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THE ECONOMIC LOSS DOCTRINE DOES NOT BAR CLAIMS UNDER THE UNFAIR PRACTICES AND CONSUMER PROTECTION LAW IN PENNSYLVANIA

Case Updates

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WHY THIS CASE IS IMPORTANT

The United States Court of Appeals for the Third Circuit considered the question of whether, under Pennsylvania law, a plaintiff's Unfair Trade Practices and Consumer Protection Law (UTPCPL) claim against a builder who constructed her home was barred by the economic loss doctrine. The UTPCPL prohibits, "unfair methods of competition and unfair or deceptive practices in the conduct of any trade or commerce." 73 Pa. Cons. Stat. §201-3. The Third Circuit found that the economic loss doctrine could not be utilized to bar claims under the UTPCPL in Pennsylvania. The economic loss doctrine stands for the general proposition that a party cannot recover purely economic losses in a tort as a result of failed contractual expectations. As a consequence of this decision, this creates a wider berth for Plaintiff's claims in the area of commercial contracts where the end result does not meet the expectations of one of the parties or where the product/service provided does not square with the representations of one of the parties to the contract. Thus, we would expect to see more matters in which these UTPCPL claims are included to broaden the spectrum of potential avenues for recovery in commercial matters.

FACTS

Plaintiff, Lisa Earl, a resident of Allegheny County, Pennsylvania, purchased a home from Defendant, NVR, Inc. ("NVR"). NVR was both the builder and the seller of the newly constructed home. Earl purchased the home, at least in part, due to NVR's representations that the home will be of " quality architecture, timeless design, and beautiful finishes." In addition, during the construction of the home, NVR allegedly made certain representations to Earl regarding the house's quality of construction, condition and various amenities. Earl was promised that the house would be finished in a workmanlike manner, constructed in accordance with relevant

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construction codes, and that NVR would remedy any deficiencies.

Shortly after moving into the home, Earl began to discover a number of defects. She reported the issues to NVR but alleges that their efforts to remedy the problems were unsuccessful and in some cases made the problems worse. Earl also cited that several of the promised amenities were not present upon completion of the property. Perhaps most importantly, she also claims that the defects present in the completed home and that NVR's failure to deliver the home in the promised condition was done willfully and knowingly. Earl sued NVR for a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act and for breach of the implied warranty of habitability.

ECONOMIC LOSS DOCTRINE

In *Werwinski v. Ford Motor Co.*, 286 F.3d 661 (3d Cir. 2002), the Court held that the economic loss doctrine may bar plaintiffs from "recovering in tort, economic losses to which their entitlement flows only from a contract." In the current case, the Third Circuit was asked to determine if the economic loss doctrine applied to claims arising out of both Pennsylvania common law as well as the Unfair Trade Practices and Consumer Protection Act. Due to the fact that Pennsylvania Supreme Court had not previously considered this issue the Third Circuit looked to other Pennsylvania Superior Court decisions for further direction. Based upon an analysis of decisions from these decisions, the Third Circuit found that, generally, the economic loss doctrine is broadly applied, without any real exceptions. Despite this fact, upon analysis of recent decisions, the Third Circuit found that the *Werwinski* decision no longer accurately reflected the state of Pennsylvania law.

Although the Pennsylvania Supreme Court had not announced a definitive determination on this issue, the Third Circuit found that it has nevertheless provided clarification of the same in *Excavation Techs, Inc. v. Columbia Gas Co. of Pa.*, 985 A.2d 840, 842-43 (Pa. 2009). In *Excavation*, the Court stated, "although the economic loss doctrine is well-established in Pennsylvania, the common law rule gives way if there is a statutory basis to impose liability for economic losses." The UTPCPL accomplishes this by allowing plaintiffs to recover for any definable loss of funds or property, including both real and personal property.

This rationale was the stated basis for two other rulings from the Pennsylvania Superior Court. In *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. 2013) Plaintiff sued a car dealership for misrepresenting the quality of a car she purchased, including the correct mileage and information regarding prior accidents in which the car had been involved. The Superior Court refused to permit the car dealership to shield itself from liability based on the UTPCPL, noting that the economic loss doctrine did not apply because the claim sounded in intentional misrepresentation, not solely in negligence.

The Pennsylvania Superior Court's decision in *Dixon v. Nw. Mut.*, 16 A.3d 780 (Pa. Super. 2016), took the *Knight* decision even further holding that the economic loss doctrine does not apply to UTPCPL claims in any context, regardless of whether the claims involved negligence or intentional fraud. The Pennsylvania Supreme Court's decision in *Excavation Techs*, coupled with decisions in *Knight* and *Dixon*, "constitute such intervening authority that they modify state law as it existed at the time of *Werwinski*." Based on this, the Third Circuit held that the economic loss doctrine may no longer serve as a bar to UTPCPL claims.