

and various common areas, including a parking structure and commercial spaces.

(Amended Complaint, ¶ 26).

Plaintiffs allege that Defendants conveyed false impressions about the level of sales in the Murano with the knowledge that sales figures impact the price of and demand for units. (Amended Complaint, ¶¶ 29, 31). For example, Plaintiffs contend, “Defendants often stated throughout this period [between 2005 and summer 2009] that 70 percent of units had been sold. This did not come true until the summer of 2010 – about four and a half years after that figure was first used as part of sales efforts.” (Amended Complaint, ¶ 30).

Plaintiffs also assert that Defendants made similar false statements to lenders and appraisers concerning the level of sales in the Murano and that these statements affected financing and refinancing decisions. (Amended Complaint, ¶ 39).

Additionally, Plaintiffs allege that the Defendants misstated to certain Plaintiffs that all units would have floor to ceiling windows when approximately 25 percent of the units would not. (Amended Complaint, ¶ 40). Plaintiffs describe a bait-and-switch tactic used by Defendants where Defendants would offer to move Plaintiffs into units with floor to ceiling windows, but only at higher prices. (Amended Complaint, ¶ 42). However, the Defendants reference the Public Offering Statement, which states that, “Units have 9’ ceiling heights and full height windows on *most* floors.” (Exhibit “3” to Marketing Defendants’ Preliminary Objections to Plaintiffs’ Complaint).

Defendants also allegedly misled Plaintiffs about the availability and previous sales of parking spaces by representing to certain Plaintiffs that less expensive spaces on

the higher floors were sold out, causing them to purchase more expensive spaces on lower floors. (Amended Complaint, ¶¶ 43, 71).

On the basis of these allegations, Plaintiffs commenced this action by filing a writ of summons on June 17, 2010. (See Docket). Plaintiffs subsequently filed their Complaint on August 30, 2010. *Id.* Plaintiffs divided the Defendants into four different categories: the Developer Defendants (TPG/P&A 2101 Market, L.P., TPG/P&A 2101 Market LLC, Thomas Properties Group, Inc., P&A Associates, Alan E. Casnoff and Peter Shaw); the Realtor Defendants (Asher R. Kahn, Asher Kahn Realty, Megan Elizabeth Orndorf Rosenberg, Karen Ragan and Timothy Rizzo); the Marketing Defendants (Citi Habitats Marketing Group, LLC, NRT New York, Inc. and NRT New York, LLC); and Defendants who Dealt with the Plaintiffs Beginning with Occupancy of the Building (Stonehenge Advisors, Inc. and Stonehenge-Murano, Inc.).¹

Plaintiffs asserted claims for 1) negligence and negligent misrepresentation; 2) fraud/intentional misrepresentation and the aiding and abetting thereof; 3) violation of the Interstate Land Sales Full Disclosure Act (ILSA) and the aiding and abetting thereof; 4) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL) and the aiding and abetting thereof; and 5) civil conspiracy to commit fraud and to violate ILSA and the UTPCPL.

Plaintiffs filed an Amended Complaint on November 8, 2010. (See Docket). The Developer Defendants filed Preliminary Objections to Plaintiffs' Amended Complaint on November 16, 2010. *Id.* Searchtec Abstract, Inc. filed Preliminary Objections on November 22, 2010, and the Marketing Defendants, the Realtor Defendants and

¹ Plaintiffs also named SearchTec Abstract, Inc. as a Defendant. Defendant SearchTec served as an escrow agent, insurer and provider of closing and settlement services in connection with Plaintiffs' purchase of units in the Murano.

Defendants who Dealt with the Plaintiffs Beginning with Occupancy of the Building filed Preliminary Objections on November 24, 2010. *Id.* By 4 Orders dated January 28, 2011, this Court granted the Defendants' Preliminary Objections, and Plaintiffs appealed. *Id.* On April 8, 2011, Plaintiffs issued four 1925 Statements of Errors Alleged on Appeal. *Id.*

The issues for appeal are as follows:

1. Whether this Court erred in finding that, because each Plaintiff's agreement of sale contains an integration clause, the parol evidence rule bars any evidence of Defendants' alleged misrepresentations in connection with Plaintiffs' claims for fraudulent misrepresentation, violations of the Interstate Land Sales Full Disclosure Act ("ILSA"), 15 U.S.C. § 1701, et seq, and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1, et seq.
2. Whether this Court erred in finding that the economic loss doctrine prevents Plaintiffs' tort and other claims because Plaintiffs are seeking damages for economic losses only.
3. Whether this Court erred in finding that Plaintiffs' claims were improperly joined.
4. Whether this Court erred in finding that Plaintiffs failed to properly plead civil conspiracy.
5. Whether this Court erred in finding that Plaintiffs failed to plead fraud with specificity.
6. Whether this Court erred in finding that Defendants owed no duty to the Plaintiffs and therefore could not be found liable for negligence.
7. Whether this Court erred in finding that the Amended Complaint was improperly verified.

LEGAL ANALYSIS

A Preliminary Objection in the nature of a demurrer tests the legal sufficiency of the Plaintiff's Complaint. *Smith v. Wagner*, 588 A.2d. 1308 (Pa.Super. 1990). The standard of review in granting Preliminary Objections is that "all material facts set forth in the Complaint, as well as all inferences reasonably deducible therefrom, are admitted as true." *Youndt v. First Nat'l Bank*, 868 A.2d 539, 542 (Pa.Super. 2005). "A preliminary objection in the nature of a demurrer must be sustained where it is clear and free from doubt that the law will not permit recovery under the facts alleged." *Petsinger*

v. Dept. of Labor & Indus., 988 A.2d 748, 753 (Pa.Cmwlth. 2010) (citing *Africa v. Horn*, 701 A.2d 273 (Pa.Cmwlth.1997)).

The Supreme Court has described the heavy burden facing an appellant from a discretionary trial court determination: "[I]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power." *Id.* (citing *Mackarus's Estate*, 431 Pa. 585, 596, 246 A.2d 661, 666-67 (1968)). If there is any basis for the trial court's decision, the decision must stand. *Brown v. Delaware Valley Transplant Program*, 371 Pa. Super. 583, 587, 538 A.2d 889, 891 (1988).

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused. *Brown*, 538 A.2d at 891.

Pennsylvania Rule of Civil Procedure 1028(a)(4) establishes the right of a party to file preliminary objections to any pleading on the grounds of legal insufficiency. On appeal, Plaintiff contends that this Court erred in sustaining Defendants' Preliminary Objections and dismissing Plaintiff's Complaint.

Plaintiffs' first contention is that this Court erred in finding that, because each Plaintiff's agreement of sale contains an integration clause, the parol evidence rule bars any evidence of Defendants' alleged misrepresentations as to Plaintiffs' claims for fraudulent misrepresentation, violations of the Interstate Land Sales Full Disclosure Act

(“ILSA”), 15 U.S.C. § 1701, et seq, and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1, et seq.

Evidence of any representations not contained in the signed writing is barred by the Statute of Frauds and the parol evidence rule; therefore, Plaintiffs cannot establish justifiable reliance as required for claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1, et seq., and the Interstate Land Sales Full Disclosure Act (“ILSA”), 15 U.S.C. § 1701, et seq, and for fraudulent misrepresentation.

Pursuant to 33 P.S. § 1, any estate in land must be in a writing signed by the parties in order to be in compliance with the Statute of Frauds. Therefore, any alleged representations made by the parties not contained in the signed writing are inadmissible.

Moreover, the parol evidence rule applies when a writing constitutes the parties’ entire contract and bars evidence of representations made prior to or contemporaneous with the writing and not contained therein. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 497, 854 A.2d 425, 436 (2004). An integration clause that represents that the writing contains the entire agreement between the parties is a clear sign that the writing is intended to express all the parties’ “negotiations, conversations, and agreements made prior to its execution.” *Id.* at 498, 436. Pursuant to the parol evidence rule,

Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract . . . and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 497, 854 A.2d 425, 436 (2004)(citing *Gianni v. Russell & Co.*, 281 Pa. 320, 126 A. 791, 792 (1924)).

Additionally, while parol evidence is admissible upon a claim of fraud in the execution, parol evidence is not admissible to support an allegation of fraud in the inducement, “i.e. that an opposing party made false representations that induced the complaining party to agree to the contract.” *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, n.26, 854 A.2d 425 (2004).

Each signed agreement of sale constitutes an entire agreement between the parties. This is evidenced by the extensive integration clauses contained therein.

There are two parts to the integration clause included in Plaintiffs’ signed Agreements of Sale. Subparagraph 16(a) provides:

This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever that are not herein referred to or expressly incorporated by reference.

Subparagraph 16(b) provides:

There are no collateral understandings, representations or agreements other than those expressly contained herein or in the public offering statement, no salesperson, employee or agent of the Declarant has the authority to modify the terms hereof, or has any authority whatsoever to make any reference, representation or agreement not contained in this agreement or the Public Offering Statement and only those contained herein and in the Public Offering Statement shall be binding upon Declarant or shall grant any rights to Purchaser or in any way affect the validity of this agreement or form any part thereof. Purchaser acknowledges that, other than expressly stated herein and in the Public Offering Statement, no representations have been made by Declarant, its agents or employees, in order to induce Purchaser to enter into this agreement of sale.

The integration clause clearly states that the writing was intended to represent the parties’ entire agreement and that none of Defendants or their representatives had authority to make representations not contained in the agreements of sale. Therefore,

evidence of any prior representations made by Defendants is barred by the parol evidence rule.

Furthermore, Plaintiffs allege that representations made by Defendants concerning the sales figures and the availability of parking spaces and units with floor to ceiling windows induced them to enter into the agreements of sale. The integration clause signed by Plaintiffs clearly states that no representations made by Defendants induced Plaintiffs to enter into the agreements of sale. Additionally, allegations of fraud in the inducement are not sufficient to preclude application of the parol evidence rule. For these reasons, parol evidence is inadmissible to vary the terms of the agreements of sale.

The third consideration is whether Plaintiffs can establish justifiable reliance as required for a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”). The UTPCPL bars “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” 73 P.S. § 201-3. To prevail on a claim under the UTPCPL, a Plaintiff must establish the common-law elements of reliance and causation. *Debbs v. Chrysler Corp.*, 2002 Pa. Super. 326, 810 A.2d 137 (2002). *See also Weinberg v. Sun Co.*, 565 Pa. 612, 777 A.2d 442 (2001).

The facts of *Yocca v. Pittsburgh Steelers Sports, Inc.* are similar to those alleged here. 578 Pa. 479, 854 A.2d 425 (2004). A group of Plaintiffs purchased stadium builder licenses (“SBLs”) granting them the right and the obligation to buy season tickets to the Pittsburgh Steelers Football Games at the new stadium, Heinz Field. Plaintiffs became dissatisfied when the seats that they purchased were not in the location they expected based upon the diagrams contained in the SBL brochure. Plaintiffs commenced a class

action alleging claims for breach of contract, fraud, negligent misrepresentation, and violations of the UTPCPL based on alleged false representations pertaining to the sale of SBLs. The Supreme Court concluded that the Plaintiffs could not prove justifiable reliance as required for claims under the UTPCPL, stating,

Appellees simply cannot be said to have *justifiably* relied on any representations made by the Steelers before the parties entered into the SBL Agreement. Indeed, by signing the SBL Agreement, which contained an integration clause stating that the terms of the SBL Agreement superseded all of the parties' previous representations and agreements, Appellees explicitly disclaimed reliance on any such representations. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 502, 854 A.2d 425, 439 (2004)(emphasis in original).

By signing the agreements of sale, each containing an integration clause that represented that there were “no collateral understandings, representations or agreements other than those expressly contained herein or in the public offering statement,” Plaintiffs explicitly disclaimed reliance on any prior representations. The integration clause further stated that there were no representations made in order to induce Plaintiffs to enter into the agreements of sale. Allowing a court to consider representations made prior to the agreements of sale would thoroughly defeat the purpose of the integration clause. Plaintiffs cannot prove justifiable reliance; thus, their claims under the UTPCPL cannot succeed.

Plaintiffs' claims under ILSA must likewise fail for lack of justifiable reliance. Allegations of fraud in connection with the sale or lease of real property pursuant to 15 U.S.C. § 1703(a)(2) require proof of reliance. *Dongelewicz v. First Eastern Bank*, 80 F. Supp. 2d 339, 348 (M.D. PA. 1999). Because the parol evidence rule bars evidence of representations made prior to a fully integrated agreement, Plaintiffs cannot claim

justifiable reliance on these representations; therefore, their claims under ILSA cannot succeed.

The parol evidence rule also bars Plaintiffs' fraudulent misrepresentation claims because Plaintiffs' allege fraud in the inducement rather than fraud in the execution. The Court in *Nicolella v. Palmer* stated that it is not enough for Plaintiffs to assert that the oral representations were fraudulently made. 432 Pa. 502, 507-8, 248 A.2d 20, 22-23 (1968). In order to avoid application of the parol evidence rule, Plaintiffs must allege that the representations were fraudulently or by mistake omitted from the fully integrated agreement. *Id.*

In the instant matter, Plaintiffs do not assert that representations by Defendants made prior to the execution of the agreements of sale were intended to be included in the agreements and omitted by fraud or mistake. Rather, Plaintiffs allege that the statements were fraudulently made to induce them to execute the agreements of sale, an allegation contradicted by the integration clause. These allegations are insufficient to avoid application of the parol evidence rule. Because the statements are barred by the parol evidence rule, Plaintiffs cannot claim to have justifiably relied on them and thus their claims for fraudulent misrepresentation must fail.

Plaintiffs' second contention is that this Court erred in concluding that the economic loss doctrine prevents Plaintiffs' claims because Plaintiffs are seeking damages for economic losses only.

"The general rule of law is that economic losses may not be recovered in tort (negligence) absent physical injury or property damage." *Spivack v. Berks Ridge Corp.*, 402 Pa. Super. 73, 78, 586 A.2d 402, 405 (1990). The court in *Aikens v. Baltimore &*

O.R. Co. explained the reasoning behind the rule, stating, “To allow a cause of action for negligent cause of purely economic loss would be to open the door to every person in the economic chain of the negligent person or business to bring a cause of action. Such an outstanding burden is clearly inappropriate and a danger to our economic system.” *Aikens v. Baltimore & O.R. Co.*, 348 Pa. Super. 17, 21, 501 A.2d 277, 279 (1985).

Pennsylvania courts have specifically applied the economic loss doctrine to preclude negligent misrepresentation claims alleging purely economic loss (*Excavation Techs, Inc. v. Columbia Gas Co.*, 604 Pa. 50, 55, 985 A.2d 840, 843 (2009).

Additionally, the exception for common law negligent misrepresentation claims causing economic loss is inapplicable here. Pursuant to Restatement (Second) of Torts § 552,

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. Restatement (Second) of Torts §552(1).

Pennsylvania courts have only applied this exception in cases involving alleged misrepresentations made by architects and design professionals. *See Bilt-Rite Contractors, Inc. v. Architectural Studio*, 581 Pa. 454, 866 A.2d 270 (2005); *Excavation Techs., Inc. v. Columbia Gas Co.* 604 Pa. 50, 985 A.2d 840 (2009).

Restatement (Second) of Torts § 552 is inapplicable to the situation at hand. Defendants are not architects or design professionals and were not employed in the guidance of Plaintiffs in their business transactions. Defendants were engaged in the real estate business. Their function was not to provide advice or insight into the merits of

entering into the transactions, but to develop, market and sell condominiums. Therefore, Plaintiffs cannot employ the exception for common law negligent misrepresentation and recover damages for purely economic loss.

Plaintiffs' third contention is that this Court erred in finding that Plaintiffs' claims were improperly joined. Pursuant to 2229(a),

Persons may join as plaintiffs who assert any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the rights to relief of all such persons will arise in the action. Pa. R.C.P. 2229(a).

The Court in *Keim v. Angelotti* dealt with alleged fraudulent representations regarding the worth and assets of a corporation in connection with the Plaintiffs' purchase of stock. The Court concluded that the claims were improperly joined because the Plaintiffs' experiences were individual and unconnected. *Keim v. Angelotti*, 25 Pa. D.&C.2d 199, 202 (1960). The court stated, "If these sales of stock to plaintiffs had taken place as the result of a meeting where they were all present and at which the identical representation was made to them jointly or if plaintiffs had made their purchase relying on a general printed prospectus furnished them, joinder in one suit would be proper." *Id.* at 201. In contrast, there was a series of oral representations allegedly made to various Plaintiffs by various Defendants over the course of several months. Additionally, the measure of potential damages for each Plaintiff was different because it was calculated based upon the difference between what each Plaintiff was induced to pay for the stock and its actual value at the time of purchase assuming such value was capable of being calculated. *See Emery v. Third National Bank of Pittsburgh*, 308 Pa. 504, 162 A. 281 (1932). Therefore, joinder was improper.

In the instant matter, joinder is improper because different Defendants allegedly made different representations to different Plaintiffs on different dates. While the seventy-five Plaintiffs are residents of the same condominium, the alleged misrepresentations made by eighteen different Defendants are not common to all seventy-five.

For example, Plaintiffs assert nineteen different figures provided on different dates by various Defendants or their representatives regarding the percentage of units sold over the course of a three year period. (Defendants TPG/P&A 2101 Market, L.P., TPG/P&A 2101 Market, LLC, Thomas Properties Group, Inc., Alan E. Casnoff and Peter L. Shaw's Preliminary Objections to Plaintiffs' Amended Complaint ¶¶ 10-12). Twelve of the fifty sets of Plaintiffs further allege that certain Defendants made various false representations about the availability of parking spaces in order to induce them to buy more expensive spaces on lower levels. *Id.* at ¶15. Eight of the fifty allege that they were told that each unit would have floor to ceiling windows. *Id.* at ¶ 16. One set was allegedly told that the prospective unit would have specially treated glass that would become darker when hit by sunlight, eliminating the need for window treatments. *Id.* Another makes a similar allegation, but attributes the statement to a different Defendant. *Id.* Other Plaintiffs also allege misrepresentations relating to the value of the units, prices for units sold and units remaining, the need to act quickly, the dimensions of the units, and whether particular units were completed. *Id.* at ¶ 17.

Based on the varied allegations alleged by fifty different sets of Plaintiffs against eighteen Defendants, it would be implausible to expect a jury to keep the claims of each Plaintiff distinct in their minds, deciding which Plaintiffs they found credible and which

they did not and which Plaintiffs were entitled to remuneration. The allegations are separate and distinct as are the units that they base their claims upon and are unrelated in time as each transfer of interest was a unique real estate transaction in a dynamic real estate market.

Plaintiffs' fourth contention is that this Court erred in concluding that Plaintiffs failed to properly plead civil conspiracy. To plead civil conspiracy, a Plaintiff "must allege that two or more persons combined or agreed to commit an unlawful act or to do an otherwise lawful act by unlawful means." *Burnside v. Abbott Laboratories*, 351 Pa. Super. 264, 278, 505 A.2d 973, 980 (1985). A Plaintiff alleging conspiracy must also prove malice and an overt act in furtherance of the conspiracy. *Petula v. Melody*, 138 Pa. Commw. 411, 418, 588 A.2d 103, 107 (1991). Parallel conduct or bald assertions thereof are insufficient to properly plead civil conspiracy. *Id.* at 419, 107. Rather, Plaintiff must set forth facts supporting the existence of a conspiracy, such as meetings, conferences, telephone calls or written statements. *Id.* at 419, 107.

For example, Plaintiffs allege that,

In order to maintain the appearance of brisk sales, prevent the deception carried on from being discovered, and keep sales going, the Developer, Marketing, and Real Estate Defendants agreed with Defendant SearchTec Abstract, Inc. that it would participate in the effort to deceive plaintiffs and the market about levels of sales. People such as representatives of SearchTec Abstract, Inc., who knew the truth about the low level of sales of units at the Murano and who dealt with plaintiffs and other residents, had to be prevented from telling the truth about occupancy and sales levels for as long as possible. Plaintiffs allege on the basis of information and belief that there was such an agreement among the Stonehenge Defendants, SearchTec and other defendants in part because SearchTec and the Stonehenge Defendants are not likely to have made the misstatements that they made without knowing that they were false; they were so closely consistent with other misstatements that had been made by other defendants that they are not likely to have been made without an intention that they be made for the same deceptive purposes that motivated

the other defendants to make them or statements like them. (Plaintiffs' Amended Complaint ¶¶ 137-138).

Plaintiffs' allegations are insufficient to support a claim for conspiracy. Plaintiffs fail to point to any alleged meetings, writings or conversations that would suggest a common plan or scheme to defraud. Plaintiffs make bald assertions of parallel conduct in furtherance of "the same deceptive purposes," which are insufficient to support a claim of conspiracy.

Plaintiffs' fifth contention is that this Court erred in concluding Plaintiffs failed to plead fraud with specificity. A claim of intentional misrepresentation requires,

- 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) resulting injury was proximately caused by the reliance.

Pursuant to Pennsylvania Rule of Civil Procedure 1019(b), averments of fraud or mistake must be averred with particularity. First, any material representations Plaintiffs allege were made falsely prior to the execution of the agreements of sale are barred by the Statute of Frauds and the Parol Evidence Rule. Because evidence of the representations is barred, Plaintiffs cannot assert justifiable reliance or causation. Therefore, their claims for intentional misrepresentation must fail.

Plaintiffs' sixth contention is that this court erred in concluding Defendants owed no duty to the Plaintiffs and therefore could not be found liable for negligence.

"To recover in tort, there must be a breach of a duty of care imposed by law and a resulting injury." *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 581 Pa. 454, 459, 866 A.2d 270, 273 (2005). The absence of privity is not an absolute bar to the recovery

of economic damages in a tort cause of action. *Id.* at 460, 274. Whether or not a duty exists is determined by several factors including: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution. *Id.* at 472, 281.

Because the agreements of sale each contained an explicit integration clause and were thus complete, representations made prior to the execution of the agreements are barred by the Statute of Frauds and the parol evidence rule, and it would be improper and contrary to the public interest to allow Plaintiffs to assert a breach of duty based upon these representations. Because each agreement contained an integration clause, none of the parties involved could have reasonably expected that any representations made prior to the agreements of sale would affect the validity of the final, executed agreements. It would be improper to impose a duty on Defendants in light of the circumstances as they exist here as it would undermine the primacy of the written agreements; therefore, Plaintiffs claims for negligence must fail.

Plaintiffs' seventh contention is that this Court erred in finding that the Amended Complaint was improperly verified. Pursuant to Pennsylvania Rule of Civil Procedure 1024, "Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified." Pa.R.C.P. 1024(a).

A verification to the Amended Complaint was submitted by only one plaintiff in this action, Richard Koehler. Richard Koehler verifies as true, "those averments of

factual matters set forth... that are not otherwise of record and that describe me or my conduct or that describe transactions or events in which I was a participant.” As Richard Koehler is only a Plaintiff in five counts and in omnibus count 251, his verification is insufficient to verify the remaining 245 counts in which he is not a participant.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that its decision to grant Defendants, NRT New York, Inc., NRT New York, LLC, Citi Habitats Marketing Group, Citi Habitats Marketing Group, LLC, Karen Ragan, Asher R. Kahn, Asher Kahn Realty, Timothy Rizzo, Megan Elizabeth Orndorf, a/k/a Megan Elizabeth Rosenberg, P&A Associates, Stonehenge Advisors, Inc., Stonehenge Murano, Inc., TPG/P&A 2101 Market, L.P., TPG/P&A 2101 Market, LLC, Thomas Properties Group, Inc., Alan E. Casnoff, Peter L. Shaw, and SearchTec Abstract, Inc.’s Preliminary Objections be **AFFIRMED**.

BY THE COURT:

10/27/2011
DATE

ALLAN L. TERESHKO, J.