

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DEBRA BENNETT & WILLIAM)	
BENNETT)	
)	
Plaintiffs,)	C. A. No. 4711-MG
)	
v.)	
)	
THE PLANTATIONS EAST)	
CONDOMINIUM ASSOCIATION, INC.)	
AND WILGUS ASSOCIATES, INC.)	
)	
Defendants,)	
)	
and)	
)	
CAROL GROSS)	
)	
Intervenor.)	

MASTER'S FINAL REPORT

Date Submitted: July 20, 2010
Final Report: July 22, 2010

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Attorney for Plaintiffs/Third-Party Defendants, William and Debra Bennett.

William J. Cattie, III, Esquire, of Rawle & Henderson, LLP, Wilmington, Delaware; Attorney
for Defendants/Third-Party Defendants Plantation East and Wilgus Associates.

John A. Sergovic, Jr., Esquire, of Sergovic & Carmean, P.A., Georgetown, Delaware; Attorney
for Intervenor/Third-Party, Carol Gross.

Stephen P. Casarino, Esquire, of Casarino, Christman & Shalk, Wilmington, Delaware; Co-
Counsel for Plaintiffs/Third-Party Defendants William and Debra Bennett.

GLASSCOCK, Master

This matter involves two condominium units in Plantations East, a condominium development near Lewes. The plaintiffs, Debra Bennett and William Bennett, own an upper unit in a building in Plantations East. The unit below is owned by Carol Gross, the intervenor/third-party plaintiff. In February, 2009 a plumbing leak originating in the Bennett unit caused what is alleged to be extensive water damage in both the Bennett and Gross units. Defendant, The Plantations East Condominium Association, Inc. (the “Council”) is the governing body of the Plantations East Condominium. Wilgus Associates, Inc. (“Wilgus”) managed the condominium property on behalf of the Council.

After becoming aware of the damage, the Bennetts contacted the Council and Wilgus (collectively, the “defendants”) and sought benefit of casualty insurance carried by the Council on behalf of the condominium with Philadelphia Indemnity Insurance Company (the “insurer”). According to the Bennetts, the insurer has paid \$24,971.92 for the damages under the policy of insurance; those proceeds are being held by the Council. The Bennetts dispute that this amount is sufficient to repair the damages they have suffered. They have brought this suit, alleging 1) that the defendants have failed in a duty to repair which is contained in the Declaration of Condominium (the “Declaration”), together with the Code of Regulations for Plantations East (the “Code of Regulations”) created pursuant to the Declaration, as well as statutory law, 2) that the Council failed to maintain sufficient insurance as required under the Declaration and Code of Regulations, benefits from which should be available to the Bennetts, and 3) that defendants failed to properly present the insurance claim. According to the plaintiffs, the damages they have suffered are far in excess of the insurance proceeds which are being held by the Council. Gross has filed a third-party action, alleging that the Bennetts are strictly liable for damages to

Gross resulting from the plumbing in the Bennetts' unit. The Bennetts have moved for summary judgement, and Gross has moved for partial summary judgment.

This matter was initially brought as an action under 10 *Del. C.* § 348. That statute provides for mandatory mediation and expedited resolution in this Court of certain disputes involving deed covenants or restrictions. The matter was assigned to mandatory mediation, which proved fruitless. The matter was then assigned to me for expedited relief under section 348. Upon review of that section, together with applicable case law, I determined in an earlier proceeding (and the parties do not contest) that this matter is not within the ambit of 10 *Del. C.* § 348.¹ Section 348 provides that “without limiting the jurisdiction of any court of this State,” Chancery shall take jurisdiction of certain deed restriction cases. Having determined that section 348 does not confer jurisdiction here, I must now determine whether Chancery has jurisdiction over this action.

This Court is without jurisdiction to hear disputes where a sufficient recovery at law is available. 10 *Del. C.* § 342; *see, e.g., International Business Machine Corp. v. Comdisco, Inc.*, Del. Ch., 602 A.2d 74, 78 (1991). Both the complaint and the third-party complaint seek damages. The complaint alleges that the Council and its agent breached contractual obligations created under the Declaration and Code of Regulations for Plantations East. The Bennetts seek to be compensated for the damage to their property, together with loss-of-use damages. Ms. Gross in turn seeks damages from the Bennetts for property damage to her unit, together with loss-of-use damages. Such contract damages (if liability is established) are available at law. The

¹ This matter involves condominium declarations, codes and statutes, together with insurance coverage questions. It is far beyond the scope of the succinct deed restriction questions contemplated by 10 *Del. C.* § 348.

Bennetts and Ms. Gross make separate arguments as to why this Court has and should exercise jurisdiction.

The Bennetts allege that this Court's jurisdiction arises from the fact that the Court may direct the defendants to specifically perform the contractual provisions of the Declaration and Code of Regulations. Specific performance is an equitable remedy not available at law. While the Bennetts did not seek such relief in their complaint (which seeks only money damages), in the briefing on summary judgment they suggest that such relief may be necessary to provide a remedy here. They base this argument on their contention that, under the Declaration and Code of Regulations, the Council is required to enter and repair damages to their building. If true, however, the breach of such a duty does not demonstrate a right to specific performance. *See, e.g., Williams v. White Oak Builders, Inc.*, Del. Ch., No. 17556, Parsons, V.C. (June 26, 2006)(Letter Op.) at 4. Specific performance is a remedy that this Court will grant only where contractual damages are insufficient to convey the benefit of his bargain upon a non-breaching party to a contract. "It is elementary that the remedy of specific performance is designed to take care of situations where the assessment of money damages is impracticable or somehow fails to do justice." *Id.*, quoting *Equitable Trust Co. v Gallagher*, Del. Supr., 102 A. 2d 538, 546 (1954). Here, if the defendants have a duty either to repair or insure for damage, which duty or duties they have breached, damages in an amount sufficient to repair the Bennetts' unit (and, if appropriate, compensate them for loss of use) would make them whole. There is no suggestion here that the defendants have some special expertise rendering repair by a third party inferior to specific performance of the promise allegedly made by the defendants to repair. *See Williams* (Letter Op.) at 4 (specific performance not available where third party can be hired to perform

obligation as well as could breaching party). Therefore, the Bennetts suggestion at oral argument that specific performance is available as a jurisdictional ‘hook’ is unpersuasive. *See Comdisco*, 602 A.2d at 78 (if claim is fundamentally legal in nature, recitation of an alternative equitable claim is insufficient to confer jurisdiction).

“Specific performance is a matter of grace and not of right, and rests in the sound discretion” of this Court. *Safe Harbor Fishing Club v. Safe Harbor Realty Co.*, Del. Ch., 107 A.2d 635, 638 (1953). I note that specific performance as a remedy would be particularly problematic here. The Council has obtained insurance proceeds based on an estimate of necessary repairs which the Bennetts have already rejected. If I directed the Council to proceed with repair of the Bennetts’ unit, and it engaged contractors to undertake that work based upon the estimate which it received, inevitably the Bennetts would be dissatisfied with the repairs and court intervention, even supervision, would be required to determine when contractual rights had been specifically performed. This would result in an inefficient use of both judicial and litigants’ resources.

Ms. Gross contends that this Court has jurisdiction on a separate ground. She points to the clean-up doctrine, which provides that this Court may exercise its discretion to entertain purely legal elements of a case even after the equitable claims have been resolved. The clean-up doctrine is inapplicable here, however. If a “controversy contains any equitable feature...by means of which a court of equity could acquire...cognizance of it, the court may go on to a complete adjudication...” *Getty Refining and Marketing Co. v. Park Oil, Inc.*, Del. Ch., 385 A.2d 147, 149 (1978), *quoting* 1 Pomeroy’s Equity Jurisprudence § 181. Here, there was never an equitable claim; only a claim erroneously brought under a statute ostensibly providing

Chancery jurisdiction. Given the state of the case law as it existed at the time the action was filed, the decision of the Bennetts to bring this matter under Section 348 is defensible and understandable. The fact remains, however, that this Court never had jurisdiction under Section 348, and that nothing exists to “clean-up” from.

As significantly, perhaps, the clean-up doctrine is based upon the supposition that a court which has resolved substantive issues in a matter is well equipped to decide the remaining issues, and that it may therefore be appropriate as a matter of judicial and litigants’ economy for a Chancery Court judge to exercise discretion to retain jurisdiction and decide the remaining legal issues in such a case. Here, however, this matter was initially assigned under 10 *Del. C.* § 348, not to a Vice Chancellor or Master in this Court but to a mediator, Richard Kiger, Esquire. Once mediation proved fruitless, the matter was returned to this Court and was taken off the Section 348 track. Subsequently, Ms. Gross moved to intervene and summary judgment has been briefed. However, there has been no resolution on my part of any substantive equitable (or legal) issues; my involvement in this matter is minimal. The matter has been briefed for summary judgment and, if transferred to the Superior Court, that summary judgment motion could simply be renewed. It became clear to me at oral argument that additional briefing would likely be required before a judicial officer could efficiently resolve the outstanding summary judgment motions. Even if partial summary judgment is entered, significant discovery remains to be done, including the retention and deposition of expert witnesses as to damages. A judge will need to decide whether the insurer must be added as a party defendant. Trial in this matter has not been scheduled. In short, this case is at a stage which would result in little repetitive effort on the part of counsel or judge should the matter be transferred to the Superior Court. Therefore, to the

extent the clean-up doctrine is applicable, in my discretion I decline to exercise it here in favor of transfer of the matter to Superior Court.

Counsel for Ms. Gross argues that a type of “judicial estoppel” is at work here, in the sense that Ms. Gross sought to intervene in this Court, and not proceed in Superior Court, because this matter had been accepted by Chancery under 10 *Del. C.* § 348. It is quite true that this matter was initially, and erroneously, accepted as a Chancery action under 10 *Del. C.* § 348. For the reasons stated above, however, I do not believe that transfer to Superior Court would, at this stage of the litigation, result in significant redundancy of effort, and therefore I do not find any reason in equity to retain jurisdiction.

Both the complaint and the third-party complaint seek relief which is legal in nature, and complete relief is available at law. Therefore, both claims shall be dismissed without prejudice, unless the complaining party seeks leave, within sixty days of the entry of this report as an order of this Court, to transfer this action to the Superior Court under 10 *Del. C.* § 1902.

/s/ Sam Glasscock, III
Master in Chancery