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SECOND DIVISION
MAY 31, 2011

1-10-2250

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ORESTE and DIANE BOSCIA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellants,)	Cook County.
)	
v.)	
)	No. 10 CH 00770
MONROE/WABASH DEVELOPMENT, LLC,)	
a Delaware limited liability company, and)	
MESA MW, LLC, a Delaware limited liability company,)	Honorable
)	Stuart E. Palmer,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

Held: The trial court did not err in dismissing all three counts of fraud in the plaintiffs' complaint and did not err in denying the plaintiffs' motion for rehearing and reconsideration.

This appeal arises from a May 12, 2010 order entered by the circuit court of Cook County, granting a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2008)) in favor of the defendants, Monroe/Wabash Development, LLC, (Monroe) and Mesa MW, LLC (Mesa), and against the plaintiffs, Oreste and Diane Boscia (collectively, the Boscias). On July 9, 2010, the circuit court denied the Boscias' motion for rehearing and reconsideration. On appeal, the Boscias argue that the

trial court erred in granting the defendants' motion to dismiss and in denying the Boscias' motion for rehearing and reconsideration. For the following reasons, we affirm the judgment of the circuit court of Cook County.

BACKGROUND

In 2007, the Boscias, as prospective buyers of a condominium unit, visited a sales center of a yet to be constructed high-rise condominium building—"The Legacy at Millennium Park" (the Legacy)—located at 60 E. Monroe Street in Chicago, Illinois. The building, which was under construction, was owned by Monroe and Mesa. At the sales center, the Boscias were allegedly shown various brochures, documents and model units with "mock-ups of views" depicting unobstructed views of Millennium Park, the Chicago skyline, and a "panorama of the entire lakefront." Sales representatives for the Legacy building allegedly informed the Boscias that the views shown in the documents and model units "would be enjoyed by all purchasers with eastern exposures."

On October 1, 2007, the Boscias, represented by counsel, entered into an agreement with Monroe and Mesa to purchase a condominium unit on the seventeenth floor of the Legacy building, whereby the Boscias paid \$112,490 in earnest money deposit. Paragraph 19 of the agreement contained the following relevant language:

"This Purchase Agreement constitutes the entire agreement between Purchaser and Seller. No representations, warranties, undertakings, or promises, whether oral, implied or otherwise, can be made or have been made by either Seller or Purchaser to the other

unless expressly stated herein or unless mutually agreed to in writing by the parties hereto. NO SALESPERSON OR EMPLOYEE OF SELLER HAS AUTHORITY TO MODIFY THE TERMS HEREOF, OR HAS ANY AUTHORITY TO MAKE ANY REPRESENTATION OR AGREEMENT NOT EXPRESSLY CONTAINED IN THIS PURCHASE AGREEMENT OR ANY EXHIBITS ATTACHED HERETO, AND ONLY THOSE EXPRESSLY CONTAINED HEREIN SHALL BE BINDING UPON SELLER, OR IN ANY WAY AFFECT THE VALIDITY OF THIS PURCHASE AGREEMENT OR FORM ANY PART HEREOF. PURCHASER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY STATED HEREIN, NO REPRESENTATIONS HAVE BEEN MADE BY SELLER, ITS AGENTS OR EMPLOYEES, IN ORDER TO INDUCE THE PURCHASER TO ENTER INTO THIS PURCHASE AGREEMENT. This Purchase Agreement may not be amended except in a writing signed by both parties.” (Emphasis in original.)

In a letter dated August 7, 2009, a representative at the Legacy informed the Boscias that the closing date for their purchased condominium unit would be held on October 7, 2009, and that the Boscias could inspect the unit on September 23, 2009.

Subsequently, upon inspection of their condominium unit, the Boscias allegedly discovered

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that the unit's views to Millennium Park, the Chicago skyline and other panoramic views were obstructed by other buildings which were in existence prior to the signing of the October 2007 purchase agreement.

On October 14, 2009, counsel for the Boscias sent a demand letter to James Hanson, a representative of Monroe and Mesa, requesting that Monroe and Mesa release all funds, including the \$112,490 earnest money deposit, because "[c]ontrary to seller's express representations, the views from the condominium unit were not 'dramatic' or unobstructed. The view to the south is completely blocked by the University Club building. The views to Millennium Park and Michigan Avenue are also blocked. At best a partial view of Lake Shore Drive and Lake Michigan is visible."

On January 7, 2010, the Boscias filed a 3-count complaint against Monroe and Mesa, requesting that the October 2007 agreement be rescinded and declared void (count I), and alleging consumer fraud under the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 *et seq.* (West 2008)) (count II), and common law fraud in the inducement (count III). The October 2007 purchase agreement, the August 7, 2009 letter, and the October 14, 2009 demand letter from the Boscias' counsel to Monroe and Mesa, as well as four pages of a sales brochure pertaining to the Legacy, were attached to the complaint as exhibits. Paragraph 5 of the complaint quoted language from the attached sales brochure: "The Legacy offers one, two, three and four bedroom residences with premier features including dramatic windows offering panoramic views of Millennium Park, Lake Michigan, Grant Park and Chicago's incomparable skyline." The complaint further alleged that model units shown to the Boscias depicted "unobstructed views of the Millennium Park, the Chicago skyline and a panorama of the entire lake front," that sales representatives informed the Boscias that

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units with eastern exposures would have the same views as those depicted in the model units and documents, and that the Boscias entered into the contract “based upon the foregoing materials, photos, model units, brochures and representations.”

On February 17, 2010, Monroe and Mesa filed a combined sections 2-615 and 2-619 motion to dismiss the Boscias’ complaint, arguing, *inter alia*, that the claims were barred by the “no-reliance” clause set forth in paragraph 19 of the agreement. On May 12, 2010, the trial court held that the no-reliance clause and the language in paragraph 19 of the agreement barred all three counts of the complaint, and granted Monroe’s and Mesa’s motion to dismiss pursuant to section 2-619 of Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)).

On May 19, 2010, the Boscias filed a motion for rehearing and reconsideration (motion for reconsideration) of the trial court’s dismissal of the case in its entirety, and attached as an exhibit, for the first time, a floor plan purporting to be the layout of the unit at issue. On July 9, 2010, the trial court denied the Boscias’ motion for reconsideration.

On August 4, 2010, the Boscias filed a notice of appeal before this court. On August 26, 2010, an amended notice of appeal was filed before this court to correct a clerical error pertaining to the circuit court case number.

ANALYSIS

The sole issue on appeal before this court is whether the trial court erred in granting the defendants’ motion to dismiss and in denying the Boscias’ motion for rehearing and reconsideration. “A section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but asserts affirmative matter that avoids or defeats the claim.” *Wolfe v. Wolf*, 375 Ill. App. 3d 702, 705, 874

N.E.2d 582, 584 (2007). A motion to dismiss under section 2-619 “admits the truth of all well-pleaded facts in the complaint.” *Id.* A trial court’s grant of a section 2-619 motion to dismiss is reviewed *de novo*. *Id.* “In conducting that review, the reviewing court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party.” *Landheer v. Landheer*, 383 Ill. App. 3d 317, 320, 891 N.E.2d 975, 978 (2008).

The Boscias argue that the trial court erred in dismissing their complaint pursuant to section 2-619 of the Code because the no-reliance clause, set forth in paragraph 19 of the October 2007 agreement, was not enforceable against them. Specifically, they argue that the no-reliance clause was unenforceable against them because they were not “sophisticated” buyers of the condominium unit at issue and cite to *Vigortone A.G. Products, Inc. v. PMAG Products, Inc.*, 316 F.3d 641 (2002), *Rissman v. Rissman*, 213 F.3d 381 (2000), *Adler v. William Blair & Co.*, 271 Ill. App. 3d 117, 648 N.E.2d 226 (1995), and *Tirapelli v. Advanced Equities, Inc.*, 351 Ill. App. 3d 450, 813 N.E.2d 1138 (2004), for support. The Boscias further contend that the no-reliance clause of the agreement did not apply to bar their claims against Monroe and Mesa because there are material issues of fact as to whether the Boscias were entitled to a rescission of their contract with Monroe and Mesa. The Boscias also maintain that Monroe and Mesa intended for the Boscias to rely on the sales materials designed to induce the Boscias to purchase the condominium unit, and thus, the trial court’s dismissal of their claims was improper.

Monroe and Mesa counter that the no-reliance clause of the agreement was enforceable against the Boscias to bar the instant fraud action. Specifically, Monroe and Mesa argue that the cases cited by the Boscias all support the enforceability of the no-reliance clause. Further, Monroe

and Mesa maintain that the no-reliance clause in the agreement and the plain and unambiguous language of the agreement barred the Boscias' claims for fraud.

We agree with Monroe and Mesa that the cases cited by the Boscias did nothing to advance the Boscias' argument that the no-reliance clause was unenforceable against their claims. We find that none of the cases cited by the Boscias preclude the applicability of the no-reliance clause in Illinois for cases involving real estate transactions in Illinois. Further, none of these cited cases restrict the enforceability of the no-reliance clause to only "sophisticated" contracting parties. Although the Boscias were not a "sophisticated" commercial enterprise which was well-versed in real estate transactions, we find that the Boscias were represented by counsel at the time they executed the October 2007 agreement. See generally *Vigortone A.G. Products, Inc.*, 316 F.3d at 645-46 (no justifiable reliance exists when six of Vigortone's seven contracts were shown to a lawyer prior to the signing of the contract). Thus, we find the Boscias' argument that the no-reliance clause was unenforceable against them to be without merit.

In the case at bar, both counts I (rescission) and III (common law fraud in the inducement) of the Boscias' complaint sound in fraud. Count I of the complaint alleged that the October 2007 agreement should be rescinded and declared void because Monroe and Mesa "knew or should have known that the views from unit 1701 would be blocked by other existing structures, contrary to [their] representations" to the Boscias. Count I also alleged that the Boscias had no opportunity to verify the views of the unit at issue prior to signing the agreement, that the obstructed views of the unit were "material to the contract as well as the value to the unit," and that the Boscias would never have contracted with Monroe and Mesa to purchase the unit had they known that the views would

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be obstructed. Count III of the complaint—common law fraud in the inducement—alleged that Monroe’s and Mesa’s “unlawful actions” were conducted “for the sole purpose of inducing the [Boscias] to enter into a contract to purchase Legacy condominium unit 1701,” that the Boscias would never have entered into such an agreement absent Monroe’s and Mesa’s unlawful conduct, and, as a result, the Boscias suffered damages. In dismissing both counts I and III pursuant to section 2-619 of the Code, the trial court held that the no-reliance clause in paragraph 19 of the agreement barred both claims.

A no-reliance clause is unlike an integration clause of a contract. An integration clause of a contract states that a contract represents the entire agreement between the parties and “prevents a party to a contract from basing a claim of breach of contract on agreements or understandings, whether oral or written, that the parties had reached during the negotiations *** but that they had not written into the contract itself.” *Vigortone A.G. Products, Inc.*, 316 F.3d at 644. An integration clause of a contract “does not bar a claim of fraud based on statements not contained in the contract.” *Id.* However, on the other hand, a no-reliance clause of a contract is one that states that neither party to the agreement has relied on any representations made by the other party, except for the representations contained within the terms of the contract. *Id.*, *Benson v. Stafford*, ___ Ill. App. 3d ___, ___, 941 N.E.2d 386, 407 (2010). A no-reliance clause, unlike an integration clause, precludes fraud actions because “reliance” is an element of fraud. *Tirapelli*, 351 Ill. App. 3d at 452, 813 N.E.2d at 1145.

To state a claim for fraud, a plaintiff must allege five elements: (1) a false statement of material fact; (2) by one who knows or believes it to be false; (3) made with the intent to induce

action by another in reliance on the statement; (4) action by the other in reliance on the truthfulness of the statement; and (5) injury to the other resulting from that reliance. *Benson*, ___ Ill. App. 3d at ___, 941 N.E.2d at ___. A plaintiff claiming fraud must also allege that his reliance on the misrepresentation was justified. *Id.*, see *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill. App. 3d 65, 72, 927 N.E.2d 852, 858 (2010).

In the instant case, the plain language of the no-reliance clause in paragraph 19 of the October 2007 agreement expressly states, in large capital letters, that:

“no salesperson or employee of seller has authority to *** make any representation or agreement not expressly contained in this purchase agreement or any exhibits attached hereto, and only those expressly contained herein shall be binding upon seller, or in any way affect the validity of this purchase agreement or form any part hereof. Purchaser acknowledges that, except as expressly stated herein, no representations have been made by seller, its agents or employees, in order to induce the purchaser to enter into this purchase agreement.”

We find that, based on the clear language of the no-reliance clause, it was unreasonable as a matter of law for the Boscias to rely on any alleged representations made by the sales representatives of Monroe and Mesa regarding the views of the unit, the terms of which were not part of the October 2007 agreement, prior to the time they signed the agreement. See *Tirapelli*, 351 Ill. App. 3d at 458, 813 N.E.2d at 1145. Thus, because “reliance” is an element of fraud and the no-reliance clause negated the element of “reliance,” counts I and III of the complaint alleging fraud must fail.

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Therefore, because the Boscias' failure to establish the reliance element is dispositive, we need not address the other elements of the Boscias' common law fraud claims. See *Tirapelli*, 351 Ill. App. 3d at 458-59, 813 N.E.2d at 1145.

Nonetheless, the Boscias maintain that their common law fraud claims were not barred by the no-reliance clause by arguing that certain documents, such as the "plans and specifications" referenced in paragraph 3 of the agreement, have not been identified nor attached to the October 2007 agreement. The Boscias maintain, however, that only the "floor plan" was contained and attached to the complaint. Thus, although it is unclear, the Boscias appear to argue that the trial court erred in granting the motion to dismiss because these documents had yet to be identified and there was a material issue of fact in dispute regarding what documents the Boscias were allegedly shown in the sales center by Monroe's and Mesa's sales representatives and "whether the documentation provided to the [Boscias] in [the sales center] could be construed as incorporated into the contract."

Initially, we note that the Boscias' instant argument in attempting to avoid the legal effect of the no-reliance clause differed on appeal from their response to Monroe's and Mesa's February 17, 2010 motion to dismiss before the trial court. In their response in opposition to the motion to dismiss, the Boscias argued that the contract itself *did* contain representations regarding unobstructed views from the unit at issue because the sales brochure pertaining to the Legacy building constituted the "plans and specifications" which were incorporated into the agreement by the language of paragraph 3 of the contract. Now on appeal, however, the Boscias argue that the "plans and specifications" referenced in paragraph 3 of the contract have not been identified and thus, a

dismissal of the Boscias' claims was improper.

We find the Boscias' arguments to be without merit. Paragraph 3 of the agreement, entitled "Construction and Warranty," states that "[s]eller has constructed or will construct the [p]urchased [u]nit substantially in accordance with (i) the floor plan for the [p]urchased [u]nit ("Floor Plan"); (ii) the preliminary plans and specifications for the [c]ondominium prepared at [s]eller's discretion ("Plans and Specifications") that have been examined and approved by [p]urchaser and are on file in the office of the [s]eller; (iii) applicable governmental codes; and (iv) the Finishes; provided, however, that the Floor Plan and the Plans and Specifications may change from time to time in order to accommodate [s]eller's changes to the [c]ondominium project." Despite the Boscias' assertion in their brief before this court that a "floor plan" was attached as an exhibit to the complaint, our review of the record shows that the complaint did not contain any floor plans. Instead, the only exhibits attached to the complaint were the October 2007 purchase agreement, the August 7, 2009 letter from a representative at the Legacy regarding the closing date of the Boscias' condominium unit, the October 14, 2009 demand letter from the Boscias' counsel to Monroe and Mesa, and the four-page sales brochure for the Legacy building. It was not until the Boscias filed their May 19, 2010 motion for reconsideration of the trial court's dismissal of the case in its entirety that a floor plan purporting to be the layout of the unit at issue was attached, for the first time, as an exhibit in a pleading.

The trial court, in its May 12, 2010 order granting the section 2-619 motion to dismiss, noted that the "sales brochures" attached as an exhibit to the complaint did not "fall within the term 'plans and specifications' as stated under paragraph 3 of the [a]greement." See *McCready v. Illinois*

Secretary of State Jesse White, 382 Ill. App. 3d 789, 794, 888 N.E.2d 702, 706 (2008) (a written instrument attached to a pleading as an exhibit constitutes part of the pleading). We agree and find that the plain language of paragraph 3 of the agreement pertained to matters relating to the physical construction of the condominium unit as specified, as evidenced by the language in paragraph 3 of the agreement that the “Floor Plan and the Plans and Specifications may change from time to time in order to accommodate [s]eller’s changes to the [c]ondominium project.” The plans and specifications referenced in paragraph 3 of the agreement had no bearing on the views of the condominium unit at issue because it is inconceivable that the views—whether obstructed or unrestricted—from the unit on the seventeenth floor of the building could be changed simply by altering the physical construction of the unit itself. Moreover, even if the sales brochure, attached to the complaint as an exhibit, somehow constituted the “plans and specifications” which were incorporated into the agreement by the language of paragraph 3 of the contract, we find that it failed to provide the Boscias with the relief they request. The plain language of the pertinent portion of the sales brochure, attached to the complaint as an exhibit, stated that “[t]he Legacy offers one, two, three and four bedroom residences with premiere features, including dramatic windows offering panoramic views of Millennium Park, Lake Michigan, Grant Park and Chicago’s incomparable skyline,” but did not state that the views to the Boscias’ condominium unit would be unobstructed or unrestricted. Thus, we find the Boscias’ arguments to be without merit.

In its May 12, 2010 order, the trial court also dismissed the Boscias’ statutory fraud claim under the Illinois Consumer Fraud and Deceptive Practices Act (Act) (815 ILCS 505/1 *et seq.* (West 2008)) (count II), by holding that paragraph 19 of the agreement also barred the claim. We agree.

“The Consumer Fraud Act provides greater protection than the common law action for fraud, and a plaintiff suing under the Act need not establish all of the elements of common law fraud.” *Adler*, 271 Ill. App. 3d at 128, 648 N.E.2d at 233. Unlike a common law claim for fraud, actual reliance is not an element required to sustain a cause of action under the Act. *Id.*, 648 N.E.2d at 233-34. In order to prove a violation of the Act, a plaintiff need only establish: “(1) a deceptive act or practice, (2) intent on the defendants’ part that plaintiff rely on the deception, and (3) that the deception occurred in the course of conduct involving trade or commerce.” *Id.* at 128, 648 N.E.2d at 233.

As the trial court correctly held, “[a]s reliance is not an element of consumer fraud, the portions of [the] no-reliance clause that negate reliance therefore have no effect.” However, as the trial court also correctly held, “[u]nfortunately for [the Boscias], paragraph 19 of the [a]greement goes further and specifically provides that the purchaser acknowledges that no representation have been made by the seller, its agents or employees, in order to *induce* the purchaser to enter into the agreement.” (Emphasis added.) Accordingly, we hold that the plain language of paragraph 19 in the agreement negated the ability for the Boscias to establish the second element of statutory fraud under the Act—namely, that Monroe and Mesa intended that the Boscias rely on the alleged deception regarding the views of the condominium unit. Thus, we hold that paragraph 19 of the agreement effectively barred all three counts of the Boscias’ complaint for fraud. Therefore, the trial court properly dismissed the claims under section 2-619 of the Code and properly denied the Boscias’ motion for reconsideration.

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

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Affirmed.