

STATE OF VERMONT

SUPERIOR COURT
Windsor County

CIVIL DIVISION
Docket No. 643-10-07 Wrcv

Birge-Curran Real Estate Partnership, LLP
Plaintiff

v.

Thomas Schreck, Gaspare Buscaglia and Black River Brewing Co.
Defendants

Thomas Schreck and Gaspare Buscaglia
Cross-Claim Plaintiffs

v.

Black River Brewing Co. and Stephen Shaw
Cross-Claim Defendants

Decision re: Motion to Alter or Amend the Final Judgment Order

On August 23, 2010, this court entered a final judgment order in this matter following a jury trial. Defendants and cross-claim plaintiffs Thomas Schreck and Gaspare Buscaglia now move to alter or amend the final judgment order under Vermont Civil Procedure Rule 59(e) for two reasons:

1. Messrs. Schreck and Buscaglia argue that the final order incorrectly enters judgment in favor of Black River Brewing Company on the cross-claim for breach of warranty of title. Messrs. Schreck and Buscaglia argue that the jury returned a verdict in their favor on the elements of liability, and so contend that final judgment should have been entered in their favor, even though there were no damages.

Actions for breach of the warranty of title are governed by the same rules as actions for breach of contract. As a result, in order to recover, it is necessary for plaintiff to prove both a breach of the covenant *and* resulting damages. 20 Am. Jur. 2d Covenants, Etc. § 122; see also *Smith v. Country Village Intern., Inc.*, 2007 VT 132, ¶ 10, 183 Vt. 535 (explaining that “[f]ailure to prove damages is fatal to a claim for breach of contract,” and thus entering judgment for defendants where plaintiffs failed to prove damages). In this case, after the jury found in their favor on the elements of liability, Messrs. Schreck and Buscaglia conceded that they had no proof of damages. Given that concession, judgment was appropriately entered in favor of Black River Brewing Company.

2. Messrs. Schreck and Buscaglia also argue that the judgment mistakenly refers to a stipulation between themselves and Black River Brewing Company regarding the mutual boundary line. Here, the court was aware that Messrs. Schreck and Buscaglia were not stipulating to the location of the boundary line. Instead, the court made a finding as to the

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location of the boundary line based on the uncontroverted offers of proof, and entered judgment based on that finding as it was depicted on Court's Exhibit #1. The final order reflects this in the first full paragraph following the preamble on page one.

There are references to "stipulations" on page two, but they do not involve the establishment of the boundary line. Instead, the references involve collateral agreements that were reached after the court entered judgment as to the location of the boundary line. As far as the court was aware, the parties agreed that (1) Birge-Curran would be responsible for engaging the surveyor, and (2) the remaining claims would be dismissed with prejudice. The court does not interpret any agreements on these points as somehow constituting a waiver of any objections Messrs. Schreck and Buscaglia might seek to preserve as to the findings and order with respect to the boundary line.

ORDER

Defendant's Motion to Alter or Amend the Final Judgment Order (MPR #10), filed Sep. 20, 2010, is *denied*.

Dated at Chelsea, Vermont this 19 day of January, 2011.



Hon. Harold E. Eaton, Jr.
Superior Court Judge

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