

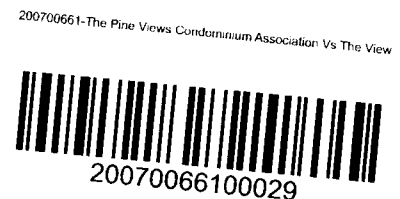
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

THE PINE VIEWS CONDOMINIUM ASSOCIATION,	:	July Term 2020
	:	
Plaintiff,	:	No. 661
V.	:	
THE VIEWS AT PINE VALLEY II, L.P., ET. AL.	:	COMMERCE COURT
:		
Defendants.	:	
	:	Control Number 21020212

**ORDER**

**AND NOW**, this 30th day of June, 2021, upon consideration of Defendants' Preliminary Objections to Plaintiff's complaint, Plaintiff's response in opposition and the attached Opinion, it hereby is **ORDERED** that the Preliminary Objections are **Sustained in part and Overruled in part** as follows:

1. Defendants' preliminary objections under Pa. R. Civ. P. 1028 (a)(1) are **Sustained**.  
The affidavits of service for the writs of summons filed on the court's docket for all defendants are **Stricken**. Plaintiff shall make proper service of original process upon all defendants within thirty (30) days from the date of this order.
2. Defendants' preliminary objection to Count IV (fraud in the inducement) is **Sustained in part** and paragraph 185 of the complaint is stricken. All other objections to Count IV are **Overruled**.
3. Defendants' preliminary objections to Count VIII (violation of the Unfair Trade Practices and Consumer Protection Law) are **Sustained** and Count VIII is dismissed in its entirety against all defendants.
4. Defendants' preliminary objections to Count IX (breach of contract-third party beneficiary) are **Overruled**.



Once Plaintiff completes service of original process of the writs of summons, defendants shall file an answer to the complaint within twenty (20) days from the date of service.

**BY THE COURT**

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**RAMY I. DJERASSI, J.**

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

THE PINE VIEWS CONDOMINIUM ASSOCIATION,	:	July Term 2020
	:	
Plaintiff,	:	No. 661
	:	
V.	:	
THE VIEWS AT PINE VALLEY II, L.P., ET. AL.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	Control Number 21020212

Djerassi, J .

June 30, 2021

**OPINION**

Plaintiff The Pine Views Condominium Association (“Plaintiff”) is a condominium association organized and existing under the Pennsylvania Uniform Condominium Act, 68 Pa. C. S. § 3101 *et seq.* Plaintiff consists of eighty (80) residential units and common areas within a residential development commonly known as Pine Views located at 777 Susquehanna Road, Philadelphia, PA. Defendants are the declarant, the developers and members of the declarant controlled executive board which is specifically identified in the complaint as follows: The Views at Pine Valley II, LLC, Holy Redeemer Active and Retirement Living Communities, Inc., Holy Redeemer Health Services Management, Holy Redeemer Health Systems, Ernest Bock & Sons, Inc., Bock Development Group, LLC, Thomas Bock, Denise Collins, Michael Laign and Joseph Nunizza. Plaintiff brings this action for money damages for the cost to repair alleged construction deficiencies of the condominium and to fund financial deficiencies which Plaintiff alleges are attributable to Defendants.

On July 2020, plaintiff initiated this action by writ of summons. On July 15, 2020, the entity known as Dennis Richman’s Services for the Professional, Inc. (“Dennis Richman’s”) served writs of summons upon Bill Cosgrove for the following entities and individuals sued as

defendants: Ernest Bock & Sons, Inc., Bock Development Group, LLC, Thomas Bock and Denise Collins. Dennis Richman's indicated on its returns of service that a person named Bill Cosgrove was the "person in charge" for these defendants.<sup>1</sup>

On July 24, 2020, the Montgomery County Sheriff's Department served upon a person named Sue Stanton writs of summons for the following entities and individuals: The Views at Pine Valley, II, L.P., the Views at Pine Valley II, LLC; Holy Redeemer Active and Retirement Living Communities, Inc., Holy Redeemer Health Services Management a/k/a Holy Redeemer Management, Holy Redeemer Health System, Michael Laign and Joseph Munizza. The Montgomery County Sheriff's Department indicated on its returns of service that Sue Stanton was the "PIC", which stands for "person in charge" for these defendants.<sup>2</sup>

On January 11, 2021, Plaintiff filed an eleven count complaint alleging breaches of contract, violations of municipal planning code, breach of express and statutory warranties, breach of implied warranties, fraud in the inducement, violation of the unfair trade practices and consumer protection law, breaches of fiduciary duties, violations of the Uniform Condominium Act and breach of contract based on third party beneficiary theory. Defendants filed preliminary objections raising improper service and legal insufficiency of the claims for fraud in the inducement, violation of the unfair trade practices and consumer protection law and the third party beneficiary contract theory. Plaintiff responded to the preliminary objections which are now ripe for disposition.

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<sup>1</sup> Returns of Service attached to defendants' preliminary objections as Exhibit "H".

<sup>2</sup> Sheriff returns of Service attached to defendants' preliminary objections as Exhibit "F".

## DISCUSSION

### **I. Service of the Writs of Summons upon Bill Cosgrove and Sue Stanton as “Persons in Charge” for defendants is improper.**

Defendants assert that service of original process of the writs of summons upon all defendants was defective and as a result, the court lacks personal jurisdiction over the defendants. The Rules of Civil Procedure provide that original process may be served by handing a copy to the defendant or by handing a copy at the following places and persons:

“at the residence of the defendant to an adult member of the family with whom the person resides; but if no adult member of the family is found, then to an adult person in charge of such residence” or

“at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides;” or

“at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.”<sup>3</sup>

As it pertains to partnerships and corporations, the Rules of Civil Procedure further provide in part that service of original process upon a partnership or corporation shall be made “upon the manager, clerk or other person for the time being in charge of any regular place of business or activity” of the partnership or association or corporation or similar entity--- or upon an agent authorized by the corporation or partnership in writing to receive service of process for it.<sup>4</sup> Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed.<sup>5</sup>

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<sup>3</sup> Pa. R. Civ. P. 402 (a) (2) (i-iii).

<sup>4</sup> Pa. R. Civ. P. 423 (2) and (3) and 424 (2) and (3).

<sup>5</sup> *Trexler v. McDonald’s Corp.* 118 A.3d 408, 412 (Pa. Super. 2015) citing, *Cintas Corp. v. Lee’s Cleaning Servs.*, 549 Pa. 84, 700 A.2d 915, 917 (1997).

In the case *sub judice*, Defendants argue and attach affidavits<sup>6</sup> averring that Sue Stanton and Bill Cosgrove were not “persons in charge” or agents authorized to accept service on their behalf. The court agrees.

Sue Stanton avers that she is an employee and administrative assistant for Holy Redeemer Health System. Stanton specifically avers that she never represented to the process server that she was in “charge of, the clerk of, the owner of, the manager of, or authorized to accept serve (sic) at or for, any of the Companies or the Place of Business or ‘Holy Redeemer Health Services Management.’”<sup>7</sup> Additionally, Stanton avers that she is not the agent of Joseph Nunizza or Michael Laign.<sup>8</sup> Defendant Michael Laign, CEO of Holy Redeemer Hospital, and Joseph Munizza, Vice President of Residential Services for Holy Redeemer Health System, also aver that Stanton is not their agent.<sup>9</sup>

For his part, Bill Cosgrove, an employee of and project manager for Bock Construction, Inc., avers that he never represented himself to the server to be in charge of, the clerk of, the owner of, the manager of, or authorized to accept service for Ernest Bock & Sons, Inc. and Bock Development Group, LLC.<sup>10</sup> Additionally, Cosgrove avers that he is not authorized to accept

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<sup>6</sup> Preliminary objections raising an issue under subdivision (a) (1) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029. *Pa. R. Civ. P. 1028 (c) (2) Note. See also, Pa. R. Civ. P. 1017 Explanatory Comment 1991.* Since Defendants raise an objection under Pa. R. Civ. P. (a) (1), facts outside the record, i.e. the affidavits, may be considered.

<sup>7</sup> Affidavit of Sue Stanton attached to defendant’s preliminary objections as Exhibit “G” (¶ 3).

<sup>8</sup> Id. at (¶ 8).

<sup>9</sup> Affidavits of Michael Laign and Joseph Munizza attached to Defendants’ preliminary objections as Exhibits “B” ¶ 2 and “E” ¶ 7, respectively.

<sup>10</sup> Affidavit of Bill Cosgrove attached to Defendants’ preliminary objections as Exhibit “I” (¶ 4).

service for Ernest Bock & Sons, Inc. and Bock Development Group, LLC.<sup>11</sup> Cosgrove also avers that he is not the agent of Denise Collins or Tom Bock.<sup>12</sup> Tom Bock, the managing member of Bock Development Group, LLC and President of Ernest Bock & Sons, Inc. also submitted an affidavit averring that Bill Cosgrove is not the clerk, manager, or in charge of or authorized to accept service at or for Bock Development Group, LLC and Ernest Bock & Sons, Inc.<sup>13</sup> Cosgrove and Tom Bock also aver that Bock Construction, Inc. is not the same entity as Bock Development Group, LLC or Ernest Bock & Sons, Inc. which are defendants. Additionally, Bock Construction, Inc. is not a parent or subsidiary of either Bock Development Group, LLC or Ernest Bock & Sons, Inc.<sup>14</sup> Lastly, Denise Collins, the Vice President of Bock Development Group, LLC also submitted an affidavit averring that Bill Cosgrove is not her agent.<sup>15</sup>

In response to these affidavits, Plaintiff argues that the service provided was sufficient to give Defendants adequate notice of the lawsuit filed against them. However, mere sufficiency of the notice does not resolve these preliminary objections in favor of Plaintiff. Defendants present evidence that challenges whether Sue Stanton and Bill Cosgrove were “persons in charge” and

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<sup>11</sup> Id. (¶¶ 5-7).

<sup>12</sup> (¶ 9).

<sup>13</sup> Affidavit of Tom Bock attached hereto to defendants’ preliminary objections as Exhibit “C” (¶¶ 4, 8).

<sup>14</sup> Affidavit of Tom Bock attached to defendants’ preliminary objections as Exhibit “C” (¶ 2); Affidavit of Bill Cosgrove attached to defendants’ preliminary objections as Exhibit “I” (¶ 2).

<sup>15</sup> Affidavit of Denise Collins attached hereto to defendants’ preliminary objections as Exhibit “D” (¶ 2).

authorized to accept service for defendant entities and individuals.<sup>16</sup> In order to overcome this challenge, Plaintiff must present evidence of a sufficient connection between the person served and Defendants to demonstrate that service was reasonably calculated to give each defendant legal notice of the action against it.<sup>17</sup> In this regard, Plaintiff has failed to come forward with persuasive evidence. Rather than producing evidence that connects the Defendants to the persons actually served, Plaintiff unconvincingly relies on a presumption of good service that flows to county sheriffs. But Defendants Ernest Bock & Sons, Inc., Bock Development Group, LLC, Thomas Bock and Denise Collins were served by private process servers, not county sheriffs.

As for those served by county sheriffs, not all facts supporting a sheriffs return of service is immune from attack. Defendants use the website of Bock Development Group in an attempt to show Bill Cosgrove was a “person in charge” but the website does not provide sufficient assurance.<sup>18</sup> As Plaintiff has not shown proper service of original process on Stanton and Cosgrove in compliance with Rules of Civil Procedure, preliminary objections are sustained.<sup>19</sup>

**II. Plaintiff’s fraud in the inducement claim based on affirmative misrepresentations in paragraph 185 of the complaint is dismissed as puffery.**

In Count IV of the complaint, Plaintiff purports to state a claim for fraud in the inducement. The claim is based on alleged affirmative statements made by Defendants that Defendants

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<sup>16</sup> See, *Trzcinski v. Prudential Property & Cas. Ins. Co.*, 409 Pa. Super. 114, 597 A.2d 687, 689 (1991)(the correct inquiry to determine proper service under Rule 424 does not focus on the location but rather the identity of the individual served.).

<sup>17</sup> *Trexler v. McDonald’s Corp.* 118 A.3d 408, 413 (2015) citing *Cintas Corp. v. Lee’s Cleaning Servs.*, 549 Pa. 84, 700 A.2d 915, 917 (1997).

<sup>18</sup> See *In re Monroe Cnty, Tax Claim Bureau*, 91 A.3d 265, 272 (Pa. Cmwlth 2014).

<sup>19</sup> The web site offered by Plaintiff did not provide any guidance to this court as to whether Bill Cosgrove was the ‘person in charge’ or authorized to accept service.



omitted material facts. Upon review of the complaint, the affirmative statements allegedly relied upon by plaintiffs are mere puffery and not grounds for a fraud cause of action.

To maintain a cause of action for fraud, a party must sufficiently plead “(1) a representation; (2) which is material to the transaction at hand; (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 the reliance.”<sup>20</sup> A misrepresentation, however, must be distinguished from puffery. Puffery is “an exaggeration or overstatement expressed in broad, vague and commendatory language.”<sup>21</sup> Such speech is “offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable [person] would rely.”<sup>22</sup> “It is common knowledge and may always be assumed that any seller will express a favorable opinion concerning what he has to sell; and when he praises it in general terms, without specific content or reference to facts, buyers” understand that they cannot literally rely upon such representations.”<sup>23</sup>

Here, plaintiff alleges the following representations as fraud:

“Bock Development brings modern luxury to life by building residences that honor the character of surrounding neighborhoods while catering to the demands for upscale, effortless living”;

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<sup>20</sup> *Gibbs v. Ernst*, 538 Pa. 193, 647 A.2d 882, 889 (1994).

<sup>21</sup> *Zaborowski v. Hosp. Care Ctr. of Hermitage, Inc.*, 60 Pa. D. & C. 4<sup>th</sup> 474, 486 (Com. Pl. 2002) citing, *Castrol Inc. v. Pennzoil Co.*, 987 F.2d 939, 945 (3d Cir. 1993).

<sup>22</sup> *Id.* citing W. Page Keeton, *Prosser and Keeton on the Law of Torts* §109 at 757 (5th ed. 1984).

<sup>23</sup> *Id.* citing *Restatement (Second) of Torts* §542 (1978).

“We prioritize location and amenities in every project, with the goal of connecting people to vibrant communities and providing distinctive features that can’t be found anywhere else”;

“Although the Condominium Declarant is newly organized, its personnel and contractors have extensive experience in the development of residential communities in Pennsylvania”;

“Holy Redeemer Health Systems has been one of the area’s most trusted providers of quality healthcare and social services for more than 75 years. Guided by its mission to care, comfort and heal, Holy Redeemer offers a wide range of quality programs, services and outreach initiatives designed to build healthier, happier communities. With a special focus on enriching the lives of older Adults, Holy Redeemer has a well-earned reputation for being in touch with their changing needs- and adapting to those needs in new, innovative ways.”<sup>24</sup>

These representations are indefinite and elusive in meaning and constitute puffery which may not form the basis of a fraud claim.<sup>25</sup> As such, the preliminary objection to the fraud claim based on these affirmative representations only is sustained and paragraph 185 is stricken from the complaint. The preliminary objections to the remainder of the fraud count are overruled.

### **III. Plaintiff is not a “purchaser” as defined by the Unfair Trade Practices and Consumer Protection Law.**

In Count IV of the complaint, plaintiff purports to state a claim for violation of the Unfair Trade Practices and Consumer Protection Law (“UTCPL”), 73 Pa. C. S. § 201-1 *et. seq.* Defendants argue that Plaintiff lacks standing to sue under the UTCPL because it is not a “purchaser”. The court agrees.

The UTCPL provides in relevant part as follows:

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<sup>24</sup> Complaint ¶ 185.

<sup>25</sup>See, *Huddleston v. Infertility Center of America Inc.*, 700 A.2d 453 (Pa. Super. 1997) (plaintiff’s fraud claim against a surrogacy clinic based on its representations that it was the “‘premier’ surrogacy program in the country and that it was designed and implemented to ensure the safety of its [clients] was found to be puffery and of no legal consequence.).

Any person *who purchases or leases goods or services* primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by Section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100.00), whichever is greater.  
*73 Pa C.S.A. § 201-9.2(a) (emphasis added).*

This provision unambiguously states that only persons who have purchased or leased goods or services are permitted to sue for relief under the UTPCPL. Here, Plaintiff did not allege that Defendants purchased units in the condominium. Rather, the condominium units were purchased by the individual unit owners who are not parties to this action. Consequently, based on the language of the statute, Plaintiff lacks standing to sue under the UTPCPL.

Plaintiff argues that the Uniform Condominium Act, 68 Pa. C. S. § 3302 (a) (4) gives it standing to bring a UTPCPL claim on behalf of the unit owners in a representational capacity. Title 68 Pa. C. S. § 3302 (a) (4) gives a condominium association authority to sue “in its own name on behalf of itself or two or more unit owners on matters *affecting the condominium*”. (Emphasis added). This provision, however, does not give a condominium association authority to sue on claims that relate solely to individual unit owners decisions to purchase the condo units themselves. Purchasing a unit is the separate and discrete decision of the individual and does not affect the communal affairs of the condominium.<sup>26</sup> Therefore, 68 Pa. C. S. § 3302 (a) (4) does not give Plaintiff standing to sue under the UTPCPL.

Additionally, cases relied upon by Plaintiff such as *Valley Forge Towers South Condominium v. Ron-Ike Foam Insulators, Inc.*, 393 Pa. Super. 339, 574 A.2d 641 (1990) and *1000 Grandview Ass’n, Inc. v. Mt. Washington Associates*, 290 Pa. Super. 365, 434 A.2d 796

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<sup>26</sup> Trial courts have previously addressed this issue. See *Greencourt Condominium Ass’n v. Greencourt Partners, et. al.* 2004 Phila. Ct. Com. Pl., Lexis 58, 2004 WL 3051336 (2004) and *Coronado Condo. Ass’n, Inc. v. Iron Stone Coronado, L.P.*, 2691 DEC, TERM 2004, 2005 WL 3036541 (Pa. Com. Pl. Nov. 7, 2005). While not precedential, we agree with these opinions.

(1981) are distinguishable from the case at hand. In *Valley Forge Towers*, the condominium association had standing to sue on behalf of the unit owners because the association directly contracted with a roof subcontractor and the defendant issued a warranty directly to the condominium association. In this community circumstance, the Court found that the condominium association was a purchaser for purposes of the UTPCP and the legal dispute in *Valley Forge Towers* “affected the condominium.”<sup>27</sup>

In *1000 Grandview Ass’n Inc.*, the condo association claimed injuries arising from cracked masonry, water leakage and a defective sewage pump. As these types of problems affected the condominium building generally, the court found that the association enjoyed representational standing.<sup>27</sup> Accordingly, the court permitted the association to sue on behalf of individual unit owners asserting that various contractors had failed to comply with their implied and express warranties.<sup>28</sup> As *Valley Forge* and *1000 Grandview* involved direct contracts with the condominium association and concerned matters affecting the condominium, they are not ~~not~~ persuasive here.

Defendants’ preliminary objections are sustained and Count IV is dismissed.

### CONCLUSION

Based on the foregoing, defendants preliminary objections are sustained in part and overruled in part as set forth in the attached order.<sup>29</sup>

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<sup>27</sup> Id.

<sup>28</sup> 434 A.2d 796, 798.

<sup>29</sup> Defendants also object to Count IX (breach of contract- third party beneficiary). In support of this objection, Defendants attach a copy of the contract to their preliminary objections appearing to dispose of this issue. This contract was not attached to the complaint and is not reviewable now. The issue of the applicability of a third party beneficiary contract theory may be raised by motion in the future.

**DATE: JUNE 30, 2021**

**BY THE COURT**

A handwritten signature in black ink, appearing to read 'R. D'Erassi', written over a horizontal line.

**RAMY I. D'ERASSI, J.**