

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

MICHAEL GOLDSTEIN, MICHAEL	:	SEPTEMBER TERM, 2009
FITZGERALD, and RIDGE	:	
NEIGHBORHOOD PARTNERS, INC.,	:	NO. 02570
	:	
Plaintiffs,	:	COMMERCE PROGRAM
	:	
v.	:	
	:	
STONEBRIDGE BANK,	:	
	:	
Defendant.	:	

**OPINION**

Plaintiffs appeal from this court’s Order dated February 2, 2010, in which the court sustained defendant’s Preliminary Objections and dismissed plaintiff’s Complaint. For the reasons that follow, the court respectfully requests its Order be affirmed on appeal.

This case is one of three related cases filed with the trial court. In the other two cases, defendant Stonebridge Bank (the “Bank”) sued two limited partnerships (the “Partnerships”),<sup>1</sup> each of which was the recipient of a commercial acquisition and construction loan from the Bank (the “Loans”). The Loans were secured by mortgages on real properties purchased with the Loan funds and owned by the Partnerships (the “Properties”). The Partnership’s general partner allegedly misused the Loan funds and the Partnerships defaulted under the terms of the Loans. As a result, the Bank requested the court appoint a Receiver to manage the Properties. The court appointed the Receiver. No appeal was taken from that decision, and those two cases are still pending before this court.

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<sup>1</sup> Stonebridge Bank v. 6212 Ridge LP, November Term, 2009, No. 2136; Stonebridge Bank v. 6214 Ridge LP, November Term, 2009, No. 2142.

Plaintiffs in this action are the limited partners of the Partnerships and the personal guarantors of the Loans. They sued the Bank for breach of contract, detrimental reliance, and breach of the duty of good faith and fair dealing. Plaintiffs claimed the Bank failed to supervise the general partner's use of the construction loan proceeds as required by the Loan documents. By making such claims, plaintiffs improperly tried to convert the Bank's rights set forth in the Loan documents into duties owed to the plaintiffs.

Construction lenders like the Bank routinely insist upon the right to inspect and approve the progress of construction before they release additional loan funds. These reservations of rights do not transform the lender into the borrower's construction manager or partner. The borrower remains responsible to the lender and to any investors for completing the construction as promised.

A lender properly and necessarily has an interest to insure that the construction is completed correctly because a completed, income producing, building is greater security for a loan than a half-finished building. Likewise, investors, such as plaintiffs, have an interest in seeing the building completed and earning money. Investors also have the means to protect their own interests and the responsibility to do so. If investors permit the person they chose to run their business to mismanage it, they cannot blame someone else for failing to stop him.

Plaintiffs in this action are limited partners of the Partnership. As such, they had both the ability to supervise their general partner and the obligation to protect their own economic interests in the Partnership and the construction project.<sup>2</sup> The Bank made no promise in the Loan documents to protect these plaintiffs' interests. The Bank reserved the right to protect its own interests. Apparently, the Bank did not adequately exercise its oversight rights to protect its

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<sup>2</sup>Any failure to reserve such rights to themselves in the partnership agreements cannot be attributed to the Bank.

interests, but it was free to choose not to do so. Likewise, the plaintiffs chose not to exercise their rights as limited partners, so their general partner had free rein to misuse the Loan funds. Having done so, they cannot now blame the Bank for their own mistake.

Plaintiffs have not pled any promise or any duty running from the Bank to them which has been breached. All of their claims pled against the Bank fail. For this reason, the court respectfully requests that its February 2<sup>nd</sup> Order dismissing plaintiffs' Complaint be affirmed on appeal.

**Dated: June 30, 2010**

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**MARK I. BERNSTEIN, J.**