

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

JASON DANA, individually and derivatively	:	February Term 2017
On behalf of LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION,	:	No. 6522 (L)
	:	
Plaintiff,	:	
	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, THOMAS MARRONE, and	:	
ECHO VOLLA,	:	
	:	
Defendants.	:	

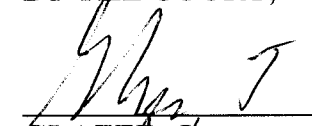
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RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
	:	
Plaintiff,	:	
	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, THOMAS MARRONE and	:	
ECHO VOLLA,	:	
	:	
Defendants.	:	Control Number 18040365

**ORDER**

**AND NOW**, this *14* day of *June*, 2018, upon consideration of Defendants Thomas Marrone and Echo Volla's Motion for Partial Summary Judgment, Plaintiff's response in opposition and the attached Opinion, it hereby is **ORDERED** that Defendants' Partial Motion for Summary Judgment is **Granted** and counts IV (fraud), V (fraud) and VI (conspiracy) are dismissed.

**BY THE COURT,**

  
\_\_\_\_\_  
GLAZER, J.

Dana Vs Lofts At 1234 C-ORDOP



**DOCKETED**

JUN - 6 2018

**R. POSTELL  
COMMERCE PROGRAM**

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ASSOCIATION, THOMAS MARRONE and	:	
ECHO VOLLA,	:	
	:	
Defendants.	:	Control Number 18040365

**OPINION**

This consolidated matter involves disputes among condominium owners and neighbors. The plaintiffs are Jason Dana (“Dana”) and Ronald Cooley (“Cooley”). The defendants are Thomas Marrone (“Marrone”) and Echo Volla (“Volla”).<sup>1</sup> Presently, Marrone and Volla filed a motion for partial summary judgment to counts IV (fraud), V (fraud) and IV (conspiracy), the remaining counts in Dana’s fourth amended complaint. For the reasons discussed below, the motion for summary judgment is granted and the remaining claims are dismissed.

On February 24, 2017, Dana commenced this action by complaint against defendants Marrone, Volla and the Lofts at 1234 Condominium Association (“Association”). Dana, individually and derivatively on behalf of the Association, filed the complaint asserting claims

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<sup>1</sup> The Lofts at 1234 Condominium Association (“Association”) was also a defendant in the respective actions but has been dismissed as a defendant by order of the court.

for intentional violations of the Pennsylvania Condominium Act (count I), breach of fiduciary duty (count II), and declaratory and equitable relief (count III).<sup>2</sup> On April 17, 2017, as a result of preliminary objections, Dana filed an amended complaint. Dana amended the complaint on three other occasions, May 18, 2017, June 28, 2017, and August 6, 2017. The last complaint, the fourth amended complaint, alleged causes of action for intentional violations of the Pennsylvania Condominium Act (count I), breach of fiduciary duty (count II), declaratory judgment and other equitable relief (count III), fraud (count IV), fraud (count V) and conspiracy (count VI). On September 5, 2017, a protective order was issued which precluded Dana from filing any further amendments to the complaint.

Defendants filed preliminary objections to the fourth amended complaint and on October 5, 2017, the court sustained in part and overruled in part preliminary objections and dismissed any claims challenging the Second and Third Amendments as barred by the statute of limitations.<sup>3</sup> The court also dismissed the claim for violations of the Condominium Act in Dana's individual capacity.<sup>4</sup> On January 29, 2018, the court granted Marrone and Volla's motion for partial summary judgment to count III (declaratory judgment and equitable relief) of Dana's fourth amended complaint thereby dismissing the count.<sup>5</sup> Thereafter, Dana filed a partial motion for summary judgment and Marrone and Volla also filed a partial motion for summary judgment which the Association joined. On April 5, 2018, the court entered two orders, 1) denying Dana's Motion for partial summary judgment as to Count III (declaratory and equitable

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<sup>2</sup> At the time Dana filed his complaint, Ronald Cooley, another unit owner and Executive Board member, filed a cause of action on April 29, 2016 captioned *Cooley v. Lofts at 1234 Condominium Association, et. al.*, 1608-3513 raising similar claims.

<sup>3</sup> See order dated October 15, 2017.

<sup>4</sup> Id.

<sup>5</sup> See order dated January 29, 2018.

relief) and 2) granting defendants Marrone and Volla's partial motion for summary judgment dismissing all derivative claims and denying Dana's request to bring an action as a guardian *ad litem* for the Association.<sup>6</sup> Remaining are Dana's individual claims for fraud against Marrone in counts IV and V and civil conspiracy against Marrone and Volla in count VI. Defendants have now filed the instant motion for summary judgment seeking to dismiss these remaining counts of the fourth amended complaint. This motion is now ripe for disposition.<sup>7</sup>

## **DISCUSSION**

### **I. The fraud claims in count IV and V are dismissed since Dana did not suffer any individual harm.**

A determination of fraud requires a finding of: 1) a misrepresentation; 2) a fraudulent utterance of it; 3) the maker's intent that the recipient be induced thereby to act; 4) the recipient's justifiable reliance on the misrepresentation; and 5) damage to the recipient proximately caused.<sup>8</sup> The plaintiff "is entitled to all pecuniary losses which result as a consequence of his reliance on the truth of the [defendant's] representations."<sup>9</sup>

Here, Dana has not suffered any individual harm as a result of the fraud alleged in counts IV and V. In count IV, Dana alleges that through the publication of the FAQ's, Marrone represented to the Association that the former Board was responsible for the failure to address "the obvious repair and maintenance matters" and not Alterra, a company owned by Leo Addimando, who was contractually charged with repairing and maintaining the real property at

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<sup>6</sup> Order dated April 5, 2018.

<sup>7</sup> This court adopts and incorporates its prior opinions issued in this matter and in the consolidated *Cooley v. The Lofts at 1234 Condominium Association, et. al.*, 1604-3513 herein.

<sup>8</sup> *Delahanty v. First Pennsylvania Bank, N.A.*, 318 Pa.Super. 90, 107, 464 A.2d 1243, 1252 (1983).

<sup>9</sup> *Delahanty, supra*, 318 Pa.Super. at 117, 464 A.2d at 1257.

Lofts.<sup>10</sup> According to Dana, Marrone refused to bring the claim against Alterra because he was acting as Addimando's lawyer or seeking Addimando as a client.<sup>11</sup> Dana alleges that as result of Marrone's conduct, he suffered individually by being forced to pay extravagant special assessments that would have been reduced if Marrone would have pursued the case against Alterra.<sup>12</sup> Having to pay extravagant special assessments does not constitute individual harm to Dana because all the Association members would be assessed in the same manner as Dana. Since Dana failed to allege any individual harm, count IV is dismissed.

Similarly, count V fails to allege any individual harm suffered by Dana. Count V alleges that Marrone engaged in fraudulent and deceptive conduct when he conveyed common elements to himself.<sup>13</sup> Notwithstanding the fact that this claim was already dismissed as barred by the statute of limitations, failure to access common elements is not individual harm to Dana but harm to the Association. Since Dana failed to allege any individual harm, the claim for fraud in count V is also dismissed.<sup>14</sup>

## **II. The claim for civil conspiracy is dismissed.**

The claim for civil conspiracy in count VI is also dismissed. Civil conspiracy occurs when two or more persons combine or agree intending to commit an unlawful act or do an otherwise lawful act by unlawful means. A plaintiff must show (1) the persons combined with a common

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<sup>10</sup> Fourth Amended Complaint ¶¶ 284-285.

<sup>11</sup> Id. ¶ 289.

<sup>12</sup> Id. ¶ 296.

<sup>13</sup> Id. ¶ 318.

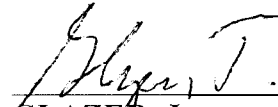
<sup>14</sup> In response to the motion for summary judgment, Dana alleges he suffered individual harm from Marrone and Volla's actions which include loss of a mortgage refinance fee, increased mortgage interest, lost rent income, being forced to pay for legal fees incurred to further Marrone's fraudulent activities and loss of the use of common elements. See Fourth Amended Complaint ¶ 143. However, the loss of mortgage refinance fee, increased mortgage interest and lost rent, while individual harm to Dana, were not alleged to be damages suffered by Dana as a result of the fraud alleged in counts IV and V.

purpose to do an unlawful act or to do a lawful act by unlawful means or unlawful purpose, (2) an overt act in furtherance of the common purpose has occurred, and (3) the plaintiff has incurred actual legal damage. Additionally, absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act.<sup>15</sup> Here, since the remaining claims of fraud in counts IV and V have been dismissed, the count for conspiracy has no legal basis and is also dismissed.

### CONCLUSION

For the foregoing reasons, Marrone and Volla's Motion for Partial Summary Judgment is **Granted** and counts IV (fraud), V (fraud) and VI (conspiracy) are dismissed.

BY THE COURT,

  
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GLAZER, J.

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<sup>15</sup> *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655 (Pa.Super.2000).