

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

SAMUEL RANCK and	:
REBECCA RANCK,	:
Plaintiffs.	: NO. CV 23-00,847
	:
vs.	: CIVIL ACTION
	:
NEW IMAGE HOMES, LLC,	: JURY TRIAL DEMANDED
Defendant.	:

OPINION AND ORDER

AND NOW, this 31st day of March, 2025, upon consideration of the Defendant's motion for summary judgment (the "Motion"),¹ the Plaintiffs' response (the "Response"),² and the briefs³ and arguments⁴ of the parties, it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

I. BACKGROUND.

Plaintiffs Samuel and Rebecca Ranck, husband and wife, commenced this action by complaint against Defendant New Image Homes, LLC on August 2, 2023.⁵ Subsequently, Plaintiffs filed an amended complaint on October 11, 2023 (the "Amended Complaint"),⁶ which Defendant duly answered, with new matter, on November 8, 2023.⁷ Plaintiffs replied to the new matter on November 28, 2023,⁸ and the parties conducted discovery.

¹ "Motion for Summary Judgment of Defendant New Image Homes, LLC Pursuant to Pa. R.C.P. 1035.2(2)," filed November 14, 2024.

² "Plaintiffs' Response to Motion for Summary Judgment," filed December 17, 2024.

³ "Brief in Support of Defendant's Motion for Summary Judgment Pursuant to Pa. R.C.P. 1035.2(2)," filed November 14, 2024. Plaintiffs did not file a brief in opposition to the Motion.

⁴ The Court heard argument on the Motion on December 18, 2024. Scheduling Order dated November 15 and entered November 18, 2024. Gary L. Weber, Esq. argued for the Defendant/Movant, and Blake C. Marks, Esq. argued for the Plaintiffs/Respondents.

⁵ Plaintiffs' "Complaint," filed August 2, 2023.

⁶ Plaintiffs' "Amended Complaint," filed October 11, 2023 (the "Amended Complaint"). The Amended Complaint is the operative complaint in this litigation.

⁷ Defendant's "Answer and New Matter," filed November 8, 2023.

⁸ Plaintiffs' "Answer to New Matter," filed November 28, 2023.

The Amended Complaint alleges that Defendant is in the business of purchasing, remodeling and reselling residential properties; that Plaintiffs purchased a property at 511 Sherman St. Ext., Muncy, Lycoming County, Pennsylvania (the "Property") from Defendants; that Defendants represented to Plaintiffs that the Property had been renovated prior to sale, including replaced floors, a bathroom remodel and other improvements; that subsequent to purchase, Plaintiffs learned the dryer vented into the ceiling above the washroom instead of outside, in violation of applicable codes; that the subfloor is substantially saturated with water, resulting in severely warped flooring; that Defendant/seller failed to disclose on the seller's disclosure statement the code violation, past or present water leakage, accumulation or dampness, water infiltration, or other material defects; that Defendant provided a one year warranty to Plaintiffs on April 12, 2021; that Defendant was notified of the problem during the warranty period; that Defendant replaced the warped flooring but refused to replace the sub-floor, whereupon the same issue re-occurred; that Defendant refused to take further action and denied responsibility; and that Plaintiffs suffered actual damages as a result of the alleged defects.⁹ The Amended Complaint asserts causes of action for fraud (Count I), for failure to disclose the improper ventilation and consequent moisture issues,¹⁰ negligence (Count II), for failure to vent the dryer properly and replace the defective subfloor,¹¹ breach of contract (Count III), for refusing to repair the defects and breach of warranty,¹² and unfair trade practices (Count IV), for alleged violation of Pennsylvania's Unfair Trade Practices and Consumer Practices Law ("UTPCPL").¹³

⁹ Amended Complaint, ¶¶ 6-22.

¹⁰ *Id.*, ¶¶ 23-31.

¹¹ *Id.*, ¶¶ 32-47.

¹² *Id.*, ¶¶ 48-55.

¹³ *Id.*, ¶¶ 56-63. The UTPCPL is codified at 73 P.S. §§ 201-1 - 201-9.2.

The parties conducted discovery, and the Defendant filed the instant Motion on November 14, 2024. Defendant contends that Plaintiffs have not produced an expert report or evidence sufficient to raise a jury question regarding any of their claims.¹⁴ More specifically, Defendant argues that all of Plaintiffs' claims relate to alleged failure to vent the dryer properly, which resulted in moisture problems in the subflooring; however, Plaintiffs have not produced evidence that Defendant's work included any work on the dryer venting; that Defendant knew of the crushed dryer vent at the time of sale of the Property; that there was any issue of moisture in the subflooring at the time of sale. Thus, Defendant asserts, Plaintiffs are unable to meet their burdens of production and proof concerning their claims against Defendant and are unable to prove those claims.¹⁵

Plaintiffs dispute Defendant's assertions. They admit that their "main complaint is that shoddy workmanship by Defendants resulted in conditions which entrapped undue moisture in the home and damaged the flooring by causing warping, cracking, etc." They further admit that they did not submit a formal expert opinion letter or report prior to September 27, 2024 but that they did so on October 11, 2024. They assert that when third parties came in to perform repairs, they removed the drywall which had been installed by defendants, whereupon they discovered that the dryer exhaust had been crushed and was not properly vented. They assert that Defendant is a sophisticated party who should know and understand the work they were performing and the consequences of not performing it properly; that they concealed information from the Plaintiffs/buyers; that they knew or had reason to know that the crushed dryer vent would be an issue that could

¹⁴ Motion, ¶¶ 9, 11.

¹⁵ *Id.*, ¶¶ 29-32.

easily cause flooring to warp due to moisture trapped below the subfloor; that Defendants walled in the dryer vent and, given their expertise, knew or should have known about the improper venting, even if they did not cause it; and that Defendants willfully concealed the problems with the Property.¹⁶

The Court heard argument on the Motion on December 18, 2024,¹⁷ and it is now ripe for resolution.

II. LAW AND ANALYSIS.

A. Legal standard.

A party may move for summary judgment, in whole or in part,

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial ... if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.¹⁸

All required pleadings having been filed, the pleadings are closed.¹⁹ Further, the Motion was filed within such time as not to delay trial unreasonably.²⁰ Thus, the Court finds that the Motion was filed timely.

Once a party has filed a motion for summary judgment,

(a) ... the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

¹⁶ Response.

¹⁷ See, *supra*, n.4.

¹⁸ Pa. R. Civ. P. 1035.2(2).

¹⁹ "[T]he pleadings in an action are limited to ... a complaint and an answer thereto ... [and] a reply if the answer contains new matter, a counterclaim ... [and] a counter-reply if the reply to a counterclaim ... contains new matter." Pa. R. Civ. P. 1017(a). Plaintiffs filed their "Amended Complaint" on October 11, 2023. Defendant filed its "Answer and New Matter" on November 8, 2023, and Plaintiffs filed their "Answer to New Matter" on November 28, 2023. No further pleadings were filed, so all relevant, authorized pleadings have been filed, and the time to respond to preceding pleadings has passed. Pa. R. Civ. P. 1026(a).

²⁰ This Court's Scheduling Order dated November 30 and entered December 4, 2023 placed this case on the Court's March/April 2025 trial list and provided a cut-off date for filing dispositive motions of November 18, 2024. Defendant filed its Motion on November 14, 2024. See, *supra*, n.1. Accordingly, the Court finds that the Motion was filed timely and will not delay trial unreasonably.

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.²¹

“Where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial.”²² The court may enter summary judgment against a party who fails to respond.²³ Here, Plaintiffs filed a response to the Motion,²⁴ alleging “one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion.”²⁵ Therefore, the Court will not enter summary judgment for failure to respond.

A court may enter summary judgment when a party fails to produce evidence of facts essential to his cause of action.²⁶ Thus,

²¹ Pa. R. Civ. P. 1035.3(a).

²² *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. Super. 1991) (citing *Overly v. Kass*, 554 A.2d 970 (Pa. Super. 1989); *Tom Morello Constr. Co., Inc. v. Bridgeport Federal Savings and Loan Ass'n*, 421 A.2d 747 (Pa. Super. 1980)).

²³ Pa. R. Civ. P. 1035.3(d) (“Summary judgment may be entered against a party who does not respond”). Although the Court is permitted to rule against a party who does not respond timely, this rule does not abrogate the Court’s discretion to determine whether briefs and/or oral argument are required or whether the motion can best be disposed of from a review of the record alone. *Smitley v. Holiday Rambler Corp.*, 707 A.2d 520, 526 (Pa. Super. 1998).

²⁴ Pa. R. Civ. P. 1035.3(a) ([T]he adverse party ... must file a response within thirty days after service of the motion”); Scheduling Order dated November 15 and entered November 18, 2024, ¶ 4 (“A response to the motion/petition shall be filed ... within 30 days per Pa. R.C.P. 1035.3”). Plaintiff’s response was filed on December 17, 2024. See, *supra*, n.2. The Motion was filed October 14, 2024, see, *supra*, n.1, so the Response was not filed within thirty days after filing of the Motion; however, “[i]t is within the discretion of the court, *sua sponte*, to allow the non-moving party to respond to a motion for summary judgment after the thirty-day period has elapsed. *Com. ex rel. Fisher v. Jash Intern., Inc.*, 847 A.2d 125, 130 (Pa. Commw. 2004) (citing *Thomas v. Elash*, 781 A.2d 170, 177 (Pa. Super. 2001)). As such, the Court will not strike the Response.

²⁵ Pa. R. Civ. P. 1035.3(a)(1).

²⁶ *Eaddy v. Hamaty*, 694 A.2d 639, 641-42 (Pa. Super. 1997).

Motions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of [a] cause of action. Summary judgment is proper if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. In other words, whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, which could be established by additional discovery or expert report and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.²⁷

When considering a motion for summary judgment, a court views the record in the light most favorable to the non-moving party and resolves all doubts as to the existence of a genuine issue of material fact against the moving party.²⁸

“Summary judgment is properly granted where ‘the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law’....”²⁹

A court will grant summary judgment “only in cases where the right is clear and free from doubt.”³⁰ The burden is on the moving party to show that there is no genuine issue of material fact,³¹ and the court's function is to ascertain whether a material issue of fact exists rather than to determine the facts.³²

²⁷ *True Railroad Realty, Inc. v. McNees, Wallace & Nurick, LLC*, 275 A.3d 490, 494 (Pa. Super. 2022).

²⁸ *Sevast v. Kakouras*, 915 A.2d 1147, 1152-53 (Pa. 2007) (citing *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001)).

²⁹ *Ducjai v. Dennis*, 656 A.2d 102, 107 (Pa. 1995) (quoting *Pa. State Univ. v. Cnty. of Centre*, 615 A.2d 303, 304 (Pa. 1992) (citations omitted)), disapproved of on other grounds by *Gardner v. Erie Ins. Co.*, 722 A.2d 1041 (Pa. 1999).

³⁰ *Marks, supra*, 589 A.2d at 206 (citing *Musser v. Vilsmeier Auction Co., Inc.*, 562 A.2d 279, 280 (Pa. 1989)).

³¹ *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033, 1035 (Pa. Super. 1999) (citing *Accu-Weather v. Prospect Communications*, 644 A.2d 1251 (Pa. Super. 1994)).

³² *Swartley v. Hoffner*, 734 A.2d 915, 918 (Pa. Super. 1999) (citing *McDonald v. Marriott Corp.*, 564 A.2d 1296, 1298 (Pa. Super. 1989)).

B. Expert testimony in support of Plaintiffs' claims.

The Motion asserts that the time for discovery has passed, and Plaintiffs have not produced an expert report in support of their claims and that, therefore, "Plaintiffs have not produced evidence sufficient to raise a jury question regarding any of the counts of the Amended Complaint."³³ Although Plaintiffs did not produce an expert report by September 27, 2024, the date set in this Court's Scheduling Order, Plaintiffs did produce an expert report on October 11, 2024.³⁴ While the Court can preclude an untimely expert report, it generally must find prejudice prior to doing so,³⁵ as preclusion of testimony is "a drastic sanction, and it should be done only where the facts of the case make it necessary."³⁶

"[A]ssuming that a party has not acted in bad faith and has not misrepresented the existence of an expert expected to be called at trial, no sanction should be imposed unless the complaining party shows that he has been prejudiced from properly preparing his case for trial as the result of a dilatory disclosure."³⁷

As there is no evidence in the record here to suggest that Defendant will be prejudiced by the untimely production of Plaintiffs' expert report, the Court will not exclude Plaintiffs' expert from testifying.

Moreover, expert testimony may not even be necessary here in order for Plaintiffs to establish liability, as the injury Plaintiffs' allegedly suffered can be inferred from Defendant's allegedly negligent acts and omissions. "It is well-established that 'expert opinion testimony is proper only where formation of an opinion on a subject requires knowledge, information, or skill beyond what is

³³ Motion, ¶¶ 9, 11.

³⁴ Response, ¶ 9.

³⁵ *Kurian ex rel. Kurian v. Anisman*, 851 A.2d 152, 157-62 (Pa. Super. 2004).

³⁶ *Kemp v. Qualls*, 473 A.2d 1369, 1374 (Pa. Super. 1984).

³⁷ *Kurian*, supra, 851 A.2d at 162 (quoting *Royster v. McGowan Ford, Inc.*, 439 A.2d 799, 804 (Pa. Super. 1982)).

possessed by the ordinary juror.”³⁸ In contrast, “[e]xpert testimony is not required ‘where the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons.’”³⁹ Thus, expert testimony is not required here if the facts alleged present a situation within the range of ordinary experience and comprehension wherein an ordinary layperson could determine that Defendant’s acts and omissions caused Plaintiffs’ damages, if any. The Court concludes that, depending upon the facts ultimately determined by the trier of fact,⁴⁰ Plaintiffs may be able to support their claim for damages exclusively with lay testimony. For example, an ordinary lay person having no specialized knowledge, information or skill is capable of understanding that a clothes dryer vented into the ceiling with a crushed hose instead of outside of the house with an operative hose is likely to cause damage over time.

C. Plaintiffs’ causes of action.

The Amended Complaint asserts causes of action for fraud (Count I), for failure to disclose the improper ventilation and consequent moisture issues,⁴¹ negligence (Count II), for failure to vent the dryer properly and replace the defective subfloor,⁴² breach of contract (Count III), for refusing to repair the defects and

³⁸ *Ovitsky v. Capital City Economic Development Corp.*, 846 A.2d 124, 126 (Pa. Super. 2004) (quoting *Com. v. Carter*, 589 A.2d 1133, 1134 (Pa. Super. 1991)).

³⁹ *Welsh v. Bulger*, 698 A.2d 581, 586 n.11 (Pa. 1997) (quoting *Chandler v. Cook*, 265 A.2d 794, 796 n.1 (Pa. 1970)).

⁴⁰ The trier of fact “make[s] credibility determinations and to resolve conflicts in evidence,” *Merrell v. Chartiers Valley School Dist.*, 51 A.3d 286, 293 (Pa. Commw. 2012), because he is “in the sole position to observe the demeanor of the witnesses and assess their credibility.” *Hirsch v. EPL Technologies, Inc.*, 910 A.2d 84, 88 (Pa. Super. 2006), alloc. denied, 920 A.2d 833 (Pa. 2007). As such, he “is free to believe all, part or none of the evidence presented.” *Haan v. Wells*, 103 A.3d 60, 72 (Pa. Super. 2014).

⁴¹ *Id.*, ¶¶ 23-31.

⁴² *Id.*, ¶¶ 32-47.

breach of warranty,⁴³ and unfair trade practices (Count IV), for alleged violation of Pennsylvania's Unfair Trade Practices and Consumer Practices Law ("UTPCPL").⁴⁴

Defendant points to testimony and evidence adduced during discovery tending to show that Plaintiffs do a significant amount of laundry every day; that they did not know whether any water issues existed at the time the property was sold to them; that they did not know whether Defendant would have known of any water issues; that they have no evidence of wet subflooring prior to the sale to them; that the faulty dryer vent was the sole reason for moisture in the subflooring; that replacing the dryer vent hose mitigated the moisture problem, resulting in no further moisture issues; that there is no proof of dryer use during the renovation process; that the dryer vent was not part of the renovations done by Defendant; that there is no evidence of a moisture problem when Defendant installed the flooring; and that there is no mold in the house related to the dryer venting defect.⁴⁵ Defendant concludes that Plaintiffs have not produced evidence that Defendant's renovations included any work on the dryer venting; that Defendant knew of the crushed dryer vent hose at the time of the sale to Plaintiffs; that there was any issue of moisture in the subflooring at the time of sale; or that the vent was crushed at the time of sale.⁴⁶

Plaintiffs respond that third party contractors had come in and removed the drywall, which was installed by Defendant, whereupon they discovered the crushed dryer vent and the failure to vent properly outside. As the party who installed the drywall, Defendant was in a position to observe the condition of the vent. Further, Plaintiffs have no evidence concerning the condition of the dryer vent or the

⁴³ *Id.*, ¶¶ 48-55.

⁴⁴ *Id.*, ¶¶ 56-63.

⁴⁵ Motion, ¶¶ 13-25.

⁴⁶ *Id.*, ¶ 30.

subflooring because they did not have access to them at the time they purchased the property. They contend that the fact that the flooring warped due to humidity is circumstantial evidence of moisture being trapped beneath the flooring or in the subflooring and that circumstantial evidence is valid evidence. Because the flooring warped and mold developed in some areas, there was a clear issue with moisture that either pre-dated their purchase of the Property or that resulted from defects arising out of Defendant's shoddy workmanship.⁴⁷

1. Fraud.

"Fraud is a generic term used to describe 'anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture.'"⁴⁸ A finding of fraud requires "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance."⁴⁹

The gravamen of the fraud claim (Count I) is that Defendant failed to disclose defects in the Property pursuant to the Real Estate Seller Disclosure Law ("RESDL").⁵⁰ Under RESDL, sellers are required to disclose all material defects and not to make any statements that they know are false or misleading.⁵¹ A material

⁴⁷ Response, ¶¶ 11-30.

⁴⁸ *Sewak v. Lockhart*, 699 A.2d 755, 759 (Pa. Super. 1997) (quoting *Moser v. DeSetta*, 589 A.2d 679, 682 (Pa. 1991)).

⁴⁹ *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994).

⁵⁰ 68 Pa. C.S. §§ 7301-7315.

⁵¹ *Medlock v. Chilmark Home Insps., LLC*, 195 A.3d 277, 289 (Pa. Super. 2018) (citing 68 Pa. C.S. § 7308, which sets forth a seller's affirmative duties under the law).

defect is “[a] problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property.”⁵²

Defendant argues that Plaintiffs have not proven the essential elements of a fraud claim because Plaintiffs have not produced evidence that Defendant's renovations included any work on the dryer venting; that Defendant knew of the crushed dryer vent hose at the time of the sale to Plaintiffs; that there was any issue of moisture in the subflooring at the time of sale; or that the vent was crushed at the time of sale. Plaintiffs contend they have established the necessary facts by circumstantial evidence.

As a general matter, a party bringing a civil action must prove, by direct or circumstantial evidence, facts by which the trier of fact can reasonably draw the inference urged by the plaintiff. Nonetheless, there is a limit to the inferences that the jury may reasonably draw from such circumstantial evidence. Viewed as a whole, the “evidentiary threads” must be sufficient to “lift [the] contention out of the realm of speculation.” Thus, while the jury may draw reasonable inferences, it “may not be permitted to reach its verdict merely on the basis of speculation or conjecture, but ... there must be evidence upon which logically its conclusion may be based.” “Clearly this does not mean that the jury may not draw inferences based upon all the evidence and the jurors' own knowledge and experiences, for that is, of course, the very heart of the jury's function. It means only that the evidence presented must be such that by reasoning from it, without resort to prejudice or guess, a jury can reach the conclusion sought by [the] plaintiff, and not that the conclusion must be the only one which logically can be reached.”⁵³

Here, the evidence establishes that Defendant renovated the Property, to include replacing drywall in the area of the dryer. Thus, the Defendant “opened up”

⁵² *Milliken v. Jacono*, 60 A.3d 133, 138 (Pa. Super. 2012) (citing 68 Pa. C.S. § 7102, which sets forth certain definitions applicable to the transfer of real property within the Commonwealth).

⁵³ *Fitzpatrick v. Natter*, 961 A.2d 1229, 1241-42 (Pa. 2008) (citations and footnotes omitted) (quoting *Kuisis v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914, 923 (Pa. 1974) (plurality on this point); *Jones v. Treegoob*, 249 A.2d 352, 354-55 (Pa. 1969) (quoting *Smith v. Bell Tel. Co.*, 153 A.2d 477, 479 (Pa. 1959)) (citing *Noel v. Puckett*, 235 A.2d 380, 384-85 (Pa. 1967)).

the portions of the Property where the dryer venting was located and had the opportunity to observe the conditions present. Whether the venting was defective at the time and whether Defendant knew that it was are issues of fact for the jury. The law in this Commonwealth for many years has been that

“However clear and indisputable may be the proof when it depends upon oral testimony, it is nevertheless the province of the jury to decide, under instructions from the court, as to the law applicable to the facts, and subject to the salutary power of the court to award a new trial if they should deem the verdict contrary to the weight of the evidence.”⁵⁴

As such, the Court concludes that Plaintiffs have produced sufficient evidence to submit their fraud claim (Count I) to a jury.

2. Negligence.

The Amended Complaint alleges negligence (Count II), for Defendant’s failure to vent the dryer properly and to replace the defective subfloor. The elements of a negligence claim are (1) a duty recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages.⁵⁵ Defendant contends the Plaintiffs have not supported their negligence claim because they did not demonstrate that Defendant did any work on the dryer venting or was aware of the alleged defective condition of the venting. For the same reasons applicable to the fraud claim, the Court finds that Plaintiffs have established sufficient circumstantial evidence in support of their negligence claim and that these are questions of fact reserved to the trier of fact for disposition.

As such, the Court concludes that Plaintiffs have produced sufficient evidence to submit their negligence claim (Count II) to a jury.

⁵⁴ *Borough of Nanty-Glo v. American Surety Co. of New York*, 163 A. 523, 524 (Pa. 1932) (quoting *Reel v. Elder*, 62 Pa. 308 (1869)).

⁵⁵ *Toro v. Fitness International LLC*, 150 A.3d 968, 976-77 (Pa. Super. 2016).

3. *Breach of contract.*

The Amended Complaint asserts a cause of action for breach of contract (Count III), for Defendant's refusal to repair the alleged defects and for failure to honor their warranty. The elements of a cause of action for breach of contract are "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages."⁵⁶ The parties do not appear to dispute existence of a contract, but they do dispute whether Defendant breached a duty imposed by the contract. Defendant maintains that the warranty only related to workmanship by Defendant and specifically excluded issues arising from initial construction that were unmodified by Defendant.⁵⁷ Plaintiffs respond that the warranty's limitations do not alleviate Defendant's duty to disclose defects and that the warranty is applicable if Defendant's work caused the vent to be crushed.⁵⁸ For the same reasons applicable to the fraud and negligence claims, the Court finds that Plaintiffs have established sufficient circumstantial evidence in support of their breach of contract claim and that these are questions of fact reserved to the trier of fact for disposition.

As such, the Court concludes that Plaintiffs have produced sufficient evidence to submit their breach of contract claim (Count III) to a jury.

⁵⁶ *CoreStates Bank v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999) (citing *General State Auth. v. Coleman Cable & Wire Co.*, 365 A.2d 1347, 1349 (Pa. Commw. 1976)); see also *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258 (Pa. 2016) (citing *J.F. Walker Co., Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 1272 (Pa. Super. 2002)).

⁵⁷ Motion, ¶ 27.

⁵⁸ Response, ¶ 27.

4. *Unfair trade practices.*

The purpose of the Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL")⁵⁹ is to protect the public from unfair or deceptive business practices.⁶⁰ A private action under the UTPCPL is available to "[a]ny person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by [the UTPCPL]."⁶¹ The UTPCPL applies to residential real estate transactions, even when the seller is an individual.⁶²

The "catchall" provision of the UTPCPL, prohibits "fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."⁶³ Thus, Plaintiffs could recover on their UTPCPL claim if the jury concludes Defendant's actions were capable of being interpreted in a "misleading way," as "deceptive conduct which creates a likelihood of confusion or of misunderstanding can constitute a cognizable claim" under the catchall provision of the UTPCPL.⁶⁴ Thus, there is a question of fact concerning whether Defendant engaged in deceptive conduct that created a likelihood of confusion or misunderstanding. For the same reasons applicable to the fraud, negligence and contract claims, the Court finds that Plaintiffs have established sufficient circumstantial evidence in support of their unfair trade practices claim and that these are questions of fact reserved to the trier of fact

⁵⁹ 73 P.S. §§ 201-1, *et seq.*

⁶⁰ *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. 2013).

⁶¹ 73 P.S. § 201-9.2.

⁶² *Growall v. Maietta*, 931 A.2d 667, 676 (Pa. Super. 2007) ("There is no question that the purchase or lease of a home, condominium, or apartment for residential purposes comes under the protections of the UTPCPL") (citing *Valley Forge Towers South Condominium v. Ron-Ike Foam Insulators, Inc.*, 574 A.2d 641, 645 (Pa. Super. 1990)).

⁶³ 73 P.S. § 201-2(4)(xxi).

⁶⁴ *Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 151-55 (Pa. Super. 2012).

for disposition.

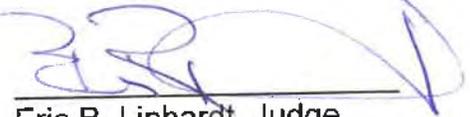
As such, the Court concludes that Plaintiffs have produced sufficient evidence to submit their unfair trade practices claim (Count IV) to a jury.

III. CONCLUSION AND ORDER.

For the reasons explained above, Defendant's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

BY THE COURT



Eric R. Linhardt, Judge

ERL/bel

cc: Blake C. Marks, Esq. (blakem@lepleylaw.com), *Lepley Engelman, Yaw & Wilk, LLC*
Gary L. Weber, Esquire (gweber@mcclaw.com), *McCormick Law Firm*