations of the UTPCPL, the

court relies upon its Order and Memorandum Opinion issued on April 30, 2004 to Sustain defendants preliminary objections.

C. The Preliminary Objections of Defendants Fox & Roach, L.P. d/b/a Linda Schaal (cn 060683) are Sustained.

Plaintiff alleges claims of fraud and misrepresentation (Count IX-A) and negligent misrepresentation (Count IX-B) against Fox & Roach d/b/a Prudential Fox & Roach and Linda Schaal an agent and employee of Prudential Fox & Roach, L.P. (Amended Complaint ¶¶ 9-10). Similar to the fraud and misrepresentation claim found in Count IV of the amended complaint, absent from Count IX-A are any allegations of reliance. Based on the foregoing, defendants' preliminary objection with respect to Count IX-A is Sustained.⁴

Defendants' preliminary objection with respect to Count IX-B-negligent misrepresentation is also Sustained. As discussed supra, since plaintiff is only seeking economic damages, its claim for negligent misrepresentation is barred by the economic loss doctrine. Accordingly, defendants' preliminary objection is Sustained.

CONCLUSION

For the reasons discussed, the Preliminary Objections of the defendants are **Sustained**. An order consistent with this Opinion will be filed.

BY THE COURT,

GENE D. COHEN, J.

⁴ Defendants argue that Count IX-A is barred by the gist of the action doctrine. At this stage in the proceedings, the court is reluctant to consider the application of this doctrine to the case at bar since the allegations of the amended complaint fail to suggest a contract between Plaintiff Greencort Partners and defendant Linda Schaal and Prudential Fox & Roach.