VERMONT SUPERIOR COURT
Windsor Unit
12 The Green
Woodstock VT 05091
802-457-2121
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-02242

Trident in Woodstock, LLC et al v. Gray Barns Enterprises LLC et al

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 7)
Filer: Richard J. Windish, Esq.
Filed Date: July 01, 2025

The Defendants, Gray Barns Enterprises, LLC, Katheryn Gray and Matthew Gray, filed a motion for summary judgment pursuant to Rule 56 of the Vermont Rules of Civil Procedure (V.R.C.P.) against the Plaintiffs (Trident Woodstock, LLC, Joseph Kolchinsky and Jennifer Kolchinsky). The Plaintiffs filed a timely written response stipulating to the dismissal of the unjust enrichment claim in count three but opposed the motion as it related to count one: fraudulent inducement and count two: fraudulent nondisclosure.

The Court reviewed the parties' pleadings and has issued a decision without a hearing. V.R.C.P. 7(b)(6).

I. Legal Standard

Summary judgment procedure is "an integral part of the . . . Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Morrisseau v. Fayette*, 164 Vt. 358, 363 (1995) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate if the evidence in the record, referred to in the statements required by V.R.C.P. 56(c)(1), shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. V.R.C.P. 56(a); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994) (summary judgment will be granted if, after adequate time for discovery, a party fails to make a showing sufficient to establish an essential element of the case on which the party will bear the burden of proof at trial). The Court derives the undisputed facts from the parties' statements of fact and the supporting documents. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 29, 175 Vt. 413. A party opposing summary judgment may not simply rely on allegations in the pleadings to establish a genuine issue of material fact. Instead, it must come forward with deposition excerpts, affidavits, or other evidence to establish such a dispute. *Murray v. White*, 155 Vt. 621, 628 (1991). Speculation is insufficient. *Palmer v. Furlan*, 2019 VT 42, ¶ 10, 210 Vt. 375.

Allegations of the nonmoving party, if supported by admissible evidence, are regarded as true when determining if a genuine issue of material fact exists. *Morisseau v. Hannaford Bros.,* 2016 VT 17, ¶ 12, 201 Vt. 313. The benefit of reasonable doubts and inferences goes to the nonmoving party. *Id.* Procedures of Rule 56 should be construed liberally in favor of resolving disputes on the merits. *Stone v. Town of Irasburg,* 2014 VT 43, ¶ 57, 196 Vt. 356.

II. **Undisputed Material Facts**

The summary judgment record is voluminous, and the Court will not delve into the nuances here. For the purposes of this decision, the following overview, drawing inferences in the Plaintiffs' favor, provides the relevant material facts. The Defendants sold the home subject of this lawsuit to the Plaintiffs in 2021. The home is a substantial, 6000 square foot house set on 40 acres in the Town of Woodstock. Of relevance to this case is that the home includes an indoor pool room.

The Defendants purchased the home in 2016. They subsequently engaged contractors to perform renovations to the pool room. The roof over the pool room was covered with a large blue tarp that covered two of the skylights in the pool room. The ceiling boards surrounding the skylights had shown signs of water staining. The Defendants initially assumed the staining was related to leaking skylights. They therefore had the skylights removed and replaced with framing and sheathing to prevent further problems.

While repairing the pool room ceiling, the Defendants' contractor, Mr. Lewis, discovered areas of rotten sheathing immediately adjacent to four skylights that he had removed. Mr. Lewis had not detected evidence of rot in any area other than the area immediately adjacent to the skylights.

The Defendants sold the home to the Plaintiffs in 2021. The sale agreement was subject to a separate addendum, which called for the Plaintiffs to obtain a home inspection prior to a sale. The Plaintiffs contracted Norway Hill Home Inspections to perform the inspection. And although the Plaintiffs indicated their preference for a structural engineer to look over the ceiling in the pool room, they never had a structural engineer inspect the ceiling prior to the sale.

During the inspection, Norway Hill inspectors took note of water staining on the interior finish of the pool room ceiling. The content of the conversation between Ms. Gray and Mr. Kolchinsky—what statements did Ms. Gray make and what statements did she not, what were her intentions behind making certain statements and refraining from making others—that followed Norway Hill inspectors' observation of the staining forms the basis of the Defendants' motion.

The summary judgment record reveals, at a minimum, the following. At the pre-sale inspection, Ms. Gray told Mr. Kolchinsky that the staining had been caused by leaking skylights. The staining visible on the day of the inspection was, however, not caused by leaking skylights.

When making that statement, Ms. Gray did not know what caused the staining. Ms. Gray did not tell Mr. Kolchinsky that she did not know what caused the staining. Ms. Gray also did not tell Mr. Kolchinsky that her contractor, Mr. Lewis, had found areas of rotten sheathing immediately adjacent to the skylights in 2017. Ms. Gray likewise did not tell Mr. Kolchinsky that she did not know about the extent of moisture damage in the roof of the pool room, that she did not ask a contractor to conduct a closer inspection to determine whether the rot that Mr. Lewis identified extended throughout the roof cavity, or whether it was limited to the skylight areas.

Ms. Gray also told Mr. Kolchinsky that the pool-room ceiling stains were merely superficial or surface stains that were not indicative of any ongoing problem. However, the staining visible on the day of the inspection was not superficial or merely surface staining. Ms. Gray did not know, and had made no attempt to determine, whether, and to what extent, the moisture that caused the ceiling stains was merely superficial or whether it had caused pervasive and serious damage throughout the internal structure of the roof.

In the addendum, the parties also agreed to additional conditions of the sale. Specifically, the addendum called for the Defendants to repair certain issues with the home prior to sale. Alternatively, it provided that the Defendants were to

> provide a credit at closing to the [the Plaintiffs] for $10,000.00 in consideration of the [the Plaintiffs'] accepting the material defects listed above along with the current physical condition of the property as outlined in the inspection report and as further subject to the [the Plaintiffs'] approval pursuant to the walkthrough in section #14 "Possession."

Defendants' Ex. L.

III. **Legal Analysis**

Here, absent from the recitation of the above facts is what Katheryn Gray's intent was in making her statement to Mr. Kolchinsky that the pool room ceiling stains were merely superficial and the surface stains that were not indicative of any ongoing problem. The Defendants argued that Ms. Gray believed the statements to be true, based on the work she and her husband had done to address the problem by removing the leaking skylights and nearby damage in the pool room ceiling sheathing. The Defendants argued Ms. Gray lacked the requisite scienter such that her nondisclosures of what the Defendants had not done to discover the origin of the pool room stains was not intentional, nor reckless. The Plaintiffs argue to the contrary that Ms. Gray's nondisclosure was material and made with the purpose to mislead or defraud them and induce the Plaintiffs into purchasing the home. Whether Ms. Gray's statement to the Plaintiffs that the pool room ceiling stains were merely superficial and not an ongoing problem was made with the intent to deceive Mr. Kolchinsky and induce him and Ms. Kolchinsky to purchase the home is a disputed material fact. See Restatement (Second) of Torts § 526 (laying out the several ways to establish scienter in fraud cases, including scenarios where "the maker (a) knows or believes that the matter is not as [s]he represents it to be, (b) does not have the confidence in the accuracy of [her] representation that [s]he states or implies, or (c) knows that [s]he does not have the basis for [her] representation that [s]he states or implies").

On a motion for summary judgment, however, the question is not credibility but admissibility; if the party disputing an assertion of fact can show admissible evidence that controverts the assertion, there is a genuine dispute as to that fact. See *White v. Queeche Lakes Landowner's Ass'n.*, 170 Vt. 25, 28 (1999) ("In determining whether a dispute over material facts exists, we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material."). Credibility determinations are reserved for the finder of fact. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether [the judge] is ruling on a motion for summary judgment or for directed verdict."); *Barbagallo v. Gregory,* 150 Vt. 653, 653 (1988) (mem.) ("Courts should be cautious in granting motions for summary judgment in any cases in which the resolution of the dispositive issue requires determination of state of mind, as the fact finder normally should be given the opportunity to make a determination of the credibility of witnesses, and the demeanor of the witness whose state of mind is at issue."). Plainly, Ms. Gray's testimony is competent and admissible. Equally plain, her intent is a material fact under the Plaintiff's theory. See *Felis v. Downs Rachlin Martin PLLC,* 2015 VT 129, ¶ 13, 200 Vt. 465 (setting forth elements of fraud claim); *Silva v. Stevens*, 156 Vt. 94, 103 (1991) (elements of fraudulent concealment); *Madowitz v. Woods at Killington Owners' Ass'n, Inc.,* 2014 VT 21, ¶ 23, 196 Vt. 47 (elements of consumer fraud claim).

Here, there is a genuine dispute of material fact that precludes summary judgment for the Defendants' on claims in count one and count two.

Finally, the Defendant raised two additional arguments: that the parties' bargained for addendum to the purchase and sale agreement bars recovery as a matter of law and if the Court finds that it doesn't, the Plaintiffs' lack of due diligence in discovering the source of the staining on the pool room ceiling and the extent of any damage does. The Court is not persuaded by these arguments.

First, parties may not contract out of a fraud claim whether it is located within the body of the purchase and sale agreement or within an addendum. Second, for the due diligence argument, the Vermont Supreme Court has held that one who has intentionally misrepresented facts to induce another to enter into a contract may not defend by saying that "'plaintiff might, but for his own neglect, have discovered the wrong.'" *Lewis v. Cohen,* 157 Vt. 564, 569, 603 A.2d 352, 354 (1991). Nevertheless, we have held that "where it is clear from the full text of a representation or from facts about the relationship of the parties that reliance should only follow an independent inquiry," such an inquiry must be made. *Winton v. Johnson & Dix Fuel Corp.*, 147 Vt. 236, 241, 515 A.2d 371, 374 (1986) (misrepresentation claim under Vermont Consumer Fraud Act). *Silva v. Stevens*, 156 Vt. 94, 104–05 (1991) (footnotes omitted and emphasis added).

Here, Ms. Gray's statement was clear her belief there were no issues with the staining on the pool room ceiling. The inspection report stated that there was visible staining where the skylights were and to know more, the roof would need to be taken apart. Plaintiff's realtor advised Mr. Kolchinsky that based upon this, there did not seem to be any issue needing further investigation. Based on those representations, it did not unequivocally indicate that something was wrong with the pool house due to the staining, rather, a general statement that it could not be known without the extreme measure of taking apart the roof. The Court finds that the relationship between the parties did not create a unique circumstance that Plaintiffs' reliance upon Ms. Gray's statements should only have followed their independent inquiry first. (While the general rule is that it is no defense to fraud that the defrauded party failed to investigate the truth of the matter asserted, "if it is clear ... from facts about the relationship of the parties that reliance should only follow an independent inquiry, then plaintiffs will be held to such an investigation." *Lewis v. Cohen,* 157 Vt. 564, 569, 603 A.2d 352, (quoting *Silva,* 156 Vt. at 105, 589 A.2d at 858). The Court finds that the Plaintiff did not have a duty to investigate such that their failure to do so bars their recovery now.

IV. **Order**

For the reasons stated above, the Defendants' motion for summary judgment is DENIED as to count one: fraudulent inducement and count two: fraudulent nondisclosure.

Based on the Plaintiffs' stipulation, count three: unjust enrichment is DISMISSED.

Dated December 3, 2025.

Electronically signed pursuant to V.R.E.F. 9(d).

Kerry A. McDonald-Cady

Kerry A. McDonald-Cady, Superior Court Judge

Vermont Superior Court
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