

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

ALBERT FACCHIANO, JR. and JEROLD	:	OCTOBER TERM, 2009
FEINSTEIN,	:	
	:	
Plaintiffs,	:	NO. 00057
	:	
v.	:	COMMERCE PROGRAM
	:	
COMMONWEALTH LAND TITLE	:	Control Nos. 11022992, 11022994
INSURANCE CO. et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 20th day of June, 2011, upon consideration of Maria Conroy's Motion for Summary Judgment, the Redevelopment Authority of the City of Philadelphia's Motion for Summary Judgment, the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that both Motions are **GRANTED** and all remaining claims in this case are **DISMISSED**.

BY THE COURT:

ARNOLD L. NEW, J.

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	:	
	:	
Defendants.	:	

OPINION

Plaintiffs purchased four adjacent parcels of real property which they planned to develop. They purchased 808, 810, and 812 East Girard from defendant Maria Conroy on May 25, 2005 for \$187,000. They purchased 814 East Girard from defendant Redevelopment Authority of the City of Philadelphia (“RDA”) on January 26, 2007 for \$15,000. In April, 2009, plaintiffs learned title to 812 and 814 East Girard is subject to a 1966 Deed of Easement held by PennDoT, so the conveyances of those two properties by Ms. Conroy and the RDA, respectively, were not free and clear of all encumbrances.¹ Plaintiffs filed this lawsuit as a result.

In addition to suing Ms. Conroy and the RDA, plaintiffs also sued the title company which insured their title to 812 East Girard. The court granted the title company’s Motion for Summary Judgment, and the title company reimbursed plaintiffs \$65,000, which represented the

¹ There is a dispute of fact as to whether the easement affects all of 812 or only a small portion thereof. *See* Motion for Summary Judgment of Commonwealth Land Title (“Commonwealth Motion”), ¶¶ 12-16. PennDoT apparently takes the position that its easement affects the entire parcel and is tantamount to a taking of 812. *Id.* ¶ 20.

decrease in the value of 812 East Girard due to the easement.² The parties stipulated to dismissal of plaintiffs' claims against the RDA with respect to 814 East Girard in exchange for payment of \$17,500. The only claims remaining in this action are:

1. Plaintiffs' claims against Ms. Conroy for breach of contract/warranty, unjust enrichment, and rescission.
2. Ms. Conroy's cross-claims against the RDA in which she asserts "in the event that judgment is rendered against [her], [RDA is] or may be liable to [her] for all or part of the claims and causes of action asserted by plaintiffs."³

Ms. Conroy has moved for summary judgment on plaintiffs' claims against her, and the RDA has moved for summary judgment on Ms. Conroy's claims against it.

Plaintiffs' claims against Ms. Conroy must be dismissed. Ms. Conroy has not breached her contract with plaintiffs.⁴ Ms. Conroy transferred title to 812 East Girard to plaintiffs by special warranty deed. Since the evidence shows the title problems with respect to the property arose before Ms. Conroy ever purported to take title to it, she has not breached any title warranty she made to plaintiffs. Furthermore, plaintiffs have no recoverable damages on their breach of contract claim with respect to Ms. Conroy's failure to convey unencumbered title to 812 East Girard because plaintiffs have been made whole by the title company's payment of \$65,000.

² Plaintiffs provided no expert evidence regarding the decrease in the value of 812 due to PennDoT's easement. The title company produced an expert report which "accepted for purposes of valuation, PennDoT's claim to an 'effective taking' of the entirety of 812 East Girard." Commonwealth Motion, ¶ 20. The expert found that the difference in value between the three properties without the encumbrance on 812 and the value of the three properties with "the easement affecting the entirety of 812" was \$65,000, which amount the title company proffered and ultimately paid to plaintiffs. *Id.* ¶ 21.

³ Ms. Conroy purchased 812 East Girard from the RDA on September 8, 1989 for \$1.00 through the Vacant Property Gift Program. The purchase was by special warranty deed. Since PennDoT already held an easement over the property at that time, Ms. Conroy took title subject to that easement although she apparently did not know of it.

⁴ See Pittsburgh Constr. Co. v. Griffith, 834 A.2d 572, 580 (Pa. Super. 2003) ("To support a claim for breach of contract, a plaintiff must allege: 1) the existence of a contract, including its essential terms; 2) a breach of a duty imposed by the contract; and 3) resultant damage.")

There is also no equitable basis for Ms. Conroy to reimburse plaintiffs under a theory of unjust enrichment⁵ or to rescind the sale of 812 East Girard.⁶ Plaintiffs have already received reimbursement of the difference in the value between 812 unencumbered and 812 as delivered. It would be inequitable for plaintiffs to obtain a second payment from Ms. Conroy reflecting the purchase price for 812 under either a theory of unjust enrichment or rescission.⁷

In addition to seeking rescission as to 812, plaintiffs claim they should be able to rescind the sale of 808 and 810 East Girard because they cannot develop those properties as planned without unencumbered ownership of 812 and 814 East Girard. Ms. Conroy conveyed good title to 808 and 810 to plaintiffs and is not in breach of her agreement with plaintiffs as to those properties. Therefore, there is no basis for rescinding the sale of those properties.

Since all of plaintiffs' claims against Ms. Conroy must be dismissed, Ms. Conroy's contingent cross-claims against the RDA must also be dismissed. For all the foregoing reasons, both Ms. Conroy's and the RDA's Motions for Summary Judgment are granted.

BY THE COURT:

ARNOLD L. NEW, J.

⁵ See Commerce Bank v. First Union Nat'l Bank, 911 A.2d 133, 143-144 (Pa. Super. 2006) ("The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.")

⁶ See Baker v. Cambridge Chase, Inc., 725 A.2d 757, 766 (Pa. Super. 1999) ("Rescission is an equitable remedy, to be granted only where the parties to a contract can be placed in their former positions with regard to the subject matter of the contract. It is well known that the purpose of equitable rescission is to return the parties as nearly as possible to their original positions where warranted by the circumstances of the transaction.")

⁷ The title company did not assert a subrogation claim against Ms. Conroy in this action.