

**IN THE SUPERIOR COURT OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

LARRY F. QUAILES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N12C-04-192 WCC
	)	
TERRANCE D. NEWTON,	)	
	)	
Defendant.	)	

Submitted: April 29, 2013

Decided: July 25, 2013

**On Defendant's Motion to Dismiss – DENIED**

**ORDER**

Donald L. Gouge, Jr., Esquire, Donald L. Gouge, Jr., LLC, 800 N. King Street, #303, Wilmington, DE 19801. Attorney for Plaintiff Larry F. Quailles.

A. Dale Bowers, Esquire, Law Office of A. Dale Bowers, P.A., 242 North James Street, Suite 100, Newport, DE 19804. Attorney for Defendant Terrance D. Newton.

**CARPENTER, J.**

Before this Court is Defendant Terrance D. Newton's ("Newton") Motion to Dismiss the Complaint brought by Larry F. Quailes ("Quailes"). At issue is whether Newton either committed fraud or breached an oral agreement with Newton regarding the repurchase of real property, causing Newton to be unjustly enriched and Quailes to incur damages. The Court finds that, under the circumstances of this case, further discovery is appropriate to determine whether fraud was committed or a breach of contract occurred. Accordingly, at this juncture, Newton's Motion to Dismiss the Complaint brought by Quailes is hereby **DENIED.**

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Newton's Motion to Dismiss arises from Quailes' purchase of a 1600-square-foot, three (3) bedroom, two (2) bath home located at 205 W. 25th Street, Wilmington, Delaware 19802 (the "Property"). Specifically, on October 13, 2009, Quailes purchased the Property from Newton for \$135,000, which Quailes alleges is an amount far exceeding its actual value. However, Quailes and Newton had known each other for approximately four (4) years prior to the purchase, and Quailes believed that he was purchasing the Property to enable Newton to repair his credit score, obtain a debt consolidation loan, and acquire "some extra cash," with the understanding that Newton would buy back the

Property in six (6) to twelve (12) months when he was more financially secure. During this six (6) to twelve (12) month period, Newton agreed to manage the Property, collect the rent, and pay the mortgage. Until July 1011, Newton complied with this agreement. However, Newton fell behind in his payments, making his June and July mortgage payments in August 2011. Unfortunately, thereafter, the parties' relationship deteriorated; the Property has remained vacant since the summer of 2011 and, unsurprisingly, has fallen into a state of disrepair. The Property was listed on the market for sale for \$50,000, but sold at a short sale in March 2013 for \$13,800.

Consequently, on April 20, 2012, Quailes filed his Complaint against Newton, seeking damages in the amount of \$100,000. On March 13, 2013, Newton filed a Motion to Dismiss. On April 22, 2013, Quailes filed a Response to Newton's Motion to Dismiss. A hearing was held before the Court on April 29, 2013 and a decision was reserved.

### **STANDARD OF REVIEW**

Under Delaware Superior Court Civil Rule 12(b)(6), the Court may dismiss a plaintiff's claim for "failure to state a claim upon which relief can be granted."<sup>1</sup> When analyzing a motion to dismiss under Rule 12(b)(6), the Court must proceed

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<sup>1</sup> Super. Civ. R. 12(b)(6).

without the benefit of a factual record and assume as true the well-pleaded allegations in the complaint.<sup>2</sup> A complaint is “well-pleaded” if it puts the opposing party on notice of the claim being brought against it.<sup>3</sup> Therefore, the Court may dismiss a complaint under Rule 12(b)(6) only where the Court determines with “reasonable certainty” that no set of facts can be inferred from the pleadings upon which the plaintiff could prevail.<sup>4</sup> Additionally, although the Court need not blindly accept as true all allegations nor draw all inferences in the plaintiff’s favor, “it is appropriate . . . to give the pleader the benefit of all reasonable inferences that can be drawn from its pleading.”<sup>5</sup>

## **DISCUSSION**

### **A. Parties Contentions**

In support of its Motion to Dismiss, Newton argues that: 1) in attempting to enforce a contract for the sale of real estate, Quailes fails to present or reference a written agreement as is required by the Statute of Frauds; 2) even if there was an “agreement,” its terms were not sufficiently definite and certain so as to render it enforceable under Delaware law; 3) Quailes’ alleged causes of action of unjust enrichment, breach of the covenant of good faith and fair dealing, breach of

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<sup>2</sup> See *Solomon v. Pathe Commc’ns Corp.*, 672 A.2d 35, 38-39 (Del. 1996).

<sup>3</sup> See *Precision Air v. Standard Chlorine of Del.*, 654 A.2d 403, 406 (Del. 1995).

<sup>4</sup> *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

<sup>5</sup> *In re USACafes, L.P. Litig.*, 600 A.2d 43, 47 (Del. Ch. 1991).

contract, and fraud are duplicative; 4) Quailes unjust enrichment claim is outside the jurisdiction of the Superior Court; 5) Quailes' claim regarding Newton's breach of the covenant of good faith and fair dealing is not an independent cause of action recognized under Delaware law; 6) Quailes' fraud claim duplicates the allegations asserted in its breach of contract claim; and 7) Quailes' claim for \$100,000 is not only arbitrary and unsupported but also cannot be recovered under the breach of contract claim if the amount represents punitive damages.

In response, Quailes concedes that there is no written contract regarding the sale of the Property. However, Quailes argues that the doctrine of partial performance, an exception to the Statute of Frauds, is applicable because Newton managed the Property and paid the mortgage for two (2) years. Further, Quailes asserts that the Court of Chancery is not the only court with jurisdiction to hear claims relating to unjust enrichment; this Court has previously allowed this type of claim to proceed, provided it accompanied a valid law claim. Moreover, Quailes contests that the breach of contract and fraud claims are not duplicative but are, instead, argued in the alternative; specifically, if the Court finds there is no basis for a breach of contract claim, then the fraud claim can stand alone. Conversely, if the Court determines there is a valid contract, then both the claims for fraud and unjust enrichment cannot be advanced. Additionally, although Quailes admits that

the breach of the covenant of good faith and fair dealing is not a separate cause of action, Quailes seeks leave to amend the Complaint by adding claims of promissory estoppel and misrepresentation.

## **B. Conclusions**

As a preliminary matter, the Court must decide the issue of enforceability. Here, Quailes claims that he and Newton entered into an agreement in which he would purchase the Property with the understanding that Newton would repurchase the Property when he was more financially secure, which Newton anticipated would take six (6) to twelve (12) months. Under the Delaware Statute of Frauds, a contract is not enforceable without evidence of a written agreement if the nature of the contract requires more than one (1) year for performance.<sup>6</sup>

Specifically, 6 *Del. C.* § 2714 provides in part:

“No action shall be brought . . . upon any agreement made upon . . . any contract or sale of lands . . . or upon any agreement that is not to be performed within the space of one year from the making thereof . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith, or some other person thereunto by the party lawfully authorized in writing . . . .”<sup>7</sup>

However, the Delaware Supreme Court has held that the Statute of Frauds will not apply if an alleged oral contract can be performed within one year.<sup>8</sup>

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<sup>6</sup> 6 *Del. C.* § 2714.

<sup>7</sup> 6 *Del. C.* § 2714(a).

<sup>8</sup> See *Haveg Corp. v. Guyer*, 211 A.2d 910, 912 (Del. 1965).

Therefore, the fact that the “agreement” between Quailes and Newton was not reduced to writing is not necessarily fatal. Instead, because Quailes has not proffered evidence of a written contract here, the Court must determine whether a genuine issue of fact exists as to the possibility of performing the alleged agreement within one (1) year. Here, Quailes contends that Newton indicated he would repurchase the Property and satisfy the mortgage within a six (6) to twelve (12) month period. Because the Court generally finds that Quailes raises a genuine dispute here, the Court cannot dismiss Quailes’ Complaint based on the Statute of Frauds.

As such, the Court is not in a position to find that there are no reasonably inferable facts under which Quailes would be unable to prevail. Further, the Court finds that a dismissal prior to additional discovery regarding the nature of the oral agreement beyond the bare allegations of the Complaint would be premature at this stage of the proceedings. Because the Court will allow additional discovery to take place, it will also deny at this time Newton’s other claims in his motion. These claims are primarily procedural and will become clearer as discovery proceeds or the Complaint is subsequently amended. Newton, however, is not precluded from raising these issues again once reasonable discovery occurs.

For the foregoing reasons, Defendant's Motion to Dismiss is hereby

**DENIED.**

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.