



Landmark at Stratton Owners vs. Ski Stratton Condo

DECISION ON MOTION
TO DISMISS CLAIMS AGAINST STRATTON IN COUNT VII (Motion 68)

Defendant The Stratton Corporation (Stratton) has moved to dismiss plaintiff Landmark at Stratton Owners' Association, Inc.'s (Landmark) breach of warranty claim, count VII of the fourth amended complaint. The motion argues that (1) Landmark has failed to allege that it was in privity of contract with Stratton and (2) even if the Common Interest Ownership Act (CIOA), 27A V.S.A. §§ 1-101 et seq., abrogates the need for privity of contract in this case, a claim under that act is time-barred.

Complaint Allegations

The fourth amended complaint alleges the following facts. Stratton constructed the Landmark Hotel in the early 1980s. In 1985, Stratton was the original declarant for the condominium association's predecessor, the Stratton Mountain Village Lodge Condominium. In or around 2001, Stratton assigned its rights and obligations as declarant to the Village Lodge Development Corp. In or around 2003, Village Lodge assigned its rights and obligations as declarant to defendant Ski Stratton Condos, LLC. In or around 2004, Ski Stratton was the declarant for the Landmark at Stratton condominium. In or around 2004, Ski Stratton converted the hotel into a luxury condominium. Plaintiffs later discovered substantial construction defects, including failed floor trusses, missing insulation, missing flashing, improper framing, and rotting in certain windows, and various electrical, plumbing, gas piping, and fire and safety code violations (the "Construction Defects"). Plaintiffs lost the use of their units and suffered damage to their units and the loss of rental income as a result. Count VII incorporates these allegations and avers that "[d]efendants made certain express and implied warranties to Plaintiffs as to good workmanship in the construction and design of the Landmark Building and the habitability of the Landmark Building." Fourth Amended Complaint (Complaint), ¶ 63. Further, "[d]efendants breached those express and implied warranties by way of the Construction Defects," causing plaintiffs' damages. *Id.* ¶ 64.

Motion to Dismiss Standard

The standard for determining a Rule 12(b)(6) motion to dismiss for "failure to state a claim upon which relief can be granted" is well established. Courts must "tak[e] all of the nonmoving party's factual allegations as true," and will dismiss a claim only when "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Davis v. American Legion, Dept. of Vermont*, 2014 VT 134, ¶ 12 (quoting *Alger v. Dep't of Labor & Indus.*, 2006 VT 115, ¶ 12). Matters outside the pleadings are not considered; if they are considered, the court must treat the motion as one for summary judgment. V.R.C.P. 12(b).

Vermont is a notice pleading state, and this pleading standard is “exceedingly low.” *Bock v. Gold*, 2008 VT 81, ¶ 4. A pleading must only set forth “a short and plain statement of the claim showing that the pleader is entitled to relief” and a demand for judgment. V.R.C.P. 8(a). A plaintiff is not required to *prove* her claim at the pleading stage. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 9. A complaint must only put a defendant on notice of the plaintiff’s general claim. *Bock*, 2008 VT 81, ¶ 8. Detailed allegations are not required. *Colby*, 2008 VT 20, ¶ 7. “Motions to dismiss for failure to state a claim are disfavored and should rarely be granted.” *Id.* ¶ 4.

Common Law Warranty of Habitability & Good Workmanship

Stratton avers plaintiffs fail to state a cause of action because “there is no contractual privity alleged between Stratton and Plaintiffs in the Fourth Amended Complaint.” Motion to Dismiss at 3. Stratton asserts plaintiffs did not and could not allege that Stratton made express warranties to plaintiffs, and the complaint does not provide any details with respect to an express warranty. Further, a claim for implied warranty of good workmanship and habitability requires contractual privity, and plaintiffs have not alleged contractual privity between Stratton and the plaintiffs.

Privity of contract is required for a claim of express or implied warranty of habitability and good workmanship. “Our case law plainly contemplates the existence of contractual privity before a breach of implied warranty claim can be raised.” *Long Trail House Condo. Ass’n v. Engelberth Const., Inc.*, 2012 VT 80, ¶ 31, 192 Vt. 322. “It is through the act of *selling* the house that such warranties arise.” *Id.* In *Long Trail*, the court affirmed a grant of summary judgment to a general contractor who had no contract with plaintiff condominium association. See also *H. Hirschmann, Ltd. v. Green Mountain Glass, LLC*, No. 5:15-CV-00034, 2016 WL 3683518, at *3 (D. Vt. July 6, 2016) (“In construction disputes, which fall beyond the scope of the UCC, the Vermont Supreme Court has continued to enforce the privity requirement.”).

The question is whether plaintiffs have sufficiently pled this cause of action. Plaintiffs allege defendants made express and implied warranties and then breached those warranties by way of the construction defects, causing plaintiffs damages. Thus, plaintiffs have alleged the elements of the cause of action. But these are legal conclusions, not facts. See *Town of Fairlee v. Forcier Aldrich & Associates*, No. 211-12-17 Oecv, 2018 WL 8666308, at *8 (Vt. Super. Nov. 07, 2018) (under the Vermont notice pleading standard, “[t]he court must take factual allegations in the Complaint—though not legal conclusions—as true and determine whether such facts could prove the [plaintiff’s] case”). The high court has said that an allegation of express warranty is not controlling where “the facts set forth show no contractual relationship whatever between plaintiff and defendants.” *Kinney v. Goodyear Tire & Rubber Co.*, 134 Vt. 571, 576 (1976). The court concludes that is the case here.

The facts alleged in the complaint are that Stratton, or a general contractor employed by Stratton, constructed the Landmark Hotel in the 1980s. The plaintiffs did not obtain their condominiums until 2004 or later. Stratton was the original declarant for the condominium association’s predecessor. Stratton assigned its rights and obligations as declarant to the Village Lodge Development Corp., which later assigned its rights to Ski Stratton Condos, LLC, which converted the building to a condominium. The complaint alleges Ski Stratton marketed the condominiums and assigned all warranties offered by the contractor who performed the conversion to Landmark unit buyers.

Complaint, ¶¶ 22–23. The court can infer that Ski Stratton, not Stratton, sold the units to plaintiff association members.

Under Vermont law, the court must determine whether the complaint’s facts could give rise to circumstances under which Stratton could have provided a warranty to plaintiff unit owners. Stratton is alleged to have constructed the Landmark building in the 1980s and to be the original declarant for the condominium association’s predecessor. Plaintiffs argue there is privity of contract between Stratton and plaintiffs because Stratton remains a party to the declaration and retained special declarant rights. Plaintiffs’ Opposition at 4–5. Stratton “has the power to enforce certain provisions of the Declaration, i.e., mandating that Landmark be part of a master association, requiring any changes to its building to undergo design review, providing Stratton easements across its property . . . and to enforce the Stratton Covenants which are incorporated into the Declaration by reference.” *Id.* The court is unpersuaded that these allegations create privity between the plaintiffs and Stratton.

Uniform Common Interest Ownership Act of 1994

The plaintiffs also argue that privity is not required under the CIOA. Stratton points out that the Vermont Condominium Act (VCA) governed the Stratton Mountain Village Condominium Association when it was created, not the CIOA. Further, the VCA does not supply a cause of action for breach of warranty apart from whatever was available at common law. Plaintiffs do not contest this. However, the CIOA was enacted before Stratton allegedly assigned rights in 2001, and both parties addressed the CIOA in their memoranda on this motion. The court will therefore assume, without deciding, that the CIOA should be considered in determining whether privity is required for the plaintiffs’ breach of warranty claims against Stratton.

Title 27A Section 3-104 provides:

Upon transfer of a special declarant right, the liabilities are as follows:

(1) A transferor remains liable for obligations and actions arising before the transfer of special declarant rights and warranty obligations imposed by this title. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

27A V.S.A. § 3-104(b). Stratton contends that Title 27A does not provide plaintiffs with actionable claims against Stratton, for two main reasons: CIOA’s removal of the privity requirement does not apply to common law claims, and in any case, any claim under the CIOA would be barred by the statute of limitations.

Stratton contends that § 3-104(b) of the CIOA only removes the privity requirement for warranty obligations imposed by Title 27A, and does not remove the privity requirement for plaintiffs’ common law warranty claims. The court agrees that this provision relates to warranty obligations imposed by Title 27A, which include express and implied warranties of quality under § 3-113 and § 3-114. It does not refer to common law warranty claims. Privity is therefore still required for such claims.

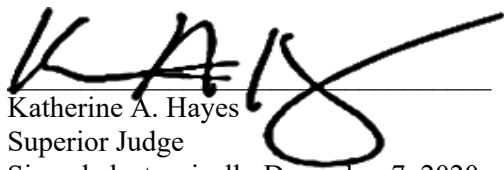
In any case, Stratton correctly argues that any Title 27A claims would be barred by the statute of limitations at § 4-116 if it did include common law claims. Plaintiffs respond that § 4-116 “only applies to warranties made *after* Landmark amended its Declaration in 2001” and that the warranties as to the building’s condition were common law warranties made in 1985. Section 4-116 imposes a

statute of limitation on CIOA warranty claims, both express and implied. It requires that an action must be commenced within six years after a cause of action accrues. The cause of action accrues at the time the purchaser to whom the warranty is first made enters into possession. § 4-116(b)(1). If a warranty was made by Stratton, it was in the 1980s. The statute of limitations has therefore long since expired.

Order

For the reasons stated above, Stratton's motion to dismiss the claims of breach of warranty made against it in Count VII of the Complaint is GRANTED.

So Ordered



Katherine A. Hayes
Superior Judge
Signed electronically December 7, 2020