

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

PHILADELPHIA WATERFRONT PARTNERS,	:	JANUARY TERM, 2007
L.P., PHILADELPHIA WATERFRONT	:	
DEVELOPMENT, LLC, CHARLES L. KAMPS,	:	NO. 03811
III, SCOTT A. BLOW, and PATRICK T.	:	
HANLEY,	:	COMMERCE PROGRAM
	:	
Plaintiffs,	:	Control No. 061367
	:	
v.	:	
	:	
CHURCHILL DEVELOPMENT GROUP, LLC,	:	
CHURCHILL RESIDENTIAL DEVELOPMENT,	:	
L.P., CHURCHILL COMMERCIAL	:	
DEVELOPMENT, L.P., JOSEPH F. LOGUE, JR.,	:	
And DOUGLAS T. HARRIS, ESQUIRE	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 21st day of January, 2009, it is **ORDERED** that the Motion for Summary Judgment of defendant Douglas T. Harris is **GRANTED in part** and **DENIED in part**. In accord with the Opinion issued simultaneously, Summary Judgment is **GRANTED**, and Count I for Fraudulent Conveyance, Count IV for Fraud, and Count VI for Breach of Fiduciary Duty against Harris in plaintiffs' Amended Complaint are **DISMISSED**.

Count III for Fraudulent Conveyance and Count VII for Conspiracy are limited to a claim that \$250,000 in loan proceeds had been fraudulently conveyed to Harris.

BY THE COURT,

MARK I. BERNSTEIN, J.

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

PHILADELPHIA WATERFRONT PARTNERS,	:	JANUARY TERM, 2007
L.P., PHILADELPHIA WATERFRONT	:	
DEVELOPMENT, LLC, CHARLES L. KAMPS,	:	NO. 03811
III, SCOTT A. BLOW, and PATRICK T.	:	
HANLEY,	:	COMMERCE PROGRAM
	:	
Plaintiffs,	:	Control No. 061367
	:	
v.	:	
	:	
CHURCHILL DEVELOPMENT GROUP, LLC,	:	
CHURCHILL RESIDENTIAL DEVELOPMENT,	:	
L.P., CHURCHILL COMMERCIAL	:	
DEVELOPMENT, L.P., JOSEPH F. LOGUE, JR.,	:	
And DOUGLAS T. HARRIS, ESQUIRE	:	
	:	
Defendants.	:	

OPINION

The facts of this case are set forth in more detail in the court’s Opinion in support of its Order granting in part the Motion for Partial Summary Judgment of defendants, Churchill Development Group, LLC, Churchill Residential Development, L.P., Churchill Commercial Development, L.P., and Joseph F. Logue, Jr. (collectively, the “Churchill Defendants”). Basically, individual plaintiffs Charles L. Kamps III, Scott A. Blow, and Patrick Hanley sold the majority of their interests in plaintiffs Philadelphia Waterfront Development, LLC and Philadelphia Waterfront Partners, L.P. (“PWP”) to the Churchill Defendants. Defendant Douglas T. Harris, Esquire represented the individual plaintiffs in connection with that transaction.

In their Amended Complaint, plaintiffs claim that the Churchill Defendants breached their agreement and defrauded plaintiffs by improperly exercising PWP’s right to purchase

certain real property (the “Property”). Plaintiffs claim that their own counsel, Harris, acted in concert with the Churchill Defendants to deprive plaintiffs of their interests in PWP and the Property. Harris has moved for summary judgment on all of the claims asserted against him.

I. Counts I and III for Fraudulent Conveyance Against Harris.

Plaintiffs assert two claims for fraudulent conveyance against Harris and the Churchill Defendants. In their first claim, plaintiffs allege:

“It is believed and, therefore, averred that Harris assisted Logue with the plan to transfer all of PWP and PWD’s rights to CDG, CRD and CCD by, inter alia, preparing the assignment documents.”¹

Plaintiffs have produced no evidence that Harris drafted the documents assigning PWP/PWD’s rights to CDG/CRD/CCD or was in any other way involved in the transfer of PWP’s interest in the Property. Accordingly, summary judgment is granted on the first claim for fraudulent conveyance.

In their second claim for fraudulent conveyance, plaintiffs allege that Harris and the Churchill defendants improperly received some of the mortgage proceeds from the purchase of the Property.² The only evidence that any such conveyance was made to Harris is a listing on the HUD-1 Settlement Statement of a payment of \$250,000 to Harris for legal fees³ and a notation of a phone call from Logue to PENNVEST which contains the words “Doug Harris” and “\$2.5m”.⁴ According to Harris and other witnesses, this amount was never owed or paid to Harris, but

¹ Amended Complaint, ¶ 114.

² *Id.*, ¶¶ 133-135

³ Settlement Statement dated January 25, 2007, attached to plaintiffs’ Response to Harris’ Motion for Summary Judgment as Exhibit B.

⁴ Call Memorandum dated January 22, 2007, attached to plaintiffs’ Response to Harris’ Motion for Summary Judgment as Exhibit C.

instead was paid to a title agency controlled by Logue.⁵ The evidence clearly raises a disputed issue of material fact as to whether any payment of \$250,000 was made to Harris. Plaintiffs' claims against Harris in Count III for fraudulent conveyance and in Count VII for conspiracy between Logue and Harris, may proceed to trial on this issue. As to such claims, summary judgment is denied.

II. Plaintiffs' Claims for Fraud and Breach of Fiduciary Duty Against Harris.

Plaintiffs' fraud and breach of fiduciary duty claims are premised on 12 repetitive allegations in the Amended Complaint. For ease of reference, these claims are numbered in brackets (“[#]”) below:

Defendants Logue and Harris [1] made representations to plaintiffs that Logue was interested in providing plaintiffs with the necessary funding to purchase the Property and that he had the financial wherewithal to do so.⁶

Defendant [Harris] engaged in activities that were intended to be to the detriment of plaintiffs including, but not limited to, [2] continually pushing plaintiffs to accept Logue as a buyer, notwithstanding Logue's plan to cheat plaintiffs out of their interests and Logue's inability to meet his financial obligations, [3] secretly assisting and furthering Logue's fraudulent scheme to defraud plaintiffs of their interests in the Property; [4] failing to have Logue execute the reversion documents; [5] failing to inform plaintiffs that Logue did not execute the reversion documents; [6] drafting various documents and contracts, including Purchase Agreement 2 and the documents assigning PWP's rights to CRD, so as to enable Logue to try to defeat plaintiffs' rights; and [7] providing confidential and proprietary information to Logue.⁷

Logue and Harris entered into an agreement, borne out of greed, and acted in concert to: [1,2] market Logue to [plaintiffs], even though both knew Logue did not have the necessary financial wherewithal to purchase and develop the Property; [8] place Logue in the position where he could control the rights to the Property and ultimately purchase it without any input or interference from

⁵ Exhibits T and U annexed to Harris' Reply in Support of Motion for Summary Judgment.

⁶ Amended Complaint, ¶ 140.

⁷ *Id.* at ¶ 155.

[plaintiffs]; and then [9] defraud the PWP interest holders by taking sole control of the Property and flipping for their quick profit.⁸

In furtherance of his agreement with Logue, defendant Harris [7] used the confidential information he obtained from his representation of plaintiffs and fed it to Logue, in breach of the fiduciary duty he owed to plaintiffs and in violation of ethical rules of conduct.⁹

In furtherance of his agreement with Logue, defendant Harris [3] secretly represented Logue's interests adverse to those of plaintiffs while ostensibly representing plaintiffs.¹⁰

In furtherance of his agreement with Logue, defendant Harris [2] engaged in a full court press to persuade plaintiffs to enter into Purchase Agreement 2, notwithstanding that it was clear from Logue and CDG's failure under Purchase Agreement 1 that they were not financially or otherwise capable.¹¹

In furtherance of his agreement with Logue, defendant Harris [4] knowingly failed to have Logue execute the Reversion Documents.¹²

In furtherance of his agreement with Logue, defendant Harris [10] inserted a self-serving subsection 9(k) entitled "Waiver of Conflict" into Purchase Agreement 2, by which CDG and [plaintiffs] purportedly held Harris harmless for any conflict arising from his representation.¹³

In furtherance of their agreement, defendants Logue and Harris [10] had [plaintiffs] sign the Waiver under duress. The Waiver was a violation of New Jersey Rule of Professional Conduct ("RPC") 1.8(h), which prohibits a lawyer from insulating himself from malpractice except under certain strict conditions. First, the Agreement did not stem from [plaintiffs] not following Harris' legal advice; in fact they followed his advice. Second, notwithstanding the false statement drafted by Harris that [plaintiffs] maintained separate counsel, he did not intend for them to have independent counsel review the Waiver and in fact knew they were relying solely on his advice.¹⁴

⁸ *Id.* at ¶ 161.

⁹ *Id.* at ¶ 163.

¹⁰ *Id.* at ¶ 164.

¹¹ *Id.* at ¶ 165.

¹² *Id.* at ¶ 166.

¹³ *Id.* at ¶ 167.

¹⁴ *Id.* at ¶ 168.

In furtherance of his agreement with Logue, Harris [11] flipped from his representation of plaintiffs to represent Logue and his companies in the same transactions in which he had represented plaintiffs, in violation of his ethical obligations under the RPC.¹⁵

In furtherance of his agreement with Logue, defendant Harris, notwithstanding his ethical obligations to his former clients, [12] repeatedly represented to plaintiff that Logue's transactions arising from Purchase Agreement 2 were not material breaches of the agreement even though they were.¹⁶

The majority of these allegations focus on Harris' breach of his fiduciary and ethical duties as attorney for the plaintiffs. These allegations are, in substance, a claim that Harris committed legal malpractice. Although not all claims of legal malpractice require proof by expert opinion, these allegations clearly require expert testimony.

Generally, the determination of whether expert evidence is required or not will turn on whether the issue of negligence in the particular case is one which is sufficiently clear so as to be determinable by laypersons or concluded as a matter of law, or whether the alleged breach of duty involves too complex a legal issue so as to warrant explication by expert evidence. The only exception to the requirement that expert testimony must be produced is where the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons.

Here, the underlying question of whether legal malpractice occurred revolves around a lawyer's duty and responsibility in connection with representing a client in a real estate transaction. . . . [T]he sale of real estate is [not] an elementary and non-technical transaction which requires only simple common sense. At issue is not the simplicity of the transaction but the duty and degree of care of the attorney. Whether an attorney failed to exercise a reasonable degree of care and skill related to common professional practice in handling a real estate transaction is a question of fact outside the normal range of the ordinary experience of laypersons.¹⁷

¹⁵ *Id.* at ¶ 169.

¹⁶ *Id.* at ¶ 170.

¹⁷ Storm v. Golden, 371 Pa. Super. 368, 377, 538 A.2d 61, 75 (1988).

Plaintiffs' own words describing Harris' wrongdoing demonstrates better than any summary that expert testimony is necessary:

By way of elaboration, Harris could have made Logue's (and the [Plaintiffs]) execution of an Escrow Agreement and the Reversion Documents a condition precedent of any party's performance under the Purchase Agreement 2; Harris could have made absolutely certain that Logue had signed the Escrow Agreement and reversion documents at the same time that he signed Purchase Agreement 2. Either alternative (one in drafting, the other in ensuring the execution of all necessary documents) would have foreclosed Logue from wresting control of the Independence Pointe Project from [plaintiffs]. It is undisputed that Harris did not draft Purchase Agreement in such a way as to make the execution of the Reversion documents and Escrow Agreement a condition precedent in Purchase Agreement 2. It is also undisputed that Harris did not ensure – or advise his clients – that Logue's failure to sign the Escrow Agreement and Reversion documents contemporaneously with Purchase Agreement 2 would deprive them of an effective means to secure their interests in the Independence Pointe Project. Harris did not advise them at that time that the failure to have Logue execute the documents in question could lead to future legal issues and compromise [plaintiffs'] contractual rights and remedies.¹⁸

Without expert opinion testimony on the technical nature of these transactions and an attorney's duties when representing a client in a real estate transaction, the finder of fact cannot possibly evaluate the claim.

Plaintiffs offer no expert testimony to establish that Harris breached any duty of loyalty or any ethical duty to plaintiffs in the transfer of interests in the Property from plaintiffs to Logue, as claimed in Allegations [2], [3], [7], [10], [11] and [12].¹⁹ Likewise, plaintiffs have offered no expert opinion that Harris improperly drafted any transfer documents as claimed in allegations [6] and [10]. Nor have plaintiffs offered any expert opinion to prove allegations [4] and [5] regarding Harris' failure to have Logue execute reversion documents. Therefore,

¹⁸ Plaintiffs' Response to Harris' Motion for Summary Judgment, ¶ 17.

¹⁹ The court notes that an ethical violation alone is insufficient to prove professional malpractice. *See Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz*, 529 Pa. 241, 255-256, 602 A.2d 1277, 1284 (1992).

summary judgment is granted as to all claims for fraud, breach of fiduciary duty, and conspiracy, all of which are actually grounded in legal malpractice claims.

Plaintiffs have also failed to prove Harris misrepresented that Logue had the financial wherewithal to purchase the Property, as claimed in Allegations [1] and [2]. Logue did have the necessary financial wherewithal and completed the purchase of the Property. Truthful representations by Harris cannot form the basis for a claim of fraud, breach of fiduciary duty, or conspiracy.²⁰

Plaintiffs have failed to offer any evidence that Harris did anything else that helped Logue and hurt plaintiffs, as claimed in allegations [3], [8] and [9]. Plaintiffs have not identified any confidential or proprietary information that Harris gave to Logue, as stated in allegation [7]. Plaintiffs' evidence shows only that Logue leased office space to Harris at a nominal rent, Logue had access to Harris' computer, the metadata embedded in one of Logue's early proposals to the plaintiffs names Harris as its drafter,²¹ and Logue may have paid \$250,000 to Harris at the closing on the Property.²² These facts, standing alone without expert opinion that Harris breached any duty to his clients, are insufficient to support plaintiffs' claims for fraud and breach of fiduciary duty against Harris. Summary judgment is granted as to these counts.

²⁰ See, e.g., Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999) (falsity is a required element of fraud).

²¹ The proposal is dated January 18, 2006, eight months prior to the Agreement between the parties dated August 18, 2006.

²² As described earlier, the HUD-1 Settlement Statement from the final closing on the Property reflects a payment of \$250,000 to Harris.

CONCLUSION

For all the foregoing reasons, Harris' Motion for Summary Judgment is granted in part and denied in part.

BY THE COURT,

MARK I. BERNSTEIN, J.