

TWENTY N. THIRD STREET DEVELOPMENT,
L.P. and TWENTY N. THIRD STREET
CONDOMINIUM,

PLAINTIFFS,

v.

SANTANDER HOLDINGS USA, d/b/a
SOVEREIGN BANK, N.A. and PBE
COMPANIES, LLC,

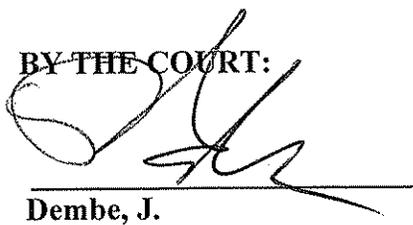
DEFENDANTS

: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
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: COMMERCE PROGRAM
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: MAY TERM, 2010
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: NO. 000988
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ORDER

AND NOW, this 11th day of December , 2013, it is hereby **ORDERED** that a finding is entered in favor of the defendant Santander Holdings USA d/b/a Sovereign Bank, N.A. and PBE companies, LLC and against plaintiffs Twenty N. Third Street Development, L.P and Twenty N. Third Street Condominium.

BY THE COURT:



Dembe, J.

Findings of Fact

1. Plaintiff, Twenty N. Third Street Development, LP, (“20 N. 3rd LP”) is a Pennsylvania Limited Partnership, which acquired title to 20 – 22 N. 3rd Street Philadelphia, PA (“20 N. 3rd”) on March 21, 2005. **Stipulated Facts 1, 9**

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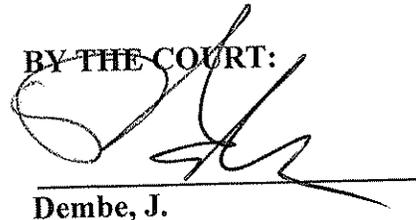
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There were holes in the five-story building roof. The three-story extension had a roof deck, but no roof. The back wall was missing from the fifth floor through the third floor of the front section. **Id at 82-84; P-57**

13. On February 6, 2009, Sovereign filed an action in the Philadelphia Court of Common Pleas at Case #090200925 to foreclose on the mortgage on 18 N. 3rd Street.

Stipulated Fact 48

14. On August 21, 2009, James Pesavento, Vice President in Debt Management and Recovery for Sovereign Bank (Pesavento) was assigned the delinquent loan account.

Stipulated Fact 49.

15. The building occupying 18 N 3rd Street was made up of three sections: a five-story building that faced the street, a three-story extension in the middle, and an unpaved rear yard. **NT 7/9/13 at 53.**

16. As early as December 1, 2009, Pesavento knew that that part of the roof of 18 N. 3rd Street and the back wall of stories four and five were missing. **NT 7/8/13 at 8.**

17. In September, 2009, Pesavento obtained bids for a Phase I Environmental Study of 18 N.3rd Street. **Stipulated Fact 51**

18. Pesavento selected Liberty Environmental, Inc. (Liberty) to perform the Study because it submitted the lowest acceptable bid. **Stipulated Fact 52**

19. On September 28, 2009, Sovereign directed Liberty to perform a Phase I Environmental Site Assessment and to issue a report. **Stipulated Fact 53¹**

¹ Evidence presented at trial indicated that Sovereign received an Environmental Site Assessment Report from Liberty dated December 9, 2009. P-57, N.T. 7/8/13 at 13-14.

2. Defendant Sovereign Bank N.A. ("Sovereign" or "Bank") is a federally chartered savings bank with its principal place of business at 1130 Brookshire Blvd., Wyomissing, PA. **Stipulated Fact 1**
3. PBE Companies, LLC ("PBE") is a Delaware Limited Liability Company with Corporate Service Company as its registered agent at 2711 Centerville Road, Suite 400, Wilmington, DE 19808. **Stipulated Fact 2**
4. Sovereign is a 100% owner of PBE. **Stipulated Fact 3**
5. PBE is Sovereign's real estate holding company. **Stipulated Fact 6**
6. On March 21, 2005, 18 N. 3rd Street, LLC ("Borrower") became the owner of 18 N. 3rd Street, Philadelphia, PA ("18 N. 3rd Street"). **Stipulated Fact 9**
7. The building located at 18 N. 3rd Street is adjacent to the building located at 20 N. 3rd Street, Philadelphia, PA 19106 ("20 N. 3rd Street"). **Stipulated Fact 8**
8. 20 N. 3rd Street Condominium was created by a Declaration dated March 10, 2006 and recorded on March 17, 2006 at the Philadelphia Department of Records as Document No. DM 51400686. **Stipulated Fact 10**
9. On April 11, 2006, Sovereign and the Borrower entered into a loan transaction. **Stipulated Fact 11**
10. A closing took place on the \$2,500,000 Sovereign Loan to Borrower on April 18, 2006 and a loan and security agreement was executed. **Stipulated Fact 12**
11. Borrower defaulted on the mortgage loan with Sovereign on April 1, 2008. **Stipulated Fact 44**
12. Before defaulting, borrower substantially demolished the property making it vulnerable to water intrusion and rendering it structurally unsound and dangerous.

20. On October 14, 2009 the City of Philadelphia Department of Licenses and Inspection (“L&I”) posted a danger notice, dated at 18 N. 3rd Street indicating that the building was “in imminent danger of collapse”. **Stipulated Fact 54.**
21. Liberty inspected the exterior of 18 N. 3rd Street on October 22, 2009 but was not could not enter because of the imminent danger of collapse notice. **Stipulated Fact 55; NT 7/8/13 at 75.**
22. The imminent danger of collapse notice bore the words “Keep Out.” **D-12, P-9 at 2-4; photo No. 4. S0V003572**
23. On October 26, 2009, Liberty sent Pesavento photographs of the exterior of 18 N. 3rd Street, including a photo of the imminent danger of collapse notice. **Stipulated Fact 58.**
24. On December 11, 2009, Carla Wesley (“Wesley”), AVP/Environmental Risk Analyst for Sovereign, forwarded the Liberty Environmental Assessment Report to Pesavento and advised him that the Sovereign Environmental Unit would conduct an independent review of the Report. **P-62**
25. Wesley performed an independent review of the report and sent Pesavento an Environmental Review Memorandum. **P-63**
26. Wesley recommended that Sovereign hire a building contractor to inspect 18 N. 3rd Street and determine what renovation was necessary and whether it should include removal of asbestos, lead based paint and “any areas affected by microbial matters/mold growth.” (Ex. P-63) **NT 7/8/13 at 16-18.**
27. Wesley’s report did not serve to put Sovereign on notice that there was mold damage to 20 N 3rd. Street.

28. Sovereign purchased 18 N. 3rd Street at a Sheriff's foreclosure sale on December 1, 2009 and took possession the same day. **Stipulated Facts 76, 77.**
29. On May 7, 2012, the Honorable Arnold L. New entered an order granting partial summary judgment to the defendants: On May 7, 2012, the Honorable Arnold L. New entered an order granting partial summary judgment to the defendants:
Santander holdings USA Inc d/b/a Sovereign Bank ("Sovereign") is not liable for any damages suffered by plaintiffs prior to December 1 2009 on which date Sovereign was the successful bidder at the Sheriff's sale of the subject property
30. On December 1, 2009, the City Department of Licenses and Inspections ("L & I") issued a second violation notice regarding 18 N. 3rd Street. The Notice was not sent to Sovereign or PBE by the City of Philadelphia. **Stipulated Fact 78.**
31. On December 2, 2009, Pesavento applied for insurance for 18 N. 3rd Street.
Stipulated Fact 79.
32. Sovereign hired ConTech to obtain the building permits necessary to begin the repair work needed to stabilize 18 N. 3rd Street and to stop water from seeping into 20 N. 3rd Street. **Id at 48.**
33. Sovereign directed ConTech to determine what repairs were necessary to stabilize 18 N. 3rd Street for the approximately 12 months it would take to find a buyer.
Stipulated Fact 60, NT 7/8/13 at 74; 7/9/13 at 23-25.
34. Sovereign Bank's immediate concern was to make 18 N. 3rd Street structurally sound because of the imminent danger of collapse. **NT 7/8/13 at 14**
35. Between November 12 and December 1, Alex Generalis, the developer and manager of 20 N. 3rd Street, and owner of some of the condo units, notified Mr. Pesavento

- that water was entering the basement of 20 N. 3rd Street through the wall south wall adjacent to 18 N. 3rd Street. **NT 7/8/13 at 65-68**
36. Pesavento testified that Generalis did not tell him about microbial issues or mold at 18 N. 3rd St. that required remediation. **Id. at 67-68.**
37. Pesavento's testimony was credible.
38. Pesavento did not have expertise in construction management or in obtaining construction permits from the Philadelphia Department of License and Inspection. **NT 7/8/13 at 75**
39. ConTech had satisfactorily managed an earlier construction project for Sovereign Bank. **Id. at 76**
40. ConTech did not perform construction work; it determined what work was needed, obtained permits, hired and supervised contractors and kept track of costs. **NT 7/9/13 at 8-9.**
41. ConTech drew up a work proposal dated December 9, 2009 and sent it to Pesavento. **Id. at 19. 49.**
42. ConTech recommended that the work be completed in two (2) Phases: Phase I entailed mitigating weather damage to 18 N. 3rd Street and its adjacent properties pending the completion of the renovation of 18 N. 3rd Street in the next 8-12 months or its demolition in **D-12;P-20**
43. Phase II involved more technical engineering work to insure 18 N. 3rd Street was structurally stable.. **NT 7/9/13 at 29-30, P-20; D-12.**

44. In an email dated December 18, 2009, Pesavento notified Herb Grant of ConTech that ConTech was authorized to begin work, but that he could not issue a written contract without his supervisor's approval ConTech's **Id. at 18-19**
45. Pesavento was busy with other bank-related issues and informed Grant he would obtain written approval the next week. **Id. at 20**
46. Pesavento sent an email to his supervisor, Andrew Roehmeyer on December 24, 2009 requesting approval to hire ConTech and attaching ConTech's proposal for work to be completed on 18 N. 3rd Street. **Id at 19-20; P-66.**
47. Approval of ConTech's proposal for repairs was not conditioned on Sovereign finding a buyer for 18 N 3rd Street. **NT 7/8/13 at 67.**
48. On January 21, 2010 Sovereign gave ConTech written authorization to perform the work outlined in their proposal of December 9, 2009. **Stipulated Fact 87. NT 7/8/13 at 20-21.**
49. On January 21, 2010 Sovereign Bank transferred assigned the Sheriff's bid to PBE and transferred title to 18 N 3rd Street, to PBE for \$1.00. **Id. Stipulated Fact 89.**
50. The Sheriff issued a deed to PBE on February 22, 2010. **Stipulated Fact 94**
51. It was Sovereign's customary practice to transfer title to their foreclosed properties to PBE, their real estate holding company. **Id at 21.**
52. Sovereign Bank did not attempt to conceal its identity or that it was responsible for the maintenance and repair of 18 N 3rd. Street.
53. On May 7, 2012, the Honorable Arnold L. New entered an order granting partial summary judgment to the defendants: *Santander holdings USA Inc d/b/a Sovereign Bank PBE Companies LLC is not liable for any damages suffered by plaintiffs prior*

to February 22, 2010 on which date PBE acquired Sovereign's interest in and the deed to the property.

54. On January 28, 2010, Sovereign hired Shea Realty Advisors to appraise 18 N 3rd Street. **Stipulated Fact 91.**
55. On December 7, 2009, A.T. Construction Inc. ("ATC") submitted a proposal to ConTech to perform work at 18 N. 3rd Street in the amount of \$17,500. **Stipulated Fact 83**
56. On January 29, 2010, ConTech hired ACT to make stabilization repairs to the roof of 18 North 3rd Street. **NT 7/8/13 at 82.**
57. ConTech applied for a permit to do the necessary roofing work in February 2010. **NT 7/9/13 at 41, 44.**
58. On February 10, 2010, Pesavento contacted ConTech for an update on the property and the work completed. **Stipulated Fact 93**
59. ATC hired an expediter to help obtain a permit to repair the roof and proceed with drying out the building but the expediter was not successful. **NT 7/9/13 at 85.**
60. L&I denied the permit application on February 22, 2010. **NT 7/9/10 at 90-91.**
61. On February 27, 2010, Pesavento requested another update from ConTech. **Stipulated Fact 95**
62. On March 1, 2013, Richard Weaver of ConTech sent an email to Pesavento to inform him that the City of Philadelphia would not issue a permit to repair the roof because they had no records indicating that the former owner (Borrower) had cured outstanding building code violations. **NT 7/9/13 at 45**

63. Weaver testified that because of this, ConTech had to modify its original plan and concentrate on remediating other building code violations before it repaired the roof. **Id. at 46, 50.**
64. Weaver's testimony was credible.
65. On February 23 2010, ConTech hired The Kachele Group ("Kachele") to design a master plan identifying what repairs were necessary to correct 18 North 3rd Street's structural instabilities and to supply supporting engineering drawings and reports required to evaluate the building pursuant to the violation that was existing on the building **NT 7/9/13 at 12-13, 46-48.**
66. Kachele was licensed to perform these services in the Commonwealth of Pennsylvania; Contech was not. **Id. at 13.**
67. Kachele issued an engineering report on March 3, 2010 which recommended installing temporary roofing and flashing. **D-22**
68. ConTech applied to L&I for a building permit on March 11, 2010. **NT 7/8/13 at 84.**
69. L & I denied the application because it had certified the building in imminent danger of collapse. **Id.**
70. ConTech had to transact with three independent departments of L&I. in order to clear the violation notices and begin repairs on 18 N 3rd Street. **NT 7/9/13 at 92**
71. The Emergency and Contractual Services Division dealt with safety issues and had issued the notice of imminent danger of collapse. The Permit Division issued building permits and the Building Inspection Division Central District conducted initial inspection after a permit is issued but before work can begin. **Id. at 92-95.**

72. After a rain storm in March 2010, Generalis sent Pesavento an email dated March 16, 2010 informing him that the basement of 20 N. 3rd Street experienced water infiltration on the side that abutted 18 N 3rd Street. **NT 7/8/13 at 101, 113.**
73. Generalis complained that rain water was entering the basement of 20 N 3rd Street and that unless a permanent roof was placed over the third floor, water would continue to enter. **P-83**
74. ConTech did not advise Pesavento that there was mold in 18 North 3rd Street that required remediation. **NT 7/8/13 at 66-67**
75. Generalis sent Pesavento an email dated March 16, 2010 that there was water coming into the basement of 20 N 3rd Street. He did not complain to Pesavento about this again nor did anyone else acting on plaintiffs' behalf. **Id. at 65.**
76. Plaintiffs did not take any measures to remove wet dry wall or base boards after the March 2010 water intrusion, nor did they dry the wet areas or apply bleach. **NT 7/8/13 at 183**
77. Pessavento testified that did not contact Generalis because ConTech was in contact with Generalis. **NT 7/8/13 at 35.**
78. Weaver corroborated this, testifying that after he spoke to Generalis on or about March 17, 2010 he changed ConTech's proposal for repairing the roof to include a deck over the rear yard. **NT 7/9/13 at 59-60.**
79. On March 17, 2010, representatives from ConTech met with representatives from L&I's Contractual Services and Permits Divisions to discuss the permit procedure.
P-204

80. On April 19, 2010, ConTech reapplied for the building permit and included engineering drawings and approval from the Historical Commission. **Id.**
81. ConTech planned to install roof membrane and flashing, star bolts on floors 3 through 5 and a temporary tarp to cover the rear façade. **Stipulated Fact 112.**
82. ConTech ultimately rejected using tarps because they would not be effective in keeping water out and would require frequent monitoring. **NT 7/11/13 at 45-46 60.**
83. The plaintiffs filed the instant case on May 7, 2010. **Stipulated Fact 115.**
84. After several resubmissions, ConTech received a building permit on May 14, 2010. **Id.**
85. City Inspector James Dougherty, who worked for the Building Inspection Division, Central District was required to inspect the work site before work could begin. **NT 7/9/10 at 95.**
86. Dougherty met with Weaver on May 14 and May 19, 2010.
87. Dougherty refused to inspect the work site to allow work to begin, despite the fact the Permit Division of L & I had already issued a building permit. **Id. at 94**
88. Weaver tried to contact Dougherty several times before meeting with him but Dougherty did not answer his phone or return messages. **Id. at 93.**
89. Weaver contacted Dan Quinn and Joe Flannigan of the Emergency Services and Permit Divisions of L&I and received permission from them to begin work. **Id at 96-97.**
90. On June 1, 2010, Plaintiffs filed a Motion for Preliminary Injunction. **Stipulated Fact 121.**

91. Work commenced at 18 N 3rd Street on June 9 2010 and continued until the site was shut down on June 29, 2010. **Id.**
92. On June 29, 2010, Dougherty paid an unscheduled visit to the work site at the request of attorneys who were defending Sovereign in the injunction action which had a hearing scheduled for June 30 before the Honorable Arnold L. New. **Id.**
93. Dougherty was displeased to learn that work on the site had resumed under the direction of another department of L&I. He ordered that work cease. He claimed that the closure was necessary because a subcontractor of ATC did not possess a Philadelphia Business Privilege License. **Id. at 99.**
94. Richard Weaver sent James Pesavento an email dated June 29, 2010 informing him of what happened: "L&I has shut down our work at the site. For whatever reason, the atty's [sic] decided to bring the local L&I inspector out to the site today. This is the guy [Dougherty] who has impeded our work since the permit was issued and who wants to supercede [sic] the approvals granted by other key L&I supervisors, who had advised us to proceed under our approved permit and under the direction of our Engineer (rather than the local L&I District) since this was the correction of an Emergency Services Violation rather than a regular building permit." **P-116, NT 7/9/13 at 100.**
95. On June 30, 2010, Walter Weir, Esq. represented the defendants at a conference before Judge New. Jerry Balka Esq. represented the plaintiffs. Alex Generalis and Richard Weaver were also present. **NT 7/8/13 at 71.**

96. The parties agreed on a course of action with the goal of resuming construction as soon as possible. In a letter to Balka dated July 6, 201 Weir summarized the action plan as follows:
97. “First, we want to get our respective engineers to meet and see if they can agree on a stabilization plan.”
98. “Second, if we can agree on a stabilization plan, PBE will organize a meeting among the City of Philadelphia, Department of Licenses & Inspections (“L&I), the parties’ representative from PBE’s consultant, ConTech Services, Inc. and both parties’ engineers.”
99. “Third, following the meeting with L&I, we will put into writing a stabilization plan and circulate it to all interested parties for comment and approval.”
100. “Fourth, immediately following everyone signing off on the stabilization plan, PBE shall forthwith implement all steps necessary to procure permits for the repair work (i.e., any necessary engineering, structural analysis, plans, drawings, etc.) and will execute the contracts with licensed contractors to perform the repair work.”
101. “Finally, the contractors will proceed ASAP with construction.” **P-121**
102. Brooke E. Leach, Esq. counsel for the defendants contacted Dougherty, Ken Weinstein and Rohemeyer via email on July 7, 8 and 12 to arrange a meeting among them which took place on July 15, 2010. **P-122, 123, 125.**

103. On July 15, 2010, Weinstein of Kachele emailed Rohmeyer estimates for the preparation of the enhanced engineer's report and structural drawings that Dougherty required. Weinstein said that it was difficult to determine a fee for the drawings because he sensed that Dougherty's requirements "might be a moving target." **P-126**
104. On July 21, 2010, Rohmeyer gave Weinstein approval to proceed with the enhanced engineer's report. **(P-128)**
105. At this time, Sovereign was also giving serious consideration to demolishing 18 N 3rd Street.
106. On July 22, 2010, Ken Weinstein of Kachele sent an email to Dougherty attaching a draft of an enhanced engineer's report. **Stipulated Fact 133**
107. On July 27, 2010, Weinstein and Dougherty met to review the revised engineer's report. Sovereign agreed to alter the scope of the report to address "certain aspects of work that were requested by the owner of 20 N. 3rd, and . . . certain items that the City central district inspectors Mr. Dougherty, had wanted to see in the scope. [T]he engineers report was revised to incorporate some of their concerns and the scope of work on the project was revised to accommodate on issues for those matters. **NT 7/9/13 at 47.**
108. Generalis objected to the use of tarps.

109. Sovereign agreed to forego the use of temporary tarps in favor of a more expensive but more permanent solution. **NT 7/11/13 at 45-46 60.**

110. On August 12, 2010, the parties participated in a conference with Judge New.

Stipulated Fact 142

111. After the conference, ConTech asked for estimates from contractors for the revised scope of work. **NT 7/8/13 at 54, NT 7/9/13 at 66.**

112. Sovereign retained ConTech as construction manager, but ConTech and Pesavento recommended that general contractor ATC be replaced with A&MD contractor. **Id. NT 7/9/13 at 66-69.**

113. Roehmeyer approved the replacement on August 24, 2010. **Id.**

114. An agreement for the sale of 18 N 3rd St. was signed on August 19, 2010. **Stipulated Fact 144**

115. ConTech submitted an application for a building permit to the City on August 24, 2010. **Stipulated Fact 146.**

116. On August 26, 2010, Weaver spoke with Joe Flanagan of L&I . Flanagan agreed to review the latest permit application that day instead of sending it through the normal plan review process. **P-161**

117. The City issued a building permit on August 26, 2010. **Stipulated Fact 148.**

118. Dougherty performed the requisite initial site inspection on August 31, 2010. **Stipulated Fact 149.**

119. Dougherty objected to various aspects of the revised scope of work including the installation of a roof over the rear yard. **NT 7/9/13 at 102**

120. Weaver was able to proceed with other aspects of the repairs. **Id.**
121. On September 13, 2010, Judge New presided over another hearing in connection with the injunction action, and resolved the Dougherty's disagreements on the scope of repairs. **Id at 104.**
122. After the hearing, Weaver discussed implementing the plan for building the rear roof with A&MD, the new contractor. **Id.**
123. By October 5, 2010, all of the work need to stabilize 18 N 3rd Street, close it and make it water tight was completed. **Id. at 107. NT 7/8/10 at 85.**
124. Plaintiffs withdrew the motion for a preliminary injunction on September 27, 2010.
125. The closing for the sale of 18 N 3rd Street took place on December 15, 2010.
126. There have never been signs posted in the lobby of 20 N. 3d Street advising tenants, their guests or business invitees of mold conditions in the building. **Stipulated Fact 162.**
127. Plaintiff could not have prevented the entry of water from 18 N. 3rd Street into their building. **NT 7/8/13 at 121.**
128. At the time Generalis sent the email dated March 16, 2010 to Pesavento (71, 72) he had only seen evidence of water infiltration in the basement. **Id at 167.**
129. He started observing water flooding on upper floors around May 22-24, 2010. **Id. at 114.**
130. After the basement of 20 N 3rd Street was flooded in March 2010, plaintiffs did not investigate whether they could take any measures to keep mold from growing in the basement. **Id. at 163-65,**

131. The basement was occupied by a tenant for one and one half years after the March 2010 flooding incident. **Id at 164.**
132. Mold spores are ubiquitous. **NT 7/10/13 at 22.**
133. Mold develops from spores which can lay dormant until the right conditions exist for it to germinate. **NT 7/10/13 at 21**
134. Water that penetrates a building can carry mold spores or the spores might exist in a dormant state in wall paper or dry wall. **Id.**
135. In February of 2011, plaintiffs hired a mold environmental service to test 20 N 3rd Street for mold. **NT 7/8/13 at 124.**
136. There was no evidence presented that plaintiffs had 20 N 3rd Street tested for mold before filing the instant lawsuit.
137. In February of 2011, Plaintiffs' attorney, Jerry Balka hired Chuck Rainey of Alpha Environmental, Inc. to take samples in all of the suspected mold areas within 20 N. 3rd Street. **Id. at 142-43**
138. A maintenance man escorted Rainey to the first and second floors and units 101 and 102 which were the areas Generalis specified should be tested for mold. **Id. at 142-43.**
139. Generalis did not request that Rainey test anywhere elsewhere in the building. **Id. at 203-06.**
140. Plaintiff did not present photographs showing evidence of water infiltration in units 301, 401 or 501 of 20 N. 3rd Street. **Id. at 174.**

141. Plaintiffs did not present any owners or tenants of units 301, 401 or 501 to testify about water infiltration, water damage or mold in their units.
142. Plaintiffs did not present evidence that any tenant or condominium owner suffered from an illness related toxic mold in 20 N 3rd Street. **Id. at 131**
143. The façade of 20 N. 3rd St was in poor condition with fractures in the infill brick which that provided gaps for water to enter. **NT 7/11/13 at 22-23.**
144. The 5th, 6th and 7th floors of 20 N 3rd St. had been damaged by water from a leaky drain pipe prior to the time Plaintiffs took ownership of the building. **NT 7/8/13 at 77.**
145. Plaintiffs did not present evidence that any condo unit in the building was offered for sale.
146. Plaintiffs did not produce evidence that the sale of a condo unit in the building had been lost for any reason, including as a result of conditions caused by water infiltration from 18 N 3rd Street.
147. The real estate firm of Miles and Generalis moved from the 20 N 3rd Street basement office in July of 2011 into another building they owned because they would pay less rent in the new building. **Id. at 136-37.**
148. Miles and Generalis leased the space they vacated in 20 N 3rd St. to a new tenant a year later. **Id. at 134.**
149. There was no remediation done in the basement office before or after the new tenant's occupancy. **Id. at 136.**
150. No evidence was presented as to when mold develop on the 20 N 3rd St. side of the wall adjacent to 18 N 3rd St.

151. Each unit in 20 N. 3rd Street has a separate ventilation and HVAC system. NT
7/11/13 at 103.
152. Plaintiffs' expert Dr. Stainken testified that no standard has been established by any scientific body as to levels of Stachybotrys, Penicillium or Aspergillus that causes adverse health effects in humans. **Id. at 18.**
153. Dr. Stainken did not examine the inside of the HVAC units before concluding that they contained mold spores and recommending that they be removed from the building. **Id. at 19.**
154. The existence of mold spores on HVAC systems is common would be expected to be found in any property with or without a water problem. **Id at 103.**
155. HVAC systems need to be cleaned and maintained on a regular basis. **Id. at 104**
156. Plaintiffs did not present evidence concerning when the mold began to grow or how much of the mold might be attributable to the time after December 9, 2009.
157. Plaintiffs did not present evidence addressing the issue of whether mold was present in 18 N 3rd Street before water intrusion from 20 N 3rd Street.
158. Plaintiffs did not produce evidence that there was a reduction in rental rates in any of the leased units in general or as a result of mold in 20 N 3rd Street.
159. Plaintiffs did not produce evidence that the resale value of the units in 20 N 3rd Street or the building itself were diminished in general or as a result of mold in 20 N 3rd Street.
160. Reaves Lukens, plaintiff's real estate expert witness testified that any prospective buyer of a condo unit would have been informed of a remediated mold problem in that

unit, but that there would be no requirement to disclose that problem after the first sale of any unit. NT 7/10/13 at 186.

161. Plaintiffs did not present evidence that any tenant or owner of a unit in 20 N 3rd Street suffered from any illness caused by toxic mold in the building from any source at any time.
162. Plaintiff's expert Dennis Stainken and defendant's expert James Frisbee referred to different editions of the IICRCS-500 standard for professional damage restoration in order to render their respective opinions on the measures necessary to remediate 20 N 3d Street.
163. Neither the plaintiff nor the defendant presented cogent evidence of the differences between the two editions
164. Plaintiffs did not present any evidence to support an award of punitive damages.

Discussion

Plaintiffs Twenty North Third Street Development and Twenty North Third Street Condominium (20 N 3rd) brought a negligence action against defendants Sovereign Bank and its real estate holding company, PBE Companies LLC (18 N. 3rd St.) alleging they violated their duty as adjacent land owners by failing to make repairs in a timely manner to 18 N. 20th St, a vacant building they bought it at a sheriff sale on December 1, 2009. Plaintiffs claim that as a result of the defendant's unreasonable delay, water seepage from 18 N 3rd Street caused toxic mold to grow in 20 N. 3rd Street. Plaintiffs allege that as a result of this toxic mold infestation, 20 N 3rd Street bears a mold stigma resulting in a decrease in the the rents and sales prices of the individual condo units as well as the overall value of the building. Plaintiffs seek damages for

losses in value plus the cost of remediation to clean up the mold including replacing drywall and ventilation system. They also request relocation costs for the tenants and condo owners while the remediation work is performed. Finally, they request punitive damages alleging that defendant delayed in repairing the building until it had found a buyer. These claims are not supported by the evidence.

Conclusions of Law

To prevail in a negligence case, a plaintiff must establish by a preponderance of the evidence that the defendant owed a duty of care to the plaintiff, that the duty was breached, that the breach resulted in the plaintiff's injury, and the plaintiff suffered an actual loss or damages as a result. *Kinney-Lindstrom v. Med. Care Availability & Reduction of Error Fund*, 73 A.3d 543 (Pa. 2013). As an adjoining land owner, the defendant had the duty to use and maintain 18 North 3rd Street in a manner that would not to injure adjoining landowners *McArthur v. Balas*, 166 A.2d 640, 643 (PA. 1961). In order to prove a breach, however, the plaintiff must demonstrate that a defendant's act or omission fell below the expected standard of care. *Scampono v. Highland Park Care Ctr., LLC*, 57 A.3d 582, 596, (Pa. 2012). This the plaintiffs failed to do.

Plaintiffs' post-trial theory of negligence was that the defendants moved too slowly to remedy the water intrusion. Unfortunately, the plaintiffs did not present persuasive evidence to support this claim. Such delay as existed was precipitated by the dilapidated condition in which the prior owner left the building, the dysfunctional License and Inspection Department and the plaintiffs' decision to involve lawyers and the court which led to the work site being shut down.

Finding of Fact 92. The duty of the bank can be no more than to expeditiously and effectively remedy the condition it inherited.

The court notes that the defendants moved rapidly after obtaining title to 18 N. 3rd Street, obtaining insurance and hiring a contractor. In the spring of 2010, however, progress in obtaining a building permit ground to a halt as the defendants and their agents attempted to reconcile the requirements of three apparently nearly independent and competing divisions of the Philadelphia Department of License and Inspection.

Plaintiff presented another theory of negligence at trial attempting to prove early in the trial that the water seepage into 20 North 3rd Street could be stopped by draping tarps over the back of 18 North 20th Street and that the defendants unreasonably resisted taking this measure. NT 9/9/13 at 30-34. Yet plaintiffs' principal, Generalis, had argued against the use of tarps to prevent water intrusion.

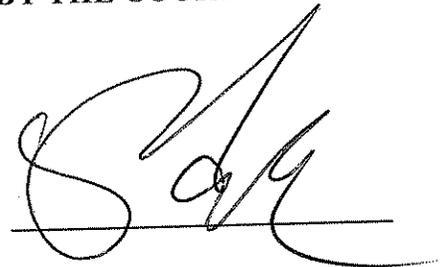
20 North 3rd Street was not tested for mold until the instant lawsuit was filed. Inexplicably, however, the owners and management of 20 North 3rd Street did not take any steps to dry walls or to prevent mold formation when the water intrusion was taking place. Even if the plaintiffs had proven that the defendant breached its duty as an adjoining land owner, their claim for damages based on "mold stigma" is troubling. Devaluation of real estate based on a stigma must be supported by competent evidence which was absent in the instant case. See, *In re Harley-Davidson Motor Co.*, 159 C.D. 2013, 2013 WL 5813712 (Pa. Commw. Ct. Oct. 30, 2013)(hazardous waste). Furthermore, plaintiffs' real estate expert's testimony indicated that the

stigma would be temporary but appeared to base his damages assessment on the assumption that the stigma was permanent.

Needless to say, the plaintiffs failed to prove that they are entitled to punitive damages. See, *SHV Coal, Inc. v. Continental Grain Co.*, 587 A.2d 702, 704 (PA 1991).

Based on the above, a verdict on all counts is entered in favor of the defendants.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'J. Dembe', written over a horizontal line. The signature is stylized and cursive.

Dembe, J.