

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

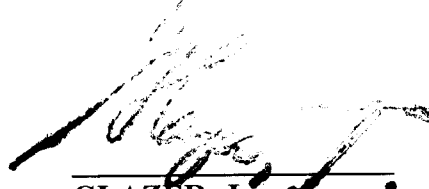
JILLARS, INC., and JOY A. CRUSADIMA,	:	JANUARY TERM, 2019
	:	
	:	NO. 2321
Plaintiffs,	:	
v.	:	COMMERCE PROGRAM
	:	
GEORGE MATHEW,	:	Control No.: 19082483
THRESIAMMA MATHEW,	:	
MAXI, LLC, and	:	
GEORGE, GOLDSTEIN AND COMPANY,:	:	
Defendants.	:	

ORDER

AND NOW, this 17th day of October, 2019, upon consideration of Plaintiffs' Preliminary Objections to Defendants' counterclaims, and all other matters of record, it is hereby ORDERED as follows:

The Preliminary Objections are SUSTAINED and the counterclaims are DISMISSED.

BY THE COURT:



GLAZER, J.

Jillars, Inc. Etal Vs M-ORDRF



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GEORGE, GOLDSTEIN AND COMPANY,:	:	
Defendants.	:	

OPINION

This matter arises from a sale of a Lukoil gas station franchise from Defendant Thresiamma Mathew and Maxi, LLC, to Plaintiffs. Plaintiffs entered into an agreement for sale of the business with Defendant Maxi, LLC (wholly owned by Defendant Thresiamma Mathew), which occurred on or about March 15, 2016. Closing occurred on June 7, 2016. Plaintiffs allege in their complaint that the Defendants misrepresented the business’ profits, and that they did not meet the required contingencies in the contract that the assets would be in full compliance with applicable local, state, and federal regulations. Plaintiffs allege that in February 2017, they were advised for the first time that the business’ city permit for sale of tobacco products had expired as of December 31, 2015, and that they could no longer sell tobacco products at the business. Plaintiffs were ultimately unable to secure a permit, which resulted in lowered profits from the business, and citations from the city. Plaintiffs brought claims against Defendants for breach of contract, fraud, negligent misrepresentation, and breach of fiduciary

responsibility, as well as professional malpractice claims against George Mathew and George Goldstein & Company, accountants who advised them in the transaction.

Defendants here bring counterclaims against Plaintiffs for fraudulent misrepresentation, breach of the duty of good faith and fair dealing, tortious interference with contractual relations, and fraud in the inducement. The court will sustain Plaintiffs' demurrers, and dismiss the counterclaims.

Defendants allege that Plaintiffs committed fraudulent misrepresentation, but do not adequately articulate this claim. For a fraud claim, the statement must be 1) a misrepresentation; which is 2) material to the transaction at hand; 3) made with knowledge of its falsity or recklessness; 4) with the intent to mislead another into relying upon it; 5) justifiable reliance on the misrepresentation; and 6) the resulting injury was proximately caused by the reliance.¹

Here, the statements cited by Defendants do not fulfill these requirements. The alleged misrepresentations were that Jillars "was prepared to complete the purchase of the Lukoil franchise" and that it was "able to operate the business and realize a profit therefrom." First of all, there is no indication these statements were false; Jillars was clearly prepared to complete the purchase and indeed did so. Nor are these statements material to the transaction; nor can Defendants articulate how they caused Defendants harm. Accordingly, this counterclaim is stricken.

Defendants allege breach of the duty of good faith and fair dealing by Plaintiffs by "failing to disclose that Crusadima was not competent to handle the business operations" and that it was unable to apply for the licenses and permits prior to closing. Again, it is unclear how

¹ Weston v. Northampton Pers. Care, Inc., 2013 PA Super 14, 62 A.3d 947, 960 (2013) (internal citations omitted).

these statements, if true, would constitute a breach of Plaintiffs' duty of good faith and fair dealing. Even if Plaintiff failed to fulfill its obligation to the business post-sale, this would not constitute a breach of duty to the seller. This counterclaim is also stricken.

Defendants allege that Plaintiffs tortiously interfered with their contractual relations, by inducing Defendants to sell the business to them instead of to a third party, FBMM, who had made a higher offer. Again, there are several problems with this claim. Defendants have attached a fully executed Agreement of Sale between themselves and FBMM, with a closing date of January 15, 2016. Plaintiffs' agreement with Defendants was signed on or about March 15, 2016, two months after the FBMM Agreement of Sale would have either closed or expired. Defendants make no allegation that Plaintiffs were even aware of this prior contract, much less that they took purposeful action to harm the existing contract (which may not have existed anymore at the time the parties entered into their own contract). Accordingly, this counterclaim is also stricken.

Finally, Defendants allege that Plaintiffs committed fraud in the inducement, by their alleged misrepresentations as to Jillars' ability to complete the purchase and run the business profitably; and that, but for these misrepresentations, Defendants would not have entered into the agreement of sale. As discussed *supra*, these allegations do not constitute a viable fraud claim. The alleged misrepresentations are not material to the transaction; once the sale was completed, the Defendant sellers could have no interest in what the expected profits of the business would be. Moreover, it is unclear how Defendants could have relied upon any misrepresentations by the Plaintiff purchasers as to the expected profits of the business that they sold. This counterclaim also falls.

For the forgoing reasons, the preliminary objections are SUSTAINED and the counterclaims are DISMISSED.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'J. Glazer', is written over the text 'BY THE COURT:'. The signature is fluid and cursive.

GLAZER, J.