



Rock v. Voshell

2005 | Cited 0 times | E.D. Pennsylvania | December 29, 2005

MEMORANDUM

I. Introduction

On November 10, 2005 this Court issued a Memorandum and Order (Doc. No. 12) dismissing inter alia Counts V (Negligence), and VI (Negligence Per Se) of the complaint. See *Rock v. Voshell*, 2005 U.S. Dist. LEXIS 27644 (E.D. Pa. Nov. 10, 2005). Presently before the Court is a Motion for Reconsideration (Doc. No. 13) of that decision filed by Plaintiffs Janet and Ronald Rock ("Plaintiffs") on November 23, 2005, arguing that Counts V and VI should not have been dismissed under the economic loss doctrine. Defendant Fay Voshell ("Defendant" or "Voshell") filed a response brief (Doc. No. 15) on December 5, 2005. The procedural history of this case, and the factual allegations and legal claims set forth in the complaint are described in detail in the November Memorandum and Order.

Specifically, Plaintiffs in their Motion for Reconsideration argue that the decision by the Supreme Court of Pennsylvania in *Bilt-Rite Contractors v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005), which was not cited by this Court in its Memorandum, holds that the economic loss doctrine does not apply to the negligent misrepresentation claims like the one in this case.

Pl's Br. at 1. In their response to the motion for reconsideration, Defendants take issue with Plaintiffs' characterization of the *Bilt-Rite* decision, arguing that its holding is limited to business transactions between professionals and that it does not apply to the instant case.¹ Def's Resp. at 4.

II. Legal Standard

When deciding a motion for reconsideration, a court may alter or amend a judgment "if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . . ; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 676 (3d Cir. 1999).

Reconsideration is an extraordinary remedy, made available to correct manifest errors of law or fact, or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Mere dissatisfaction with the Court's ruling is not the basis for such a reconsideration, nor can such a motion be used as a means to put forth additional arguments which could have been made but



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which the party neglected to make. *Waye v. First Citizen's Nat'l Bank*, 846 F. Supp. 310, 314 (M.D. Pa.), *aff'd*, 31 F.3d 1175 (3d Cir. 1994).

III. Discussion

The Court will first consider *Bilt-Rite* and its effect on the application of the economic loss doctrine in this case. Though Plaintiffs argue for a broad reading of the *Bilt-Rite* case, the Court understands it to have a narrower holding, adopting § 552 of the Restatement of Torts (Second) only as it applies to "architects and other design professionals." *Bilt-Rite*, 866 A.2d at 286. Unlike *Voshell*, the defendant in *Bilt-Rite* was both the seller and the architect of the structure in question, and the holding in the case appeared to be so limited. It reads as follows:

Accordingly, we hereby adopt Section 552 as the law in Pennsylvania in cases where information is negligently supplied by one in the business of supplying information, such as an architect or design professional, and where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no direct contractual relationship with the supplier of information. In so doing, we emphasize that we do not view Section 552 as supplanting the common law tort of negligent misrepresentation, but rather, as clarifying the contours of the tort as it applies to those in the business of providing information to others.

Id. at 287 (emphasis added).

In addition to the qualifying language found in the holding, the *Bilt-Rite* court also recognized the importance of the fact that the seller was a professional, noting that although "design professional services play an important role in public and private planning," design professionals should not be excused from tort consequences in their work "given the important reliance placed upon such professional services." *Id.* The *Bilt-Rite* court also concluded that applying § 552 in Pennsylvania would not be unduly burdensome upon design professionals, as it "merely subjects them to the same sort of professional responsibility other professionals face" and "serve[s] the overall public interest by discouraging negligence among design professionals." *Id.* As mentioned above, the Defendant in this case is not in the business of designing and/or building homes, and the various policy reasons behind liability for "design professionals" are simply inapplicable to a person in her position.

Plaintiffs also cite a case from the Middle District of Pennsylvania, *Silverstein v. Percudani*, 2005 U.S. Dist. LEXIS 10005 (M.D. Pa. May 26, 2005), in an attempt to show an application of *Bilt-Rite* to a similar set of facts as those in the present case. This effort is less than convincing, however, as *Percudani* involved Defendants that were professionals involved in the business of home construction. *Id.* at *1. In finding that *Bilt-Rite* controlled the inquiry, the *Percudani* court noted that the Supreme Court of Pennsylvania "expressly adopted Restatement (Second) of Torts § 552 in the context of design professional cases, and found that the plaintiff's claim fit within its parameters." *Id.* at **31--32 (emphasis added). Though *Percudani* characterizes *Bilt-Rite* as holding that "the



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economic loss doctrine does not apply to negligent misrepresentation claims," *id.* at *31, this Court finds that Bilt-Rite is best understood as limiting the application of the economic loss doctrine only as to design professionals and those engaged in the business of home construction and home sales and not as to all negligent misrepresentation claims. The fact that Voshell was not engaged as a professional homebuilder or architect at the time of the sale distinguishes her from the defendants in both Bilt-Rite and Percudani. As this Court reads the applicable case law, preventing the application of the economic loss doctrine in this case would serve to expand Bilt-Rite beyond the scope intended by the Supreme Court of Pennsylvania.²

As stated above, reconsideration is an extraordinary remedy and is granted only based on an intervening change in the controlling law, the availability of new evidence that was not available when the court granted the motion, or the need to correct a clear error of law or fact or to prevent manifest injustice. In this case the first two bases are inapplicable, and Plaintiffs have failed to demonstrate a clear error of law or fact that needs to be corrected to prevent injustice. The Court holds that Bilt-Rite and its progeny are inapplicable to the present case and that the dismissal with prejudice of the negligence and negligence per se counts under the economic loss doctrine was therefore proper.³

IV. Conclusion

In sum, there is no valid basis for reconsideration. The Court holds that the Bilt-Rite and Percudani cases do not compel reconsideration of its November 10, 2005 Memorandum and Order, and Plaintiff's motion will be denied.

ORDER

AND NOW, this 29th day of December, 2005, upon consideration of Defendant's Motion for Reconsideration (Doc. No. 13) and the response thereto, it is hereby ORDERED that the motion is DENIED.

MICHAEL M. BAYLSON, U.S.D.J.

1. In addition to the applicability of the economic loss doctrine, Defendant in her brief in opposition to reconsideration also adopts two other arguments as to the negligence counts. First, Defendant argues that Plaintiffs failed to plead negligent misrepresentation, see Def's Motion at 2. Second, Defendant notes that justifiable reliance is an element of negligent misrepresentation and contends that Plaintiffs' claim must fail, since reliance cannot be established due to the invocation of the parole evidence rule. Though the Court is aware of Defendant's additional assertions, it need not reach these issues, as the Motion for Reconsideration can be decided based entirely on the matters raised by Plaintiffs in their brief.

2. The undersigned is a co-author of a recent discussion of the intersection of contract and tort law. See Michael M.



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Baylson, Kelly D. Eckel & Sandra A. Jeskie, Contracts, in 8 Business and Commercial Litigation in Federal Courts §§ 68:6--8, at 330--38 (Robert L. Haig ed., 2d ed. 2005). The piece discusses the intricacies and potential difficulties in applying both the economic loss doctrine and the related gist of the action doctrine.

3. Plaintiffs filed an amended complaint (Doc. No. 14) in this case on November 30, 2005 and again included claims of negligence and negligence per se (now Counts IV and V). On December 12, Defendant filed a motion to dismiss the amended complaint (Doc. No. 17). Plaintiffs have amended their complaint in an effort to satisfy the LeDonne factors and therefore avoid the parole evidence issues discussed by the Court in its November 10, 2005 Memorandum and Order. Plaintiffs have not as of the date of this Memorandum filed a response to the latest motion to dismiss, and the Court deems it appropriate to address the negligence and negligence per se claims included in the amended complaint in a later memorandum addressing Defendant's second motion to dismiss.

