SUPERIOR COURT OF NEW JERSEY
CAPE MAY-LAW DIVISION

Oceanview at Avalon Condominium Association, Inc. **Plaintiff** **v.** Cornell Oceanview, LLC et al. **Defendant**	:	**Civil Action** **DOCKET NO.: CPM L 398-15** **Order**

THIS MATTER having come before the Court on the motion of Defendant, Manor Hill Contracting Services, LLC, for partial summary judgment as to Count III (breach of warranties) and Count IV (negligence) of the Complaint; and the Court having heard argument and considered the papers submitted; and for good cause shown;

IT IS ON THIS 25th day of August, 2017 ORDERED that:

1. The motion of Defendant, Manor Hill Contracting Services, LLC, for partial summary judgment as to Count III (breach of warranties) and Count IV (negligence) of the Complaint, pursuant to R. 4:46-2(c) is denied.
2. FURTHER ORDERED that a copy of this Order be served on all parties within five (5) days.

J. Christopher Gibson, J.S.C.

Memorandum of Decision is attached.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY

CASE: **Oceanview at Avalon Condominium Association, Inc. v. Cornell Oceanview LLC**

DOCKET NO.: **CPM-L-398-15**

NATURE OF APPLICATION: **DEFENDANT'S MANOR HILL CONTRACTING SERVICES, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

MEMORANDUM OF DECISION ON MOTION

BACKGROUND AND NATURE OF MOTION

The Complaint in this matter was filed on August 13, 2015. The discovery end date is September 23, 2016. There were no previous extensions of discovery for a total of 450 days of discovery in this matter. Neither trial nor arbitration is currently scheduled. Defendant, Manor Hill Contracting Services, LLC, now moves for summary judgment as to Count III (breach of implied warranty of habitability and reasonable workmanship) and Count IV (negligence), pursuant to R. 4:46-2(c).

This Court has carefully and thoroughly reviewed the moving papers and attached exhibits submitted by the parties with this motion.

LEGAL ANALYSIS

R. 4:46-2(c), which governs motions for summary judgment, provides, in pertinent part, that:

> the judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

A genuine issue of material fact must be of a substantial, as opposed to being of an insubstantial nature. Brill v. Guardian Life Ins. Co. 142 N.J. 520, 529 (1995). "Substantial" means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," or, "having real existence, not imaginary[;] firmly based, a substantial argument." Ibid. (internal citations omitted). Disputed facts which are immaterial, fanciful, frivolous, gauzy, or merely suspicious are insubstantial, and hence do not raise a genuine issue of material fact. Ibid. (internal citations omitted).

Additionally, R. 4:46-5 provides, in pertinent part, that

> when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleading, but must respond by affidavits meeting the requirements of R. 1:6-6 or as otherwise provided in this rule and by R. 4:46-2(b), setting forth specific fact showing there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered, unless it appears from the affidavits submitted, for reasons therein stated, that the party was unable to present by affidavit facts essential to justify opposition, in which case the court may deny the motion, may order a continuance to permit additional affidavits to be obtained, depositions to be taken or discovery to be had, or may make such order as may be appropriate.

In determining whether a genuine issue of material fact exists, the motion judge must "engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Brill, 142 N.J. at 533. This weighing process "requires the court to be guided by the same evidentiary standard of proof—by a preponderance of the evidence or clear and convincing evidence—that would apply at the trial on the merits when deciding whether there exists a 'genuine' issue of material fact." Id. at 533-34. In short, the motion judge must determine "whether the competent evidentiary materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540.

MOVANT'S POSITION

Defendant, Manor Hill Contracting Services, LLC, requests that this Court enter an Order for partial summary judgment as to Count III (breach of implied warranty of habitability and reasonable workmanship) and Count IV (negligence), pursuant to R. 4:46-2(c).

Defendant asserts the following as undisputed material facts: the underlying matter involves property damages allegedly sustained by Plaintiff, Oceanview at Avalon Condominium Association, Inc. Defendant provided project management services for the renovation project pursuant to

a construction contract with co-Defendants, Cornell Oceanview, LLC and The Wright Group. See Exhibit B attached to Defendant's Brief (representing a Subcontract Agreement).[1] While it indicates that the purpose of the Subcontract Agreement is for a construction project for the subject Condominium Association, Plaintiff is not identified as a party to the contract.

Plaintiff, on behalf of the condominium unit owners, filed suit alleging damages associated with the repair to several components of the building's common area and expenses. See Exhibit A attached to Defendant's Brief (representing the Complaint). Specifically, Plaintiff has filed three claims against Defendant: breach of implied warranty of habitability and reasonable workmanship (Count III); negligence (Count IV); and violations of the New Jersey Consumer Fraud Act (Count V). See Exhibit A, pp. 23-37. Defendant moves for summary judgment as to Counts III and IV only.

Defendant submits that the Economic Loss Doctrine bars the claims here. The Economic Loss Doctrine (hereinafter, the "Doctrine") bars tort remedies in strict liability or negligence when the only claim is for economic loss, as opposed to physical injury or property damage. Dean v. Barrett Homes, Inc., 204 N.J. 286, 295 (2010). In other words, the Doctrine bars tort

[1] Although Exhibit B is entitled "Subcontractor Agreement," with Cornell Oceanview, LLC identified as the "Contractor" and Manor Hill Contracting Services, LLC identified as the "Subcontractor," Defendant Manor Hill was actually the General Contractor for the construction of the condominium project. Cornell Oceanview, LLC was the Developer and did not participate in the construction of the condominium project. Compare Exhibit A, paragraph 27 ("Manor Hill served as the general, principal contractor responsible for some or all of the construction, supervision and inspection of the construction Project … .") with Exhibit A, paragraph 16 ("[T]he Developer was created as a single-purpose entity for the sole purpose of developing, establishing, marketing selling the Condominium.").

theories of liability when the relationship between the parties is based on a contractual relationship. See ibid.; see also Travelers Indem. Co. v. Dammann & Co., 594 F.3d 238, 248 (3d Cir. 2010) ("New Jersey courts have consistently held that contract law is better suited to resolve disputes between parties where a plaintiff alleges direct and consequential losses that were within contemplation of sophisticated business entities with equal bargaining power and that could have been the subject of their negotiations."). The doctrine applies to service contracts in addition to products liability. Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 309-10 (2002).

There are two exceptions to the Doctrine. The first exception is where tort liability may apply when the injured party would not otherwise have a remedy. People Express Airlines v. Consol. Rail Corp., 100 N.J. 246, 249-50 (1985) (permitting recovery of economic damages when no contract existed between the parties that would permit recovery under contract). Second, a party may recover in tort when a breaching party owes a duty imposed by law *independent* of a duty under the contract. Saltiel, 170 N.J. at 316, citing New Mea Constr. Corp. v. Harper, 203 N.J. Super. 486, 493 (App. Div. 1985). This includes contracts involving parties who have professional standards of care, such as doctors, lawyers, insurance brokers, and manufacturers. Saltiel, 170 N.J. at 317.

Defendant notes that this Court previously entertained a discussion on the Economic Loss Doctrine in the context of a motion to dismiss Complaint

pursuant to R. 4:6-2(e) for design professional co-Defendants, Olivieri, Shousky & Kiss and Michael Beach Associates (the "Design Defendants"). The Court entered an Order dated January 11, 2016, which dismissed the negligence claims against these parties based upon the Economic Loss Doctrine. See Exhibit C, pp. 14-17, attached to Defendant's Brief (representing the Memorandum of Decision accompanying the January 11, 2016 Order).

Here, Plaintiff asserts a breach of implied warranty of habitability and reasonable workmanship. See Exhibit A, paragraph 93 (representing specific allegations of faulty workmanship). First, Defendant contends that the implied warranty is tied to a contract, and Plaintiff cannot point to a contract in which Plaintiff and Defendant have entered. Second, the exact allegations are set forth under Plaintiff's claim of negligence. See Exhibit A, paragraph 100. Defendant submits that these damages are purely economic, and therefore, the Economic Loss Doctrine applies here to bar Plaintiff's negligence claim. Finally, Defendant asserts that there is no genuine issue of material fact, as the Subcontract Agreement controls, and it is explicit as to Defendant's duties and obligations. See, e.g., Exhibit C, § 22 (limiting Defendant's obligations, duties, warranties, and guarantees to the "Contract Documents").

OPPOSITION

While Plaintiff admits that it never entered into a contract directly with Defendant, Plaintiff asserts that Defendant was the general contractor

over the construction project. See Exhibit A, paragraph 27, attached to Defendant's Brief.

Plaintiff asserts that the existence of economic damages should not bar a claim of negligence, based on the aforesaid exceptions to the Economic Loss Doctrine. The Doctrine will not bar a tort claim "if the plaintiff was a member of an identifiable class that the defendant should have reasonably foreseen was likely to be injured from defendant's conduct." Carter Lincoln-Mercury, Inc., Leasing Div. v. EMAR Group, Inc., 135 N.J. 182, 195 (1994), citing People Express Airlines, supra, 100 N.J. at 263.

Plaintiff contrasts this exception with the Appellate Division's New Mea Construction. There, the plaintiffs alleged that the builder failed to adequately supervise the job and allowed workers to use lesser-quality materials than the contract required. New Mea Constr. Corp. v. Harper, 203 N.J. Super. 486, 489 (App. Div. 1985). The obligation to use a certain grade of materials was solely created by contract, and no personal injuries outside of the economic damages existed. See id. at 494-97.

Plaintiff also refers to Juliano v. Gaston, 187 N.J. Super. 491 (App. Div. 1982), certif. denied, 93 N.J. 709 (1983) as an example of the exception to the Doctrine. There, an oral agreement existed to perform certain renovation work to the subject house prior to the sale of the house. Id. at 494. However, the record did not reveal that the subcontractors did any work. Ibid. The Appellate Division reversed the trial court's findings that the Economic Loss Doctrine applied because no contract existed. See id. at 493-96. Accordingly,

Juliano held that the homeowner's damages for replacement and repair were recoverable under a negligence theory. See id. at 497.

In summation, the critical difference was "the presence of a direct contractual relationship in New Mea and the absence of a direct contractual relationship in Juliano." SRC Constr. Corp. of Monroe v. Atl. City Hous. Auth., 935 F. Supp. 2d 796, 799 (D.N.J. 2013). In accordance with this distinction, SRC Construction Corp. stated the following law in regard to the Economic Loss Doctrine: "[W]here there is no direct contractual relationship between the plaintiff and defendant, frequently there can be no contract claim at all, and therefore any claim asserted cannot possibly be a contract claim in tort clothing." Id. at 801. Plaintiff further argues that any third-party beneficiary analysis would fail because the unit owners of Plaintiff were not sophisticated parties that fully understood and intended the repair and renovation construction project.

As to the previous Motion to Dismiss, the Court recognized that the dismissed architectural and engineering firm parties were not a party to the Purchase Agreement. Conversely, the Economic Loss Doctrine applied to the Design Defendants who were determined to be subsumed in the language of the Agreement of "any and all disputes with Seller [Cornell Oceanview], Seller's parent company or their subsidiaries or affiliates, whether statutory, contractual, or otherwise, … ." Exhibit C, p. 15, attached to Defendant's Brief. See also Exhibit B attached to Plaintiff's Opposition Brief (representing the Purchase Agreement).

Defendant disputes here that Defendant (or the previously dismissed architect or engineer) is the Seller's parent company, subsidiary, or affiliate. Defendant argues this would have been more obvious if the Purchase Agreement called to include the Seller's general contractor, architect, or engineer, but no such contract terms existed. Furthermore, the Purchase Agreement did not provide an avenue for relief to Plaintiff as it did not provide an application of the Agreement to the Seller's contractors. Additionally, the type of damages claimed in this action is, indeed, property damage, which is a damage claimed in tort. See Exhibit A, paragraphs 56, 93, 98, 100, 113, 114, 118-120, 122, 127, attached to Defendant's Brief.

As to the claim of the breach of the implied warranty, Plaintiff dismisses Defendant's argument that an implied warranty cannot exist without an express warranty, as Defendant had not cited any legal authority in his moving papers to support that statement of law. To the contrary, Defendant asserts that a written contract is not a prerequisite for the claim. The implied warranty is imposed by law when a purchaser relies upon the builder's superior knowledge and skill. Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 239 (1979); McDonald v. Mianecki, 79 N.J. 275, 288 (1979). The purpose of implying such a warranty is to "discourage sloppy building practices and encourage care in the construction of houses." McDonald, 79 N.J. at 290.

Plaintiff refers to Aronsohn v. Mandara, 98 N.J. 92, 102-03 (1984) as an example of enforcing a claim of the implied warranty without the existence of a contract. The New Jersey Supreme Court held that requiring

privity for a claim of the implied warranty of habitability and reasonable workmanship would "leave innocent homeowners without a remedy for negligently built structures in their home … [and relieve builders of] liability for unworkmanlike construction simply because of the fortuity that the property on which he did the construction has changed hands." Ibid.

REPLY

Defendant asserts that Plaintiff has mischaracterized the facts and the Economic Loss Doctrine. Plaintiff has an avenue to fully recover its alleged damages under a contractual relationship *with the developer co-Defendants*. In doing so, Plaintiff cites SRC Construction Corp., supra, which relied on two New Jersey unpublished decisions. However, SRC Construction Corp. ultimately concludes that these decisions were inconsistent with the controlling Juliano v. Gaston, supra. Defendant asserts that the only reason why Juliano upheld maintaining negligence claims against subcontractors who were not in privity to the original contract is due to the fact-sensitive circumstances that the main homebuilder, who was in privity with the plaintiff, was insolvent, leaving the plaintiff without remedy under contract. See 187 N.J. Super. at 495-96. That is not the case here. While Defendant admits that the main builder was not insolvent in SRC Construction Corp., Defendant believes this District Court decision was incorrectly decided, and upon information and belief, a separate District Court matter, J&J New Jersey, LLC v. Unity Constr. Servs., Inc., is pending before the Third Circuit Court of Appeals to address these issues. See Exhibit A attached to

Defendant's Reply Brief (representing a copy of the J&J New Jersey decision, Civil Action No.: 13-cv-5096 (PGS), dated March 31, 2015).[2] Defendant seeks to resolve this discrepancy by the general statement of law by the New Jersey Supreme Court in Dean v. Barrett Homes, Inc.:

> [T]ort principles, such as negligence, are better suited for resolving claims involving unanticipated physical injury. … Contract principles, on the other hand, are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their argument.

204 N.J. 286, 296 (2010), quoting Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555, 579-80 (1985).

As to the argument made by Plaintiff that his clients are the "individual owners" and not the condominium association, according to the individual signatures on the Purchase Agreement, the Court has already recognized that Plaintiff is indeed a condominium association, and the sole issue within this matter involves alleged damages to common elements. Furthermore, Defendant reminds Plaintiff that it will still have an avenue of recovery against it due to the cross-claims by co-Defendant Cornell Oceanview, and the direct claim of violations of the Consumer Fraud Act against Defendant. Finally, as to the breach of the implied warranty, Defendant asserts that the content of this claim is one of tort. Therefore, the claim should be dismissed in accordance with the Economic Loss Doctrine Analysis, supra.

[2] As of the date of this Order, no Third Circuit decision has been published.

DISCUSSION

Defendant is not entitled to summary judgment as to Count III (breach of warranties) and Count IV (negligence) of the Complaint, pursuant to R. 4:46-2(c).

R. 4:46-2(c), which governs motions for summary judgment,[3] provides, in pertinent part, that:

> the judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

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[3] The subject Subcontract Agreement states that it is to be governed by Pennsylvania law. See Exhibit B, § 31, attached to Defendant's Brief. However, the application of this provision is limited to the "validity, interpretation and performance of this Subcontract … ." Ibid. Therefore, the application of the relevant substantive law, such as the Economic Loss Doctrine, shall be discussed under New Jersey law.

Assuming *arguendo* that Pennsylvania law applies here, this does not affect the Court's analysis herein; the relevant law in Pennsylvania is substantially similar to that in New Jersey. For example, the summary judgment standard in Pennsylvania is as follows:

> Pursuant to Pa. R. Civ. P. 1035.2(2), a trial court shall enter judgment if, after the completion of discovery, an adverse party who will bear the burden of proof at trial fails to provide "evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury." See Rapagnani v. Judas Co., 736 A.2d 666, 668-69 (Pa. Super. 1999) (summary judgment properly granted when "the record contains insufficient evidence of facts to make out a *prima facie* cause of action or defense, and, therefore, there is no issue to be submitted to a jury"). A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Swords v. Harleysville Ins. Cos., 883 A.2d 562, 566-67 (Pa. 2005). In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Hayward v. Medical Center of Beaver County, 608 A.2d 1040, 1042 (Pa. 1992). The party with the burden of proof on an issue may not rely merely on the allegations in its pleadings, but rather must produce evidence of facts demonstrating a genuine issue for trial. Fennell v. Nationwide Mut. Fire Ins. Co., 603 A.2d 1064, 1067 (Pa. Super. 1992).

Phillips v. Selig, 959 A.2d 420, 427 (Pa. Super. 2008).

A genuine issue of material fact must be of a substantial, as opposed to being of an insubstantial nature. Brill v. Guardian Life Ins. Co. 142 N.J. 520, 529 (1995). "Substantial" means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," or, "having real existence, not imaginary[;] firmly based, a substantial argument." Ibid. (internal citations omitted). Disputed facts which are immaterial, fanciful, frivolous, gauzy, or merely suspicious are insubstantial, and hence do not raise a genuine issue of material fact. Ibid. (internal citations omitted).

The material facts are not in dispute. The underlying matter involves damages sustained by Plaintiff relating to the residential condominium association, Plaintiff, Oceanview at Avalon Condominium Association, Inc., located at 7900 Dune Drive, Avalon, New Jersey. Defendant provided project management services for the renovation project pursuant to a construction contract with co-Defendants, Developer and Seller, Cornell Oceanview, LLC, and The Wright Group. See Exhibit B attached to Defendant's Brief (representing a "Subcontract" Agreement). While it indicates that the purpose of the Subcontract Agreement is for a construction project for Plaintiff, Oceanview at Avalon, Plaintiff is not identified as a party to the contract.

Plaintiff, on behalf of the condominium unit owners, filed suit alleging damages associated with the repair to several components of the building's common area and expenses. See Exhibit A attached to Defendant's Brief

(representing the Complaint). Specifically, Plaintiff filed three claims against Defendant: breach of implied warranty of habitability and reasonable workmanship (Count III); negligence (Count IV); and violations of the New Jersey Consumer Fraud Act (Count V). See Exhibit A, pp. 23-37. Defendant moves for summary judgment as to Counts III and IV only.

Privity of contract does not exist between Defendant and Plaintiff via the inclusion of Cornell Oceanview, LLC's agents and affiliates under the Arbitration clause of the Purchase Agreement. Therefore, the Economic Loss Doctrine does not bar Plaintiff's claims.

The Economic Loss Doctrine bars tort remedies in strict liability or negligence when the only claim is for economic loss, as opposed to physical injury or property damage. Dean v. Barrett Homes, Inc., 204 N.J. 286, 295 (2010). In other words, the Doctrine bars tort theories of liability when the relationship between the parties is based on a contractual relationship. See ibid. The New Jersey Supreme Court in Dean v. Barrett Homes, Inc. explains the policy behind this Doctrine:

> [T]ort principles, such as negligence, are better suited for resolving claims involving unanticipated physical injury. … Contract principles, on the other hand, are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their argument.

204 N.J. 286, 296 (2010), quoting Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555, 579-80 (1985); see also Travelers Indem. Co. v. Dammann & Co., 594 F.3d 238, 248 (3d Cir. 2010) (explaining same). The doctrine applies to

service contracts in addition to products liability. Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 309-10 (2002).

There are two exceptions to the Doctrine. The first exception is where tort liability may apply when the injured party would not otherwise have a remedy. People Express Airlines v. Consol. Rail Corp., 100 N.J. 246, 249-50 (1985) (permitting recovery of economic damages when no contract existed between the parties that would permit recovery under contract). Second, a party may recover in tort when a breaching party owes a duty imposed by law *independent* of a duty under the contract. Saltiel, 170 N.J. at 316, citing New Mea Constr. Corp. v. Harper, 203 N.J. Super. 486, 493 (App. Div. 1985). This includes contracts involving parties who have professional standards of care, such as doctors, lawyers, insurance brokers, and manufacturers. Saltiel, 170 N.J. at 317.

Here, Plaintiff opposes the instant motion on the basis that Defendant was not in contractual privity with Plaintiff, making the Economic Loss Doctrine inapplicable.[4] The Court agrees. The Court previously found that architectural and engineering Design Defendants were contemplated within the broad language of the Arbitration Clause of the Purchase Agreement for purposes of the Economic Loss Doctrine:

[4] There is an additional argument by Defendant that the relevant law does not apply because Plaintiff is a condominium association and not a homeowner. This argument fails because the Court recognizes that Plaintiff has filed suit on behalf of the individual unit homeowners. See Soc'y Hill Condominium Ass'n, Inc. v. Soc'y Hill Assocs., 347 N.J. Super. 163, 169 (App. Div. 2002) (permitting a condominium association to sue for construction defects, but only for damages to the common elements of the association).

> Despite the fact that the Professional-Design Defendants did not execute the purchase agreement, the language in the agreement renders the contract applicable to the Design Defendants as the agreement states "any and all disputes with Seller, Seller's parent company or their subsidiaries or affiliates, whether statutory, contractual, or otherwise, including but not limited to personal injuries and/or illness ("Claims") and requires such claims to "be resolved by binding arbitration."

Defendant's Exhibit C, p. 15 (representing the January 11, 2016 Order). The Court notes that Plaintiff did not move to reconsider the dismissal pursuant to R. 4:49-2.

However, the Court does not find that Defendant, as the general contractor, is also part of the Purchase Agreement. As stated above, the Association is in contractual privity with Cornell Oceanview, LLC as the Developer/Seller through the Purchase Agreement (Plaintiff's Exhibit B), and Cornell Oceanview, LLC is in contractual privity with Defendant through the Subcontract Agreement (Defendant's Exhibit B), but no contract exists with the Association and Defendant as named contracting parties. Defendant does not provide any evidence that would suggest any "subsidiary or affiliate" relationship with Cornell Oceanview, LLC that would warrant Defendant's inclusion in the Purchase Agreement's Arbitration Clause.

The Court's finding in this regard is consistent with the general paradigm for condominium and homeowner association construction projects. In discussing the Economic Loss Doctrine, the Utah Supreme Court in Davencourt at Pilgrims Landing Homeowners Ass'n v. Davencourt at

Pilgrims Landing, LC, 221 P.3d 234, 245 (Utah 2009) explained the general paradigm for such cases, including this case:

> Knowledge and expertise alone do not establish an independent duty; privity or a direct relationship is also required. The Association has no privity of contract or a direct relationship that would lead it to rely on any of the Defendants. Unlike [in Yazd v. Woodside Homes Corp., 143 P.3d 283 (Utah 2006)], the Builder here was not the seller. Rather, the Developer contracted with the Builder to construct the townhomes, and the Developer sold them. Moreover, the Unit Owners, not the Association, purchased the townhomes from the Developer. These arrangements limit privity of contract to the Builder and the Developer or to the Unit Owners and the Developer. The Association lacks any kind of relationship with the Builder. And while the Association has a relationship with the Developer and Woolstenhulme, in that they created and subsequently ran the Association until the Unit Owners took control, this relationship presents no reliance based on a disparity of expertise. Accordingly, no independent duty arises under the expertise and relationship that a contractor-seller owes a home purchaser.

Here, without contractual privity between the Association and Defendant, and without any evidence of an independent relationship between the Association and Defendant, the Economic Loss Doctrine does not apply here. The Economic Loss Doctrine requires the existence of a contractual relationship. See Dean, 204 N.J. at 295, supra.

Accordingly, dismissal of Counts III (breach of express and implied warranties) and IV (negligence) of such claims pursuant to the Economic Loss Doctrine is denied. Defendant does not provide any other argument in support of the dismissal of such claims. Therefore, Defendant's motion is denied.

CONCLUSION

The motion of Defendant, Manor Hill Contracting Services, LLC, for partial summary judgment as to Count III (breach of warranties) and Count IV (negligence) of the Complaint, pursuant to R. 4:46-2(c) is denied.

An appropriate form of order has been executed. Conformed copies of that order will accompany this memorandum of decision.

August 25, 2017