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Hillside Manor Mgmnt and Rolling Acres Mgmnt v. St. Thomas Township Municipal Authority

**Hillside Manor Management, LLC and Rolling Acres Management, LLC, Plaintiffs v.
Saint Thomas Township Municipal Authority, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Action for
Declaratory Judgment No. 2013-488

HEADNOTES

Preliminary objections; Unfair Trade Practices and Consumer Protection Law- person subject to suit, catchall provision, deceptive conduct

1. Although Meyers v. Community College of Beaver County is on appeal before the Pennsylvania Supreme Court, the Commonwealth Court's decision that a governmental entity is subject to suit under the Unfair Trade Practices and Consumer Protection law remains the binding precedent in Pennsylvania.
2. Saint Thomas Township Municipal Authority is a person subject to suit under the Unfair Trade Practices and Consumer Protection Law.
3. The catchall provision of the Unfair Trade Practices and Consumer Protection Law requires proof of fraudulent or deceptive conduct; it is not necessary to prove the elements of common law fraud.
4. Deception is defined as intentional misleading by falsehood spoken or acted.
5. Plaintiffs failed to assert sufficient facts to state a claim that the Saint Thomas Township Municipal Authority's bills were deceptive.

Appearances:

Daniel F. Schranghamer Esq., *Attorney for Plaintiffs*

John N. Keller, Esq., *Attorney for Defendant*

OPINION

Before Krom, J.

Presently before the Court is Saint Thomas Township Municipal Authority's Preliminary Objections to the Plaintiffs' Complaint. For the reasons that follow, Saint Thomas Township Municipal Authority's Preliminary Objections are sustained in part and overruled in part.

Background/ Procedural History

Hillside Manor Management, LLC, and Rolling Acres Management, LLC, (collectively "Plaintiffs") commenced this action for declaratory judgment pursuant to the Municipality Authorities Act, 53 Pa.C.S. § 5607(d) (9), by filing a complaint against Saint Thomas Township Municipal Authority ("Municipal Authority") on January 30, 2013. The Plaintiffs have owned and operated two mobile home parks, Hillside Manor Mobile Home Park and Rolling Acres Mobile Home Park, located in St. Thomas Township since April 2008. The sewage and wastewater generated at Plaintiffs' mobile home parks is treated by the Municipal Authority. It was Plaintiffs understanding that the Municipal Authority would bill based on the number of occupied lots. In keeping with this understanding, Plaintiffs informed the Municipal Authority of the number of occupied lots on a monthly basis by telephoning the Municipal Authority and speaking directly to Ms. Kesselring¹ or leaving her a message.

After the Municipal Authority approved a rate increase effective July 2012, Plaintiffs through their general counsel sent a Right to Know request to the Municipal Authority regarding rules, regulations, and sewer rates. In response to the request, Ms. Kesselring sent a letter explaining that Plaintiffs were billed only for occupied lots while other mobile home parks served by the Municipal Authority were billed for the total number of lots, occupied or unoccupied. *Letter from Kesselring to Schranghamer* dated November 5, 2012 (Exhibit B of Complaint). She further explained that the number of occupied lots was adjusted based on the number of sewer lines that the Municipal

¹ According to several letters she sent to Plaintiffs, Ms. Kesselring is the Municipal Authority's office manager.

Authority capped or uncapped for a \$25 fee. *Id.*

In a letter dated November 27, 2012, from Ms. Kesselring to Plaintiffs, Ms. Kesselring explained that the Municipal Authority bills on a quarterly basis and that the count of occupied lots can only be updated at the end of a quarter. Exhibit C of Complaint. Ms. Kesselring requested that Plaintiffs fax a count of occupied lots to the Municipal Authority in the last week of each quarter. *Id.* The letter states that as of October 23, 2012 the number of occupied lots in the Hillside Manor Mobile Home Park is 140 and in the Rolling Acres Mobile Home Park is 123. Ms. Kesselring reiterates that this is not the policy that applies to all other mobile home parks served by the Municipal Authority. *Id.* There was no mention in this letter of whether it was Plaintiffs' or the Municipal Authority's responsibility to cap or uncapped sewer lines.

In a letter dated November 28, 2012, from Ms. Kesselring to Plaintiffs, Ms. Kesselring states that the policy has always been that in order for the occupied lot count to be changed, the sewer line must be capped or uncapped by the Municipal Authority for a \$25 fee. Exhibit D of Complaint. According to Ms. Kesselring's records no sewer lines in Hillside Manor Mobile Home Park or Rolling Acres Mobile Home Park had been capped or uncapped since March 2011.^{2,3}

In response to the two contradictory letters sent to Plaintiffs by Ms. Kesselring on behalf of the Municipal Authority, Plaintiffs sent a letter to Ms. Kesselring that they would be following the procedure outlined in the letter dated November 27, 2012. Exhibit E of Complaint.

At the Municipal Authority meeting on January 14, 2013, the Municipal Authority adopted a resolution to bill all mobile home parks for all lots (whether the lines are capped or uncapped) and to have the mobile home park owners maintain the system lines located within the mobile home park. *January 14, 2013 Meeting Minutes* (Exhibit B of Brief in Support).

Plaintiffs Complaint contains six⁴ counts. There are four counts of unreasonable billing, one count for refund of overbillings, and one count of unfair trade practices. The Plaintiffs allege that the Municipal Authority violated the catchall provision⁵ of the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). Specifically, Plaintiffs assert that the sewage bills sent to Hillside Manor, LLC from May 2008 through December 2012 were not calculated in accordance with the Municipal Authority's rules and regulations and that the sewage bills sent to Rolling Acres, LLC from May 2008 through September 2012 were not calculated in accordance with the Municipal Authority's rules and regulations.⁶

On February 11, 2013, the Municipal Authority filed Preliminary Objections to the Complaint. The Municipal Authority objected to Counts I, II, III, and VI on the basis that they were legally insufficient because the resolution in question did not impose a "new rate." The Municipal Authority also objected to Count VIII (unfair trade practices claim) on the basis that it was legally insufficient and that the facts were not plead with the requisite level of specificity. The Municipal Authority filed a Brief in Support of Preliminary Objections on November 7, 2013. In its Brief in Support, the Municipal Authority withdrew its objections to Count I, II, III, and VI. The Municipal Authority filed a Reply to Plaintiffs' Brief in Opposition on November 26, 2013.

Plaintiffs filed a Response to Preliminary Objections on February 20, 2013, and a Brief in Opposition to Preliminary Objections on November 21, 2013.

This matter was originally scheduled for oral argument on January 10, 2014; however, by Order of Court dated January 6, 2014, oral argument was cancelled and this matter will be decided on briefs alone. Therefore, the Municipal Authority's Preliminary Objections to the Complaint are now properly before the Court and ripe for decision.

Discussion

Legal standard

The standard of review for preliminary objections in Pennsylvania is well-settled. Preliminary objections

² The letter contains addresses of the lots that were capped or uncapped in March 2011, but it is not clear from the letter which mobile home park the capping or uncapping occurred in.

³ According to the spreadsheets attached to Complaint as Exhibits L and M, there was no change in the number of lots that either mobile home park was being billed for in March 2011; the only change in the number of lots being billed for occurred in October 2012.

⁴ Counts I, II, III, V, VI, and VIII. The Court notes that Count VI is listed before Count V and that there is no Count IV or VII.

⁵ Section 201-2(4)(xxi) of the Unfair Trade Practices and Consumer Protection Law, known as the catchall provision defines "unfair methods of competition" and "unfair or deceptive acts or practices" as: "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. 201-2(4)(xxi)

⁶ It is unclear what specific "rules and regulations" Plaintiffs are asserting that the Municipal Authority did not follow.

are properly granted only when, “based on the facts pleaded, it is clear and free from doubt that the complainant will be unable to prove facts legally sufficient to establish a right to relief.” *Mazur v. Trinity Area Sch. Dist.*, 961 A.2d 96, 101 (Pa. 2008). In considering preliminary objections, “all well-pleaded allegations and material facts averred in the complaint, as well as all reasonable inferences deductible therefrom, must be accepted as true.” *Wurth*, 584 A.2d at 407. However, the trial court “need not accept as true conclusions of law, unwarranted inferences from fact, argumentative allegations, or expressions of opinion.” **Penn Title Ins. Co. v. Deshler**, 661 A.2d 481, 482 (Pa. Commw. Ct. 1995).

Under current law, the Municipal Authority is a person subject to suit under the UTPCPL

The Municipal Authority objects to the claim under the catchall provision of the UTPCPL because the Municipal Authority, as a governmental entity, is not a “person” that can be sued under the UTPCPL. *PO* ¶4. However, in their brief the Municipal Authority acknowledges that the Commonwealth Court has ruled that a government entity is a person that can be sued under the UTPCPL in *Meyers v. Community College of Beaver County*. 30 A.3d 857 (2011).

Plaintiffs deny that because they are a governmental entity, the Municipal Authority is not subject to suit under the UTPCPL. *Response* ¶ 4. Although *Meyers v. Community College of Beaver County* is on appeal before the Pennsylvania Supreme Court, the Commonwealth Court’s decision that a governmental entity is subject to suit under the UTPCPL remains the binding precedent in Pennsylvania. *Brief in Opposition* p. 5.

In conformity with the law as it stands today, the Municipal Authority is a person subject to suit under the UTPCPL. Therefore, the Municipal Authority’s objection to Count VIII on the basis that the Municipal Authority is not a person that can be sued under the UTPCPL is overruled.

Plaintiffs failed to state a claim for deceptive conduct under the UTPCPL

The Municipal Authority objected to Count VIII on the basis that it failed to conform to law and was legally insufficient to state a claim under the UTPCPL. The Municipal Authority specifically objects to Plaintiffs’ failure to allege the elements of common law fraud as required by the catchall provision of the UTPCPL. *PO* ¶ 5. Additionally, the Municipal Authority asserts that the Plaintiffs could not have been misled about the number of lots for which they were being billed nor could they claim justifiable reliance on a misrepresentation by the Municipal Authority. *PO* ¶ 6. The Municipal Authority also objected to Count VIII on the basis that they failed to plead the material facts related to the fraud with particularity in violation of Pa.R.C.P. 1019. *PO* ¶ 8. In their Brief in Support of Preliminary Objections, the Municipal Authority focuses on deceptive conduct rather than fraudulent conduct. The Municipal Authority asserts that the alleged overbilling by the Municipal Authority for sewage services does not amount to deceptive conduct. *Brief in Support* p. 6.

Plaintiffs initially assert that the Court should not consider the Municipal Authority’s arguments regarding Plaintiffs failure to allege deceptive conduct (the focus of the Municipal Authority’s Brief in Support of Preliminary Objections), as the focus of the Municipal Authority’s Preliminary Objections was the failure to allege the elements of common law fraud. *Brief in Opposition* p. 6. Plaintiffs assert that the catchall provision of the UTPCPL only requires proof of fraudulent or deceptive conduct, and that it is not necessary to prove the elements of common law fraud. *Brief in Opposition* p. 8. Plaintiffs further assert that as they have alleged deceptive conduct in the Complaint that they have stated a viable claim under the catchall provision of the UTPCPL. *Id.*

The UTPCPL is Pennsylvania’s consumer protection law and seeks to prevent “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...” 73 P.S. § 201–3. The purpose of the UTPCPL is to protect the public from unfair or deceptive business practices. *Agliori v. Metropolitan Life Ins. Co.*, 879 A.2d 315, 318 (Pa. Super. 2005). The Pennsylvania Supreme Court has stated courts should liberally construe the UTPCPL in order to effect the legislative goal of consumer protection. *Com., by Creamer v. Monumental Properties, Inc.*, 329 A.2d 812, 816 (Pa. 1974).

The catchall provision of the UTPCPL was amended in 1996 to include deceptive conduct rather than just fraudulent conduct. In the years after the amendment, Pennsylvania courts struggled with whether even though deceptive conduct had been added, recovery under the catchall provision still required proof of the elements of common law fraud. “Recent developments in Pennsylvania law convince this Court that meeting a heightened “fraud pleading” standard is not required to maintain a cause of action under the “catch-all” section of the UTPCPL.” *Trunzo*

v. Citi Mortg., 876 F.Supp.2d 521, 542 (W.D. Pa. 2012). Therefore, the Municipal Authority's objection to Count VIII of the Complaint for failure to allege the elements of common law fraud is overruled as there is no requirement for a claim under the catchall provision of the UTPCPL to state a claim alleging the elements of common law fraud.⁷

As the Court believes that the Municipal Authority's objection was to Plaintiffs' failure to state a claim under UTPCPL, the Court will consider whether Plaintiffs have alleged sufficient facts to state a claim for deceptive conduct under the UTPCPL. To state a claim for deceptive conduct, under the UTPCPL, a plaintiff must satisfy three elements:

First, a plaintiff must allege facts showing a deceptive act, that is conduct that is likely to deceive a consumer acting reasonably under similar circumstances. Next, the plaintiff must allege justifiable reliance, in other words that he justifiably bought the product in the first place (or engaged in some other detrimental activity) because of the defendants' misrepresentation or deceptive conduct. Finally, the plaintiff must allege that this justifiable reliance caused ascertainable loss.

Montanez v. HSBC Mortg. Corp., 876 F.Supp.2d 504, 519 (E.D. Pa. 2012) (quoting *Seldon v. Home Loan Serv., Inc.*, 647 F.Supp.2d 451, 470 (E.D. Pa. 2009)). "Deception...is defined as intentional misleading by falsehood spoken or acted." *Montanez*, 876 F.Supp.2d at 520 (quoting *Christopher v. First Mut. Corp.*, 2006 WL 166566 (E.D. Pa. 2006)).

The Court finds that Plaintiffs have not asserted sufficient facts to state a claim that the Municipal Authority's bills were deceptive. While the Municipal Authority bills⁸ sent to Plaintiffs may not have been correct or consistent with the policies described in correspondence from the Municipal Authority, Plaintiffs were not deceived or intentionally misled by the bills. Plaintiffs had the ability to determine the number of lots for which they were billed, as evidenced by the spreadsheets submitted to the Court as Exhibits L and M of Complaint. There were no facts alleged that the Municipal Authority bills did not reflect the number of lots for which charges were assessed. Therefore, the Municipal Authority's objection to the Complaint for failure to state a claim under the catchall provision of the UTPCPL is sustained.

An appropriate Order of Court follows.

ORDER OF COURT

NOW THIS 17th day of January, 2014, upon review and consideration of Saint Thomas Township Municipal Authority's Preliminary Objections to the Complaint, the Response of Hillside Manor Management, LLC and Rolling Acres Management, LLC, the briefs submitted by the parties, the record, and the law,

THE COURT HEREBY ORDERS that:

1. Preliminary objections to Counts I, II, III, and VI were withdrawn by the Saint Thomas Township Municipal Authority.
2. The preliminary objection to Count VIII on the basis that the Saint Thomas Township Municipal Authority is not a person subject to suit under the Unfair Trade Practices and Consumer Protection Law is overruled pursuant to the attached Opinion.
3. The preliminary objection to Count VIII on the basis that Hillside Manor Management, LLC and Rolling Hills Management, LLC have failed to state a claim under the Unfair Trade Practices and Consumer Protection Law Section 202-2(4)(xxi) is sustained pursuant to the attached Opinion.

IT IS FURTHER ORDERED that Hillside Manor Management, LLC and Rolling Hills Management, LLC may file an Amended Complaint, consistent with the attached Opinion, within twenty (20) days of service of this Order of Court.

Pursuant to the requirements of Pa. R. Civ. P. 236 (a)(2), (b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.

⁷ The Municipal Authority acknowledges in their Brief in Support that after the amendments to the catchall provision of the UTPCPL in 1996 that the elements of common law fraud no longer had to be proven in order to recover under the catchall provision. *Brief in Support* p. 6-7.

⁸ The Court reiterates that none of the bills themselves were submitted by either party.