

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 1283

HERSCHEL ALLEN and wife, ELIZABETH P. ALLEN; SVEN RONNY CARLSSON and wife, SUSAN P. CARLSSON a/k/a CARLSSON INVESTMENTS, LLC; WAYNE COX and wife, JOSEPHINE COX; GLENN A. DAY and wife, KATHERINE KOSTOFF-DAY; CALVIN C. HENDERSON and wife, ELAINE W. HENDERSON; JOHN J. KASIANOWICZ and wife, RACHEL H. KASIANOWICZ; JILL ANNE LYCAN; GLENN M. SWARTZ and wife, DAWNA L. SWARTZ; DAVID LEE WOOD; STEPHEN PETER BLOOM; MARCOS I. RUBERT and wife, KATHRYN M. RUBERT; and BRIAN J. KREBS,

Plaintiffs,

v.

LAND RESOURCE GROUP OF NORTH CAROLINA, LLC, a North Carolina limited liability company; LAND RESOURCE DEVELOPMENT GROUP, INC., a Georgia corporation; LAND RESOURCE GROUP, INC., a Georgia corporation; LR BUFFALO CREEK, LLC, a Georgia limited liability company; LAND RESOURCE, LLC a/k/a LAND RESOURCE COMPANIES, LLC, a Georgia limited liability company; MIKE FLASKEY; J. ROBERT WARD; PAUL BEIDEL; ROB VACKO; SCRIPPS NETWORK INTERACTIVE d/b/a HGTV; WACHOVIA BANK, N.A.; MITCH BEN MILLER; SOUTHERN H.O.A. MANAGEMENT, LLC; CLARK CHAMPION; TAMMY MIKESELL; ROBERT L. HULLETT; HOWARD HULLETT APPRAISALS AND REALTY, INC.; SHANNON GLOVER; EDDIE H. GILBERT; LYNN SESSOMS; EHG APPRAISAL SERVICES; SUSAN GARREN; MARIE A. FOX; HOMEFOCUS VALUATION SERVICES, LLC; TWO DAY APPRAISAL;

**AMENDED ORDER ON THE
INDIVIDUAL DEFENDANTS'
MOTIONS TO DISMISS**

RANDY COCHRAN; JEANETTE MANNER-JONES; BRANCH BANKING & TRUST COMPANY; BANK OF AMERICA CORPORATION; JOHN DOE OFFICERS OF LAND RESOURCE GROUP OF NORTH CAROLINA, LLC; JOHN DOE OFFICERS OF LAND RESOURCE DEVELOPMENT GROUP, INC.; JOHN DOE OFFICERS OF LAND RESOURCE GROUP, INC.; JOHN DOE OFFICERS OF LR BUFFALO CREEK, LLC; JOHN DOE OFFICERS OF LAND RESOURCE, LLC a/k/a LAND RESOURCE COMPANIES, LLC; JOHN DOE DIRECTORS OF LAND RESOURCE GROUP OF NORTH CAROLINA, LLC; JOHN DOE DIRECTORS OF LAND RESOURCE GROUP, INC.; JOHN DOE DIRECTORS OF LAND RESOURCE DEVELOPMENT GROUP, INC.; JOHN DOE DIRECTORS OF LR BUFFALO CREEK, LLC; JOHN DOE DIRECTORS OF LAND RESOURCE LLC a/k/a LAND RESOURCE COMPANIES, LLC; JOHN DOE APPRAISER; and JOHN DOE REAL ESTATE AGENT,

Defendants.

THIS MATTER comes before the Court on various motions, including (1) Defendants James Robert Ward, Michael Flaskey, Paul Beidel, Robert Vacko, Clark Champion, Jeanette Manner-Jones, Tammy Mikesell, Mitch B. Miller, Marie Fox Miller, and Shannon M. Glover's (collectively, the "Individual Defendants") Motion to Dismiss Claims for Breach of Contract, Anticipatory Breach and Breach of the Covenant of Good Faith and Fair Dealing ("Motion to Dismiss Plaintiffs' Contract Claims"); (2) Individual Defendants' Motion to Dismiss Based on Statute of Limitations; and (3) Individual Defendants' Motion to Dismiss Certain of Plaintiffs' Claims Against Certain Defendants or in the Alternative Motion for More Definite Statement. The Court heard oral arguments on October 26, 2009.

After reviewing the submissions by counsel and hearing oral arguments, the Court hereby ORDERS the following:

The Individual Defendants' Motion to Dismiss Plaintiffs' Contract Claims is GRANTED. The Individual Defendants contend that Plaintiffs failed to allege the existence of a contract and thereby failed to state any contract claim for which relief can be granted. (Br. Supp. Defs.' Mot.

Dismiss Pls.’ Contract Claims at 2–3.) In their Memorandum in Response, Plaintiffs agree that their claims for breach of contract, anticipatory breach, and breach of the covenant of good faith and fair dealing do not apply to the Individual Defendants. (Pls.’ Mem. Resp. at 3.) The Court agrees. Although the Complaint alleges that Plaintiffs entered into a contract with Defendant LR Buffalo Creek, LLC, nowhere does it allege that Plaintiffs entered into a contract with any of the Individual Defendants. (Compl. ¶¶ 64–73, 75, 328, 335.) Therefore, the Court hereby dismisses Plaintiffs’ contract claims with respect to the Individual Defendants.

The Individual Defendants’ Motion to Dismiss Certain Claims Based on Statute of Limitations is GRANTED IN PART with respect to certain Plaintiffs. A three-year limitation period governs claims brought under section 1703(a)(1) of the Interstate Land Sales Full Disclosure Act (“ILSA”). 15 U.S.C.S. § 1711(a)(1) (LEXIS through 2007 legislation). The three-year period runs from the date of signing the sales contract. 15 U.S.C.S. § 1711(a)(1). In support of their Motion to Dismiss, the Individual Defendants contend that claims brought by certain Plaintiffs in this case fall outside of the three-year limitation period. The Court agrees.

Plaintiffs filed the Complaint on September 11, 2008. However, the following Plaintiffs contracted for the purchase of their lot(s) before September 11, 2005: Brian J. Krebs (“Krebs”), Sven Ronny Carlsson and Susan P. Carlsson (“the Carlssons”), Herschel Allen and Elizabeth P. Allen (“the Allens”), Glenn M. Swartz, Jr. and Dawna L. Swartz (“the Swartzes”), and Glenn A. Day and Katherine Kostoff-Day (“the Days”).¹ (Compl. ¶¶ 64–69.) Plaintiffs do not dispute that ILSA provides for a three-year limitation period. (Pls.’ Mem. Resp. at 6.) Instead, Plaintiffs maintain that the doctrines of equitable tolling and equitable estoppel apply and common law grounds for rescission remain.

Neither the case law nor ILSA provide for equitable tolling or equitable estoppel under the circumstances of this case. Therefore, the Court dismisses the First Cause of Action with respect to those Plaintiffs listed above. The common law grounds for rescission, however, were not addressed by the Individual Defendants. Furthermore, in their Memorandum in Response, Plaintiffs clarify that their rescission claim does not apply to any of the moving Defendants. (Pls.’ Mem. Resp. at 4.) As such, the Court declines to dismiss Plaintiffs’ Third Cause of Action against Defendant LC Buffalo Creek, LLC at this time.

¹ Reuben T. Joy and Krystal K. Joy (“the Joys”) also signed their sales contract prior to September 11, 2005. However, the Joys filed a voluntary dismissal as to all claims on February 6, 2009.

The Individual Defendants' Motion to Dismiss Certain of Plaintiffs' Claims Against Certain Defendants is DENIED. Plaintiffs shall have thirty (30) days from the date of this Order to file an amended complaint which includes specific details of the misrepresentations. See Coley v. N.C. Nat'l Bank, 41 N.C. App. 121, 124–25, 254 S.E.2d 217, 219 (1979) (dismissing a complaint when pleader failed to “state with particularity the time, place and content of the false misrepresentation”) (citations omitted); Phillips & Jordan, Inc. v. Bostic, 2009 NCBC 13 ¶¶ 34–37 (N.C. Super. Ct. June 2, 2009), http://www.ncbusinesscourt.net/opinions/2009_NCBC_13.pdf. Conclusory allegations will not suffice. Bostic, 2009 NCBC ¶ 35 (citation omitted). Moreover, lumping all the Individual Defendants together will result in dismissal. Id. ¶¶ 46, 48. In their amended complaint, Plaintiffs shall identify (1) which claims apply to which Defendants and (2) which person made the alleged misrepresentations. Coley, 41 N.C. App. at 125, 254 S.E.2d at 219 (dismissing fraud claim when plaintiff alleged “that he was defrauded by a group” of people without identifying “the particular individuals”); Bostic, 2009 NCBC ¶ 46, 48.

IT IS SO ORDERED, this the 7th day of December, 2009.

/s/ Ben F. Tennille
The Honorable Ben F. Tennille
Chief Special Superior Court Judge
for Complex Business Cases