

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOHN MINGORA and)
JENNIFER MINGORA,) C.A. NO.:
 PLAINTIFFS,)
Vs.)
))
CHARLOTTE A. HURLEY,)
CYNTHIA SPIECZNY a/k/a)
CINDY SPIECZNY,) Jury of Twelve (12) Demanded
RESORT QUEST REAL ESTATE,)
And MALLARD LAKE COMMUNITY)
ASSOCIATION, INC.)
 DEFENDANTS)
)

COMPLAINT

NOW COME Plaintiffs, John and Jennifer Mingora, husband and wife, by and through counsel, Dean A. Campbell, Esq. to Complaint of Defendants, to wit:

THE PARTIES

1. Plaintiffs are John and Jennifer Mingora, husband and wife, of 38296 Hummingbird Lane, Selbyville, Delaware 19975. (“Mingora”).
2. Defendant Charlotte A. Hurley is an individual residing at 1995 NW Cary Parkway, Morrisville, NC 27560 (“Hurley”).
3. Cynthia Spieczny a/k/a Cindy Spieczny, is a Delaware licensed real estate agent / broker and can be served at 37458 Lion Drive, Suite 7, West Fenwick, DE 19975. (“Spieczny”).
4. Resort Quest Real Estate is a residential and commercial real estate and can be served by serving Brigit Taylor, Broker, at 37458 Lion Drive, Suite 7, West Fenwick, DE 19975 (“Resort Quest”).
5. Defendant is Mallard Lake Community Association, Inc., a Delaware corporation, which can be served through its President, Fran Lazerow, at 38391 Bluebird Lane, Unit 387, Selbyville, Delaware 19975. (Hereinafter “The Association”).

THE FACTS

6. Mallard Lakes is a condominium community established and existing pursuant to the Delaware Unit Properties Act. (“Mallard Lakes”). Within the community of Mallard Lakes are Four Hundred Seventy Seven (477) townhome condominium units. Within Mallard Lakes is a grouping of five (5) condominium buildings each consisting of six (6) individual condominium units. These five (5) buildings are situated on an island and accessible by motor vehicle across a bridge owned and maintained by the Mallard Lake Community Association, Inc. (“The Mallard Lakes Island Buildings”).
7. On or about October 29, 2012 Mallard Lakes, and in particular the Mallard Lakes Island Buildings, became victim to Superstorm Sandy. In the aftermath of Superstorm Sandy, many of the condominium units within the Mallard Lakes Island Buildings were flooded and otherwise damaged by high tidal water. One of those damaged units was 38296 Hummingbird Lane, Selbyville, Delaware. (Hereinafter “the Subject Property”).
8. At all times between October 29, 2012 and October 18, 2013, Hurley was the owner of the Subject Property.
9. On September 8, 2013, Hurley and Mingora entered into an Agreement of Sale whereby Hurley contracted to sell, and Mingora contracted to buy, the Subject Property. (Exhibit A). (Hereinafter “the Contract”)
10. Attached to and made a part of the Contract was Hurley’s Disclosure of Real Property Condition Report as required by Chapter 25, Title 6 of the Delaware Code. (Exhibit B) (Hereinafter “The Disclosure Report”).
11. At all times relevant to the Contract Spieczny acted as dual agent representing both Hurley, as seller, and Mingora, as buyer.

12. Spieczny is familiar with the Mallard Lakes community as she has sold dozens of other condominiums and homes in Mallard Lakes, both before and after Superstorm Sandy, and also owns a condominium in Mallard Lakes.
13. In the aftermath of Superstorm Sandy, and on April 24, 2013, the Association, acting by and through its President, asked Sussex County and/or Delaware Department of Natural Resources and Environmental Control, to open a claim with the Federal Emergency Management Agency (“FEMA”) and in doing so, asking the officials to declare several of the Mallard Lakes Island Buildings, including the building containing the Subject Property, to be “substantially damaged”. (The requesting e-mail is attached as Exhibit C).
14. On May 14, 2013, Sussex County’s FEMA representative, Jeff Shockley, issued a letter officially declaring the Subject Property, and all of its building structure, as “substantially damaged.” The letter addressed to the Association stated: “The existing structure and all repairs/improvements will be required to be brought into compliance with National Flood Insurance Program and Sussex County Floodplain Ordinance.” (Exhibit D)
15. As a result of the “substantial damage designation”, and requirement to satisfy Sussex County Floodplain Ordinances, the Subject Property was rendered non-compliant with Sussex County Zoning Ordinances and the Subject Property’s Certificate of Occupancy (“CO”) was rendered null and void or otherwise revoked.
16. To make the Building and Subject Property compliant with FEMA regulations and Sussex County Code, it is necessary for the entire condominium building containing the Subject Property, to be raised.

17. The Association's efforts to obtain FEMA grant money to fund the raising of the condominium building was stopped by State and/or County officials after the Association failed to comply with the grant application requirements.
18. The Association has taken a position cost of raising the condominium building should be borne by the individual condominium owners affected, including the owner of the Subject Property.
19. As a result of the Association's position, Mingora may be assessed, or otherwise required to pay, in excess of Sixty Thousand Dollars (\$60,000.00) as the Subject Property's contribution to raising the building. (Hereinafter "the Possible Special Assessment").
20. Upon information, knowledge and belief, Mingora's condominium unit is valueless because it cannot be legally occupied.
21. Upon information, knowledge and belief, Hurley, the Association, Spieczny, and Resort Quest had knowledge of the extent of the "substantial damage" implications and the necessity to raise the condominium building to bring the building into compliance with FEMA Regulations and Sussex County Flood Plain Ordinances.
22. Upon information, knowledge and belief, Hurley, the Association, Spieczny, and Resort Quest had knowledge that the Subject Property could not be legally occupied until a current Certificate of Occupancy is issued by Sussex County.
23. , Upon information, knowledge and belief, Hurley, the Association, Spieczny, and Resort Quest had knowledge that the Subject Property would, be subjected to a Possible Special Assessment.

24. On October 18, 2013, Mingora closed on the Contract and title to the Subject Property was delivered.
25. Prior to the October 18, 2013 closing, Mingora was not placed on notice that the Subject Property lacked a valid Certificate of Occupancy.
26. Prior to the October 18, 2013 closing, Mingora was not placed on notice that the Subject Property may be subjected to a Possible Special Assessment.
27. Prior to the October 18, 2013 closing, Mingora was not placed on notice that the Subject Property would need to be raised.
28. Prior to October 18, 2013 closing, Mingora was not placed on notice that the Subject Property could not be legally occupied as a result of the certificate of occupancy cancellation.
29. On October 24, 2013, current president of the Association, and past president of the Association, exchanged e-mail communications (Exhibit E) inquiring whether Spieczny had fully disclosed the issues surrounding the Subject Property, including raising the building. Said e-mail from the current president states: "I would assume that they do not know everything they should know and that whatever they do know is not necessarily correct."
30. Hurley's Disclosure (Exhibit B) explained only that there had been water damage to the unit on October 29, 2012 and further stated that all repairs and remediation were completed.

31. At no time did Hurley, Spieczny, Resort, or the Association disclose to Mingola that the CO to the Subject Property had been revoked by the “substantial damage” designation or that the Subject Property may subsequently be subjected to a Special Assessment in excess of \$60,000.00.
32. As of this date, Mingora does not have a valid CO and is in violation of Sussex County Code by occupying the Subject Property without a valid CO.

COUNT I – BREACH OF CONTRACT

(AS TO HURLEY ONLY)

33. Plaintiffs repeat and incorporate the foregoing paragraphs by reference.
34. Mingora and Hurley entered into a valid and binding contract whereby Mingora was to buy, and Hurley was to sell, the Subject Property as a residential property.
35. The Seller’s Disclosure of Real Property Condition Report was made a part of, and incorporated into, the Contract.
36. Hurley represented in both the Contract and Disclosure of Real Property Condition Report that all material and adverse information concerning the Subject Property had been disclosed.
37. Hurley breached said Contract by failing to disclose the void certificate of occupancy.
38. Hurley breached said Contract by failing to disclose a future special assessment in excess of \$60,000.00.
39. Hurley breached the Contract by failing to disclose that the Subject Property cannot, and could not, be occupied as a residence.
40. As a result of the aforementioned breaches, Mingora has been damaged.

COUNT II – FRAUDULENT CONCEALMENT/INTENTIONAL

MISREPRESENTATION AS TO DEFENDANTS SPIECZNY AND RESORT¹

41. Mingora repeats and incorporates the foregoing paragraphs by reference.
42. Spieczny at all times relevant to this litigation served as real estate agent for Mingora in the purchase transaction involving the Subject Property.
43. Spieczny was at all times relevant to this litigation serving as a statutory agent on behalf of Mingora as defined by 24 Del.C. §2933 with respect to the purchase transaction involving the Subject Property.
44. As agent and statutory agent for Mingora, Spieczny had both a common law duty, and statutory duty pursuant to 24 Del.C. §2936(b)(8) to disclose all adverse material facts about the Subject Property to Mingora prior to settlement.
45. Upon information, knowledge and belief, Spieczny knew that the Subject Property was without a valid Certificate of Occupancy.
46. Upon information, knowledge and belief, Spieczny knew that the Association had plans, or was planning, to raise the building containing the Subject Property.
47. Upon information, knowledge and belief, Spieczny knew that the Association intended to, or was considering, assessing the owners of the Subject Property a special assessment in excess of \$60,000.00 in order to raise the condominium building.
48. Upon information, knowledge and belief, Spieczny knew that flooding damage to the Subject Property had not been fully and completely mitigated.

¹ To establish a prima facie case of intentional **misrepresentation**, fraudulent concealment, the following elements must be proven: (1) Deliberate concealment by the defendant of a material past or present fact, or **silence** in the face of a duty to speak; (2) That the defendant acts with scienter; (3) An intent to induce plaintiff's reliance upon the concealment; (4) Causation; and (5) Damages resulting from the concealment. *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 147 (Del. 1987)

49. Upon information, knowledge and belief, Spieczny knew that the representations contained in the Disclosure of Real Property Report completed by Hurley were incorrect and inaccurate.
50. Spieczny at all times concealed information, or remained silent although having a duty to speak, with the intent to induce Mingora to complete settlement on the Contract.
51. Spieczny and Resort obtained a commission upon settlement of the Contract.
52. As a direct and proximate result of Spieczny's failure to disclose material information, Mingora completed settlement on the Contract.
53. As a direct and proximate result of the fraud and misrepresentation, Mingora has been damaged in the amount of \$114,900.00, plus other out-of-pocket costs related to purchase of the real property.
54. Resort is vicariously liable for the acts of its agent, Spieczny, both at common law and pursuant to 24 Del.C. §2937.

COUNT III – NEGLIGENCE AS TO DEFENDANTS SPIECZNY AND RESORT²

55. Plaintiffs repeat and incorporate the foregoing paragraphs.
56. Spieczny had a common law duty and statutory duty to review the Disclosure of Real Property Condition Report, and any other disclosure documents, related to the Subject Property and review said documents with Mingora in order to disclose or otherwise discover any material defects related to the Subject Property.
57. Spieczny knew, or should have known, that Hurley's Disclosure of Real Property Condition Report was inaccurate and/or incomplete.

² To establish a prima facie case of intentional **misrepresentation**, fraudulent concealment, the following elements must be proven: (1) Deliberate concealment by the defendant of a material past or present fact, or **silence** in the face of a duty to speak; (2) That the defendant acts with scienter; (3) An intent to induce plaintiff's reliance upon the concealment; (4) Causation; and (5) Damages resulting from the concealment. *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 147 (Del. 1987)

58. Spieczny failed to alert Mingora, or otherwise disclose , the true condition of the Subject Property.

59. As a direct and proximate result of Spieczny's failure to adequate review and/or disclose material adverse conditions of the real property to Mingora, Mingora has been damaged.

COUNT IV - FRAUDULENT CONCEALMENT/INTENTIONAL

MISREPRESENTATION AS TO THE ASSOCIATION

59. Plaintiffs repeat and incorporate the foregoing paragraphs.

60. At all times relevant to this Complaint, the Association knew that the Subject Property did not have a valid CO.

61. At all times relevant to this Complaint, the Association knew that the condominium building which contains the Subject Property would need to be raised to comply with FEMA regulations and Sussex County Flood Plain Ordinances.

62. At all times relevant to this Complaint, the Association maintained that the owners of the affected Mallard Lakes Island Buildings would be responsible for the costs of raising the condominium buildings.

63. At all times relevant to this Complaint, the Association knew that each unit owner in the affected Mallard Lakes Island Buildings would be charged a special assessment to offset the costs of raising the affected Mallard Lakes Island Buildings.

64. Pursuant to 25 Del.C. §81-409, the Association was required to furnish a true and accurate Resale Certificate which would be given to Mingora.

65. 25 Del.C. §81-409 required The Association to disclose information regarding the Sussex County Zoning Code and/or Building Code violations, any information

concerning future special assessments and other adverse information concerning the Subject Property.

66. The Association failed to disclose any of the adverse material information identified in Paragraphs 60 to 63 above.

67. The Association had a duty to disclose the adverse material issues concerning the Subject Property to Mingora, by and through their agent, and the Seller's agent, Spieczny, but failed to make said disclosures.

68. As a direct and proximate result of the nondisclosure of adverse material information, Mingora completed settlement on the Contract and has been damaged.

COUNT V – NEGLIGENCE AS TO THE ASSOCIATION

59. Plaintiffs repeat and incorporate the foregoing paragraphs.

60. At all times relevant to this Complaint, the Association knew that the Subject Property did not have a valid CO.

61. At all times relevant to this Complaint, the Association knew that the condominium building which contains the Subject Property would need to be raised to comply with FEMA regulations and Sussex County Flood Plain Ordinances.

62. At all times relevant to this Complaint, the Association maintained that the owners of the affected Mallard Lakes Island Buildings would be responsible for the costs of raising the condominium buildings.

63. At all times relevant to this Complaint, the Association knew that each unit owner in the affected Mallard Lakes Island Buildings would be charged a special assessment to offset the costs of raising the affected Mallard Lakes Island Buildings.

64. Pursuant to 25 Del.C. §81-409, the Association owed a duty to Mingora, as buyer, to disclose accurate information regarding the Subject Property, the Association, and the Association's finances.

65. 25 Del.C. §81-409 required The Association to disclose information regarding the Sussex County Zoning Code and/or Building Code violations, any information concerning future special assessments and other adverse information concerning the Subject Property.

66. The Association failed to disclose any of the adverse material information identified in Paragraphs 60 to 63 above.

67. The Association had a duty to disclose the adverse material issues concerning the Subject Property to Mingora, by and through their agent, and the Seller's agent, Spieczny, but failed to make said disclosures.

68. As a direct and proximate result of the nondisclosure of adverse material information, Mingora completed settlement on the Contract and has been damaged.

COUNT VI –BREACH OF FIDUCIARY DUTY AS TO SPIECZNY AND

RESORT

69. Plaintiffs repeat and incorporate the foregoing paragraphs.

70. As realtor and associate broker for Mingora, Spieczny was held in a position of trust and confidence and had a fiduciary relationship with Mingora.

71. Spieczny had a fiduciary duty to disclose all adverse material information about the Subject Property to Mingora.

72. Sieczny intentionally, or with reckless disregard to the truth, failed to disclose all adverse material information about the Subject Property to Mingora prior to settlement.

73. As a result of the aforesaid breach, Mingora has been damaged.

**COUNT VII – AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY AS
TO THE ASSOCIATION**

74. Plaintiffs repeat and incorporate the foregoing paragraphs.

75. Spieczny and Mingora, as a result of the real estate purchase and sale, were engaged in a fiduciary relationship.

76. The Association knew that Spieczny was actively engaged in marketing the Subject Property prior to the time of contract.

77. The Association, upon information, knowledge and belief intentionally failed to provide full and accurate disclosure of adverse material information to Spieczny. (This is an alternative pleading.)

78. The Association, upon information, knowledge and belief, recklessly failed to disclose adverse material information to Spieczny. (This is an alternative pleading.)

79. The Association, upon information, knowledge and belief, engaged in a course of conduct which would allow Spieczny to be ignorant of the adverse material information. (This is an alternative pleading.)

80. The Association, upon information, knowledge and belief, engaged in a course of conduct which would preclude Mingora from obtaining full and accurate information regarding adverse material defects with the Subject Property. (This is an alternative pleading.)

81. As a result of the concerted action between Spieczny and the Association, Mingora has been damaged.

**COUNT VIII – CIVIL CONSPIRACY AS TO SPIECZNY AND THE
ASSOCIATION**

82. Plaintiff repeats and incorporates the foregoing paragraphs.

83. Spieczny and the Association engaged in a confederation for the purpose of allowing Spieczny to complete the sale of the Subject Property to Mingora.

84. Both Spieczny and the Association engaged in unlawful acts of nondisclosure of material facts in furtherance of the sale of the Subject Property to Mingora.

85. As a result, Mingora has been damaged.

WHEREFORE Plaintiffs pray the Court will enter judgment against Defendants, jointly and severally, in the amount of \$114,900.00 together with post judgment interest at the legal rate, attorney's fees, costs and such other relief as may be appropriate.

The Law Office of Dean A. Campbell, LLC

/s/ Dean A. Campbell

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