

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

DOCKETED  
DEC 30 2013  
C. HART  
CIVIL ADMINISTRATION

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EL—MUCTAR SHERIF and SAMI SEI GANDY, derivatively, on behalf of AFRICAN ISLAMIC COMMUNITY CENTER  <i>Plaintiffs</i>	:	February Term, 2012
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	:	Case No. 02131
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	:	Commerce Program
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	:	Control Nos. 13061794,
	:	<i>CA 13062863</i>
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**ORDER**

AND NOW, this 27<sup>th</sup> day of December, 2013, upon consideration of the motion for summary judgment of defendants American Land Transfer, Inc. and Stewart Title Guaranty Company, the motion for summary judgment of plaintiffs El—Muctar Sherif and Sami Sei Gandy, derivatively on behalf of African Islamic Community Center, the respective responses in opposition and accompanying memoranda of law, it is

**ORDERED** that the motion for summary judgment of defendants American Land Transfer, Inc. and Stewart Title Guaranty Company is **GRANTED** in its entirety and:

- 1) counts I and II of plaintiffs' amended complaint, asserting the claims of conspiracy and fraud, are **DISMISSED** as to defendants American Land Transfer, Inc. and Stewart Title Guaranty Company; and,
- 2) counts III and IV of plaintiffs' amended complaint, asserting the claims of negligence and gross negligence solely against defendant American Land

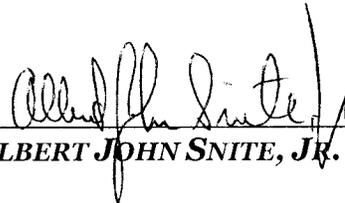
Sherif Etal Vs American Land Transfer, Inc. -ORDOP



Transfer, Inc., are **DISMISSED**.

The motion for summary judgment of plaintiffs El—Muctar Sherif and Sami Sei Gandy, derivatively on behalf of African Islamic Community Center, which motion seeks judgment in favor of plaintiffs and against defendant American Land Transfer, Inc., is **DENIED**.

**BY THE COURT,**

  
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**ALBERT JOHN SNITE, JR. J.**



relevant to this action, Sherif and Gandy served as members of the Board of Directors of AICC. Individual defendant Mohamed Jomandy (“Jomandy”) is an individual residing in Pennsylvania. At all times relevant to this action, Jomandy acted as president of AICC. Defendant Southwest Community Center, Inc. (“SWCC”), is a non-profit Pennsylvania corporation with an incorporated address at 6300 Grays Avenue, in Philadelphia, Pennsylvania. Defendant American Land Transfer, Inc. (“ALT”), is a Pennsylvania real estate company with an address at 4486 York Road, Buckingham, Pennsylvania. Defendant Stewart Title Guaranty Co., (“STGC”), is a title insurance company with offices located in Texas. Individual defendant John F. Hartzel, Esquire (“Hartzel”), is an attorney engaged in the practice of law in Pennsylvania.

On July 21, 2005, two individuals, husband and wife (the “Cornehs”), paid \$225,000.00 to acquire title upon real property located at 2400 S. 63<sup>rd</sup> Street in Philadelphia, Pa. (the “Mosque”).<sup>1</sup> The Cornehs acquired title to the Mosque on behalf of AICC because AICC lacked sufficient credit history to qualify for a mortgage loan. The Cornehs understood that after a period of time they would relinquish ownership of the Mosque and transfer title thereof to AICC. However, a dispute arose between the Cornehs and AICC, and a civil action was filed by AICC against the Cornehs in 2007.<sup>2</sup> Subsequently, on April 30, 2009 AICC and the Cornehs reached a settlement agreement and release, the terms of which required transfer of title to the Mosque, from the Cornehs to AICC, in exchange for consideration of \$215,000.00, no later than January 30, 2010.<sup>3</sup>

On January 10, 2010, a meeting of the board of directors of AICC was held at

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<sup>1</sup> Recording Information Summary issued by the City of Philadelphia, Indenture between Seller and Buyers, and Philadelphia Real Estate Transfer Tax Certification, Exhibit 7 to the motion for summary judgment of defendants ALT and STGC.

<sup>2</sup> African Islamic Community Center v. Corneh, C.C.P. Philadelphia County, case no. 01711-02555.

<sup>3</sup> Settlement Agreement and Release between the Cornehs and AICC, Exhibit 10 to the motion for summary judgment of defendants ALT and STGC.

AICC's corporate address, 2400 S. 63<sup>rd</sup> Street, in Philadelphia, Pennsylvania. At the meeting, the board of directors resolved that AICC should acquire title to the Mosque. Defendant Jomandy, as president of AICC, was empowered by the board of directors to transact with the Cornehs on behalf of AICC.<sup>4</sup>

In the meantime, an individual who is not a party to this action, Eyad Takiedine, ("Takiedine"), agreed to loan funds necessary to complete conveyance of the Mosque. Defendant Hartzel, Esquire, was retained by Takiedine in connection with this loan. On January 11, 2010, Hartzel submitted to defendant ALT a "Request for Title Insurance" on behalf of Takiedine. The Request for Title Insurance, in the amount of \$100,000.00, stated as follows:

JOHN F. HARTZEL REPRESENTS LENDER EYAD TAKIEDINE.

Additional Comments. This property may be conveyed from the Current Owner to the African American Community Center. Eyad Takiedine may provide a private 1<sup>st</sup> mortgage for the purchase. Need a full search to check for any prior liens or encumbrances.<sup>5</sup>

Sometime before conveyance of the Mosque from the Cornehs to AICC, Jomandy incorporated South West Community Center (SWCC), a non-profit religious entity.<sup>6</sup> Settlement was held on February 17, 2010, and the Mosque was conveyed from the Cornehs to AICC for consideration of \$215,000. 00.<sup>7</sup> All settlement papers were prepared by ALT on behalf of Takiedine. Jomandy received title to the Mosque on

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<sup>4</sup> Corporate Resolution of AICC, Exhibit 18 to the motion for summary judgment of defendants ALT and STGC.

<sup>5</sup> Request for Title Insurance, Exhibit 13 to the motion for summary judgment of defendants ALT and STGC.

<sup>6</sup> Articles of incorporation of South West Community Center, Exhibit 11 to the motion for summary judgment of defendants ALT and STGC.

<sup>7</sup> Indenture between the Cornehs and AICC; Philadelphia Real Estate Transfer Tax Certification; Pennsylvania Department of Revenue's Realty Transfer Tax Statement of Value, Exhibit 19 to the motion for summary judgment of defendants ALT and STGC.

behalf of AICC and signed the deed thereof.<sup>8</sup> On the same date as the settlement, Jomandy also executed an affidavit for the purpose of inducing the entity he had incorporated, SWCC, to acquire the Mosque from AICC. This affidavit stated that Jomandy, on behalf of AICC, had not entered into any agreements affecting AICC's ownership rights to the Mosque.<sup>9</sup> Immediately after the Mosque was conveyed to AICC, Jomandy, as president of both AICC and SWCC, transferred ownership of the property to SWCC for consideration of \$1.00. Jomandy also executed a mortgage in the amount of \$87,950.34 from SWCC to Takiedine, lender to the transaction.<sup>10</sup> Allegedly, ALT and STGC knew that the Mosque would be transferred from AICC to SWCC, yet failed to disclose this knowledge to AICC or its board.

In February 2012, Sherif and Gandy, derivatively, on behalf of AICC, commenced the instant action against ALT, STGC, Hartzel, Jomandy and SWCC. The amended complaint of Sherif and Gandy asserts the claims of conspiracy and fraud against all defendants, and the claims of negligence and gross negligence against ALT alone. On June 17, 2013, defendants ALT and STGC filed a motion for summary judgment seeking to dismiss all claims asserted against them in the amended complaint. On June 24, 2013, plaintiffs Sherif and Gandy also filed a motion for summary judgment. This motion seeks the entry of judgment in favor of Sherif and Gandy and against ALT alone.<sup>11</sup> The motions are now ripe for a decision.<sup>12</sup>

### **Discussion**

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<sup>8</sup> Indenture between the Cornehs and AICC, Exhibits 19 to the motion for summary judgment of defendants ALT and STGC.

<sup>9</sup> Purchaser's Affidavit executed by deponent Mohamed Jomandy, Exhibit C to plaintiffs' original complaint.

<sup>10</sup> Indenture between AICC and SWCC; Mortgage between SWCC and Takiedine; Settlement Sheets for the conveyance of the Mosque, from the Cornehs to AICC and from AICC to SWCC, Exhibits 20, 21, 22 to the motion for summary judgment of defendants ALT and STGC.

<sup>11</sup> Proposed Order of plaintiffs Sherif and Gandy attached to their motion for summary judgment.

<sup>12</sup> Originally, plaintiffs Sherif and Gandy had not attached any exhibits to their motion for summary judgment. However, on November 1, 2013, Sherif and Gandy filed a praecipe to attach the missing exhibits to their motion for summary judgment.

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury....

A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the jury....

Where a motion for summary judgment is based upon insufficient evidence of facts, the adverse party must come forward with evidence essential to preserve the cause of action. If the non-moving party fails to come forward with sufficient evidence to establish or contest a material issue to the case, the moving party is entitled to judgment as a matter of law. The non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. As with all summary judgment cases, the court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party as to the existence of a triable issue.<sup>13</sup>

I. **Plaintiff has not offered any evidence to show that American Land Transfer, Inc. and Stewart Title Guaranty Co. conspired with others to deprive AICC of its property rights.**

In Pennsylvania,

[t]he essential elements of a claim for civil conspiracy are as follows:

(1) a combination of two or more persons acting with a

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<sup>13</sup> Biernacki v. Presque Isle Condominiums Unit Owners Ass'n, Inc., 2003 Pa. Super 247, 828 A.2d 1114, 1115-16 (Pa. Super. 2003).

common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose,

(2) an overt act done in pursuance of the common purpose, and

(3) actual legal damage.<sup>14</sup>

[C]ivil conspiracy may be proven by circumstantial evidence, provided the evidence is full, clear and satisfactory.<sup>15</sup>

In this case, plaintiffs AICC, Sherif and Gandy have presented no evidence to show that ALT and STGC combined with others to do an unlawful act, a lawful act by unlawful means, or a lawful act for an unlawful purpose. Plaintiffs merely rely on Baker v. Rangos<sup>16</sup> to assert that they “sufficiently set forth factual averments to support the [cause] of action ... for ... conspiracy.”<sup>17</sup> Reliance on Rangos is inappropriate. In Rangos, the trial court sustained preliminary objections on grounds that plaintiff’s amended complaint had failed to state with sufficient particularity the facts, time and place surrounding a claim for civil conspiracy.<sup>18</sup> On appeal, the Pennsylvania Superior Court reversed, finding that plaintiff’s amended complaint had stated with sufficient particularity the facts, time and place surrounding the claim of conspiracy.<sup>19</sup> In this case however, the action is well beyond the stage of preliminary objections and plaintiff may no longer rest on its well pleaded amended complaint to preserve the claim of civil conspiracy against the moving defendants. At this stage of the litigation, plaintiffs “must come forward with evidence essential to preserve the cause of action” which is grounded on their claim of conspiracy.<sup>20</sup> Plaintiffs AICC, Sherif and Gandy have not come forward with evidence essential to preserve the claim of conspiracy, and that claim

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<sup>14</sup> Phillips v. Selig, 2008 Pa. Super. 244, 959 A.2d 420, 437 (Pa. Super. 2008).

<sup>15</sup> Rumbaugh v. Beck, 411 Pa. Super. 220, 236, 601 A.2d 319, 327 (1991).

<sup>16</sup> Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498 (1974).

<sup>17</sup> Plaintiffs’ memorandum of law in opposition to ALT and STGC’s motion for summary judgment, p. 2.

<sup>18</sup> Baker v. Rangos 324 A.2d at 504-510 (1974).

<sup>19</sup> Id. at 508-510.

<sup>20</sup> Biernacki v. Presque Isle Condominiums Unit Owners Ass’n, Inc., 828 A.2d at 116 (Pa. Super. 2003).

is dismissed as to defendants ALT and STGC.

**II. Plaintiffs may not maintain the claim of fraud against ALT and STGC.**

Plaintiffs' amended complaint asserts that ALT and/or STGC "had both constructive knowledge and actual knowledge that Jomandy and SWCC were engaged in fraudulent actions...."<sup>21</sup> The amended complaint also asserts that ALT and/or STGC, by preparing the papers needed at settlement, and with knowledge that SWCC and Jomandy were perpetrating a fraud, engaged in "deceitful conduct designed to deprive AICC of [its] valuable property rights."<sup>22</sup>

In Pennsylvania,

[t]o recover on a claim of fraud, the plaintiff must prove by clear and convincing evidence six elements:  
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) the resulting injury was proximately caused by the reliance.<sup>23</sup>

In this case, plaintiff have failed to come forward with clear and convincing evidence showing that ALT and/or STGC intended to mislead AICC, and to induce AICC to rely on any statements contained in the settlement documents prepared on behalf of Takiedine. Plaintiffs cannot prove all the elements needed to maintain the claim of fraud, and that claim is dismissed as to defendants ALT and STGC.

**III. Plaintiffs may not maintain the claims of negligence and gross negligence against ALT.**

Plaintiffs' amended complaint asserts the claims of negligence and gross

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<sup>21</sup> Amended complaint, ¶ 41.

<sup>22</sup> *Id.* at ¶ 48.

<sup>23</sup> *Viguers v. Philip Morris USA, Inc.*, 2003 Pa. Super. 446, 837 A.2d 534, 540 (Pa. Super. 2003) *aff'd*, 584 Pa. 120, 881 A.2d 1262 (2005).

negligence against ALT. According to the amended complaint, ALT failed to discharge its duty of care toward AICC while acting as the real estate title company in charge of the settlement transaction. Defendant ALT, in its motion for summary judgment, asserts that the claims of negligence and gross negligence fail as a matter of law because ALT owed no duty to AICC while acting as the real estate title company in charge of the settlement transaction.

In Pennsylvania, the duty of a real estate title company runs only to the party with whom it has entered into a contract.<sup>24</sup> However, a real estate title company may owe a duty to a non-party to the contract if the non-party is an intended beneficiary of the agreement.<sup>25</sup> In Hicks v. Saboe, husband and wife owned real property as tenants by the entireties. After the couple separated, husband forged his wife's signature, conveyed the property to himself, then sold the property to third parties. As a part of this transaction, husband signed an affidavit of "no marriage" to remove any preliminary objection on the title report.<sup>26</sup> After the husband died, wife sued the new owners to rescind the sale. The real estate title company involved in the sale was joined on the allegation that it had negligently cleared title prior to the sale. Judgment was entered in favor of wife and against the real estate title company. There was an appeal to the Pennsylvania Superior Court which affirmed the lower court's decision. There was another appeal to the Pennsylvania Supreme Court. Reversing, the Pennsylvania Supreme Court held that "[i]n general, the duty of a title insurance company runs only to its insured, not to third parties who are not party to the contract."<sup>27</sup> The Pennsylvania Supreme Court also stated that a non-party to the contract may have enjoyed certain

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<sup>24</sup> Hicks v. Saboe, 521 Pa. 380, 384; 555 A.2d 1241, 1243 (Pa. 1989) (discussing Guy v. Liederbach, 501 Pa. 47; 459 A.2d 744 (Pa. 1983) ).

<sup>25</sup> Id.

<sup>26</sup> Id. 521 Pa. at 384; 555 A.2d at 1243 (Pa. 1989).

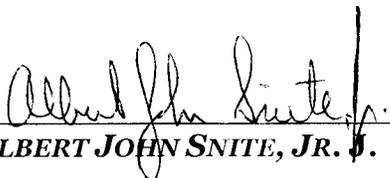
<sup>27</sup> Id.

rights therein; however, such rights were “limited to ... rights [of] an intended beneficiary of the contract.”<sup>28</sup> The Supreme Court explained that an intended beneficiary to a title insurance contract “is one intended by the promisee to receive the benefit of the promised performance.”<sup>29</sup>

In this case, plaintiffs have not offered any evidence showing that AICC was the intended beneficiary of the contract between ALT and Takiedine, and cannot prove that AICC was the intended beneficiary of that contract. Consequently, plaintiffs cannot prove that ALT owed any duty to AICC, ALT may not be held liable to AICC under the claims of negligence and gross negligence, and such claims are dismissed.<sup>30</sup> For the same reason, the motion for summary judgment of derivative plaintiffs El—Sherif Muctar and Sami Sei Gandy is denied.

**Dated: December 27, 2013**

**BY THE COURT,**

  
**ALBERT JOHN SNITE, JR. J.**

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<sup>28</sup> Id.

<sup>29</sup> Id. 521 Pa. at 385; 555 A.2d at 1244 (Pa. 1989).

<sup>30</sup> The claims of negligence and gross negligence would fail even if ALT owed a duty to AICC. The claims would fail because plaintiffs have not produced expert testimony which could show that ALT acted negligently in its professional role as real estate title agent for the sale of the Mosque. As a general rule, “expert testimony is necessary to establish negligent practice in any profession.” Storm v. Golden, 371 Pa. Super. 368, 375, 538 A.2d 61, 64 (1988) (discussing whether an attorney handling a real estate transaction exercised a reasonable degree of professional skill and care).