

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

LEANNE G. SPRAGUE, : No. 2005-SU-3028-Y01  
Plaintiff :

vs. : CIVIL ACTION - LAW

LONG & FOSTER REAL ESTATE, INC., :  
BONNIE SNYDER, SHAD R. SAHM, :  
ATLANTIC HOME INSPECTION :  
SERVICES, INC., THOMAS E. :  
SCOZZARI and ZITA SCOZZARI, :  
Defendants : JURY TRIAL DEMANDED

APPEARANCES: GIRARD E. RICKARDS, Esquire  
For the Plaintiff Leanne G. Sprague

FRANK P. IPPOLITO, Esquire  
For the Defendants Long & Foster Real Estate, Inc. and  
Bonnie Snyder

GEORGE H. EAGER, Esquire  
For the Defendants Shad R. Sahn and  
Atlantic Home Inspection Services, Inc.

JULIE S. LEE, Esquire  
For the Defendants Thomas E. Scozzari and Zita Scozzari

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**OPINION**

**Procedural History**

On October 7, 2005, the Plaintiff, Leanne G. Sprague (hereinafter Sprague), filed a Writ of Summons against the Defendants, Long & Foster Real Estate, Inc. (hereinafter Long & Foster), Bonnie Snyder (hereinafter Snyder), Shad R. Sahn (hereinafter Sahn), Atlantic Home Inspection Services, Inc. (hereinafter Atlantic Home Inspection), and Thomas E. Scozzari and Zita Scozzari (hereinafter Scozzaris). On January 30, 2006, the Plaintiff filed a Complaint against the Defendants. Count I was based on negligence against Snyder, Count II was based on Unfair Trade Practices and Consumer Protection Law against

Snyder, Count III was based on vicarious liability of Long & Foster through its agent Snyder, Count IV is a complaint of negligence against Sahn, Count VI is based on vicarious liability of Atlantic Home Inspection through its agent Sahn, and Count VII<sup>1</sup>. Count VIIa is a claim against the Scozarris based on the Seller's Disclosure Act, Count VIIb is a claim of rescission with regard to the real estate transferred to Sprague by Scozarris, Count VIIc is a claim against the Scozarris based on fraud and misrepresentation, Count VIId is a claim against the Scozarris based on Unfair Trade Practices and Consumer Protection Law, and Count VIII is a breach of contract with respect to Scozarris.

On February 21, 2006, Sahn and Atlantic Home Inspection filed an Answer with New Matter. On February 23, 2006, Long & Foster filed Preliminary Objections raising a number of issues including improper venue. On March 8, 2006, Defendant Snyder filed Preliminary Objections raising a number of issues including improper venue, and on March 17, 2006, the Defendants Scozarris filed Preliminary Objections raising a number of issues including improper venue.

### **Factual History**

On October 1, 2004, the Plaintiff, Sprague, entered into an agreement with the Defendants, Scozarris, to buy real estate in Manheim Borough, Lancaster County, Pennsylvania, being known and numbered as 2 North Charlotte Street, Manheim, PA 17545 (hereinafter the Property). The Property was listed for sale by Scozarris with Long & Foster and Long & Foster and its agent, Snyder, served as agent for Scozarris and Sprague.

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Plaintiff's Complaint contains four Count VIIs against the same Defendants, Scozarris, but each count based on a separate cause of action. They will be referred to as Count VIIa, VIIb, VIIc, and VIId.

Sprague alleges that Snyder recommended Sahn, presently an agent of Atlantic Home Inspection, perform a home inspection. A home inspection was completed.

Sprague purchased the property from Scozarris.

**Issue**

Is York County proper venue for this action?

**Discussion**

The property is located in Lancaster County. Sprague resides in Lancaster County. Snyder worked for Long & Foster in Long & Foster's office located in Lancaster County, Sahn and Atlantic Home Inspection are both located in Lancaster County. The Scozarris currently reside in Baltimore, Maryland.

Long & Foster and Snyder have raised as Preliminary Objections improper venue based on Pa.R.C.P. 1006(a)(2) which reads as follows:

Except as otherwise provided by subdivision (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which

- (1) ...
- (2) The property, a part of the property which is the subject matter of the action is located provided that corporal relief is sought with respect to the property.

Count VIIIb of the Plaintiff's Complaint is a claim for rescission of the sale and purchase of the real property which would involve the title to real property located in Lancaster County. Rescission is an equitable action. *Schwan v. Kelly*, 173 Pa. 65, 33 A. 1107 (1896); *Sullivan v. Allegheny Ford Truck Sales, Inc.*, 283 Pa.Super. 351, 423 A.2d 1292 (1980); *Gilmore v. Northeast Dodge Co., Inc.*, 278 Pa.Super. 209, 420 A.2d 504

(1980); and *Baker v. Cambridge Chase, Inc.*, 1999 Pa.Super 9, 725 A.2d 757 (Pa.Super. 1999).

Since the equitable remedy of rescission is being sought by the Plaintiff with respect to real estate that is situate in Lancaster County, Pennsylvania, Lancaster County is the only proper venue. The Court will enter an Order that will transfer venue to Lancaster County in accordance with Pa.R.C.P. 1006(e) which reads as follows:

Improper venue shall be raised by preliminary objection and if not so raised shall be waived. If a preliminary objection to venue is sustained and there is a county of proper venue within the state, the action shall not be dismissed but shall be transferred to the appropriate court of that county. The cost and fees for transfer and the removal of the record shall be paid by the plaintiff.

See also Pa.R.C.P. 213(f) which reads:

When an action is commenced in a court which has no jurisdiction over the subject matter, the action shall not be dismissed if there is another court of appropriate jurisdiction within the Commonwealth in which the action could originally have been brought but the court shall transfer the action at the cost of the plaintiff to the court of appropriate jurisdiction. It shall be the duty of the prothonotary or clerk of the court in which the action is commenced to transfer the record together with a certified copy of the docket entries to the prothonotary or clerk of the court in which the action is transferred.

Moreover, we note that even if the Plaintiff were to abandon the claim for rescission, this Court would, if so petitioned by a party to the action,<sup>2</sup> transfer the action to Lancaster County which would be the appropriate county in which the action should have been brought based upon the fact that the real estate and all of the parties reside in Lancaster County

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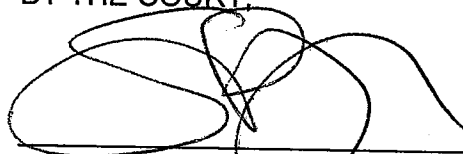
Pa.R.C.P. 1006(b)(1) - "For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

except for Scozarris who now live in Maryland but lived in Lancaster County at the time the events occurred and who were the owners of the real estate in question. The only connection of any party to York County is that Long & Foster has three offices located in York County; however, none of those office were involved in this transaction.

The remaining issues raised by the Defendants in their Preliminary Objections will not be addressed by this Court as they may be matters that would be appropriately addressed by the court of appropriate jurisdiction.

An Order consistent with this Opinion will be entered.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Stephen P. Linebaugh', written over a horizontal line.

Stephen P. Linebaugh, Judge

Date: November 21, 2006

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**ORDER**

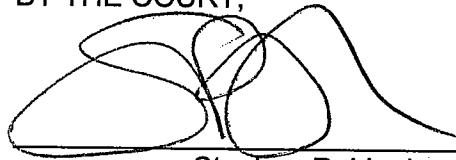
AND NOW, this 21st day of November 2006, the Preliminary Objections of Defendants Long & Foster Real Estate, Inc., Bonnie Snyder, and Thomas E. Scozarri and Zita Scozarri raising improper venue are hereby sustained.

Pursuant to Pa.R.C.P. 1006(e) this action is hereby transferred to the Court of Common Pleas of Lancaster County, Pennsylvania. Costs and fees for transferring and removal of the record shall be paid by the Plaintiff.

Upon payment of costs and fees by the Plaintiff for the transfer and removal of the record, the Prothonotary of York County shall transfer the record together with a certified copy of the docket entries to the Prothonotary of Lancaster County in an expeditious manner.

The Prothonotary shall provide a copy of this Opinion and Order to Girard E. Rickards, Esquire, Frank P. Ippolito, Esquire, George H. Eager, Esquire, and Julie S. Lee, Esquire.

BY THE COURT,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Stephen P. Linebaugh, Judge