

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

CORONADO CONDOMINIUM ASSOCIATION, INC.,	:	December Term 2004
	:	
Plaintiff,	:	No. 2691
v.	:	
IRON STONE CORONADO, L.P., IRON STONE CORONADO G. P. CORP., IRON STONE MANAGEMENT, ANDREW EISENSTEIN, MATTHEW CANNO, JOEL WACHS AND PRUDENTIAL FOX & ROACH,	:	COMMERCE PROGRAM
	:	Control Number 052061/070293
Defendants.	:	

ORDER and OPINION

AND NOW, this 7th day of November 2005, upon consideration of the Preliminary Objections of Defendant Prudential Fox & Roach to Plaintiff's complaint (cn 052061) and the Preliminary Objections of Defendants Iron Stone Coronado, L.P., Iron Stone Coronado, G.P. Corp., Iron Stone Management, Andrew Eisenstein, Matthew Canno and Joel Wachs (cn 070293), Plaintiff's responses in opposition, Memoranda, all matters of record and in accord with the Memorandum Opinion to be filed of record, it hereby is **ORDERED** and **DECREED** that Defendants' Preliminary Objections are **Sustained** in part as follows:

1. Count IV (UTPCPL) is dismissed for lack of capacity to sue.
2. Count III (fraud and misrepresentation) is dismissed for failure to conform to a rule of court. Plaintiff is granted leave to amend Count III to conform with Pa. R. Civ. P. 1020 within twenty (20) days from the date of this order.
3. Count V (violations of the Real Estate Seller Disclosure Act) is dismissed for failure to state a claim.

All other preliminary objections are overruled.

BY THE COURT,

C. DARNELL JONES, II, J.

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	:	Control Number 052061/070293
	:	
Defendants.	:	

OPINION

JONES, II, J.

The instant action arises from the sale of condominium units to individual unit owners. Plaintiff Coronado Condominium Association, Inc. (hereinafter “Association” or “Plaintiff”) instituted suit against Prudential Fox & Roach and Iron Stone Coronado, L.P., Iron Stone Coronado, G.P. Corp, Iron Stone Management, Andrew Eisenstein, Matthew Canno and Joel Wachs alleging claims for breach of contract (count I), breach of fiduciary duty (count II), fraud and misrepresentation (count III), violations of the Unfair Trade Practices Consumer Protection Law (count IV), violations of the Real Estate Seller Disclosure Act (count V) and negligence (count VI). Presently before the court are the respective Preliminary Objections of Defendant Prudential Fox & Roach and Iron Stone Coronado, L.P., Iron Stone Coronado, G.P. Corp, Iron Stone Management, Andrew Eisenstein, Matthew Canno and Joel Wachs to Plaintiff’s complaint. For the reasons discussed below, Defendants’ preliminary objections are sustained in part and overruled in part.

DISCUSSION

I. Defendants' Preliminary Objection to Count IV (UTPCPL) is Sustained.

Count IV of the complaint purports to state a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §201-1 et. seq. Defendants maintain that the Association lacks standing to assert such a claim since the Association is not a purchaser as required by the statute. The court agrees.

The UTPCPL provides in pertinent part as follows:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100.00) whichever is greater.

73 Pa. C.S. § 201-9.2 (a). According to the plain and unambiguous terms of the statute, only parties who have made purchases or leased goods and services may sue.

Here, the complaint fails to allege that the Association is a purchaser as intended by the UTPCPL. Although the Uniform Condominium Act permits an association to institute litigation in its own name on behalf of itself or two or more unit owners on matters affecting the condominium, the UTPCPL was intended to enhance the protection of consumers against deceptive or unfair trade practices. As such, the language found in the UTPCPL requires that the persons who can bring a claim be a "purchaser." Here, the claim arising under the UTPCPL did not affect the condominium but affected the purchaser of the condominium unit. Since the Association is not a purchaser it is statutorily precluded from bringing a private cause of action under the UTPCPL. *See Greencourt Condominium Ass'n v. Greencourt Partners, et. al.* 2004 Phila. Ct. Com. Pl. Lexis 58 (2004)(citing Balderston v. Medtronic Sofamor Danek, Inc., 285 F.3d 238, 241

(3rd. Cir. 2002); *cf.* Valley Forge Towers South Condominium v. Ron-Ike Foam Insulation, Inc., 574 A.2d 641 (Pa. Super. 1990)(holding that a condominium association could proceed under the UTPCPL based on the condominium associations purchase of roofing material from the defendant)). Accordingly, Count IV is dismissed.

II. Count III is dismissed for Failure to Conform to a Rule of Court.

Pennsylvania Rule of Civil Procedure 1020 requires each cause of action and any special damage related thereto to be stated in separate counts containing a demand for relief. *See* Pa. R. Civ. P. 1020. Count III of the complaint purports to state a claim for fraud and misrepresentation. Pennsylvania recognizes three different types of misrepresentation, intentional misrepresentation, negligent misrepresentation and innocent misrepresentation. *See* Bortz v. Noon, 729 A.2d 555, 560 (Pa. 1999). Count III fails to identify the type of representation for which it seeks relief against moving Defendants and fails to separate the fraud claim from the misrepresentation claim as required by Pa. R. Civ. P. 1020. Accordingly, Defendants' Preliminary Objections are sustained. Plaintiff is granted leave to amend Count III to conform with Pa. R. Civ. P. 1020 within twenty (20) days from the date of this order.¹

II. Count V is dismissed for failing to state a claim.

Count V of plaintiff's complaint purports to state a claim for violations of the Real Estate Seller Disclosure Act, 68 Pa. C. S. § 7301 *et. seq.* Defendants maintain that Plaintiff's claim is legally insufficient and should be dismissed since the act does not require disclosures relating to common elements by a seller of the condominium unit.

The court agrees.

¹ Despite plaintiff's failure to separate the fraud claim from the misrepresentation claim as required by Pa. R. Civ. P. 1020 the allegations contained within Count III are sufficient at this stage in the litigation to state a claim for fraud against defendants.

Section 7302 (b) of the Real Estate Seller Disclosure Law provides:

(b) Limitations in the case of condominiums or cooperatives.—Any seller of a unit in a condominium created under Subpart B of Part II (relating to condominiums or a similar provision of prior law or a cooperative as defined in section 4103 (relating to definitions) shall be obligated to make disclosures under this chapter only with respect to the seller's own unit and shall not be obligated by this chapter to make any disclosure with respect to any common elements or common facilities of the condominium or cooperative. The provisions of section 3407 (relating to resales of units) shall control disclosures a seller is required to make concerning common elements in a condominium, and section 4409 (relating to resales of cooperative interests) shall control disclosures a seller is required to make concerning common elements in a cooperative. (Emphasis added.).

Here, in count V of the complaint, plaintiff alleges as follows:

97. Iron Stone Coronado, L.P. breached the foregoing duties by failing to accurately and fully complete the Seller's Property Disclosure Statement mandated in Section 1025 of the Seller's Disclosure Act.

98. Moreover, Iron Stone Coronado, L.P. breached the foregoing duties by providing Seller Disclosure Statements to Association members which contained errors, inaccuracies and omissions regarding materially defective Common Elements within The Coronado, the existence of which Iron Stone Coronado, L.P. knew, or should have known.

Because plaintiff's allegations relate to the common elements of the condominium, the Real Estate Seller Disclosure Law does not apply. Accordingly, Count V is dismissed.

CONCLUSION

For the foregoing reasons, Defendants' Preliminary Objections are **Sustained** in part as follows: Count IV (UTPCPL) is dismissed for lack of capacity to sue, Count III (fraud and misrepresentation) is dismissed for failure to conform to a rule of court and Count V (violations of the Real Estate Seller Disclosure Law) is dismissed. Plaintiff is

granted leave to amend Count III to conform with Pa. R. Civ. P. 1020 within twenty (20) days from the date of this order. All other preliminary objections are overruled.²

An order contemporaneous with this Opinion will be filed of record.

BY THE COURT,

C. DARNELL JONES, II, J.

² The court makes no finding as to the future viability of the remaining counts and this order is entered without prejudice so that Defendants may later file a motion challenging same if warranted.