

VERMONT SUPERIOR COURT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 261-5-12 Wrcv

J.D. Farrow Associates, LLC,
J.D. Farrow & Sons, LLC,
John D. Farrow, and
Trudy Rumbaugh, M.D.
Plaintiffs

v.

Ledyard National Bank
and Daniel Emanuele
Defendants.

Decision on Motion for Summary Judgment

Plaintiffs sue Defendants for consumer fraud, negligent misrepresentation, fraudulent inducement to a contract, breach of contract, and breach of the covenant of good faith and fair dealing. Defendants moved for summary judgment on April 9, 2013. Plaintiffs opposed summary judgment on May 13, 2013. Defendants responded to the opposition on May 23, 2013. The Court grants summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). The Court makes all reasonable inferences and resolves all doubts in favor of the non-moving party. *Lamay v. State*, 2012 VT 49, ¶ 6, 191 Vt. 635.

The causes of action arose from a loan Defendants made to Plaintiffs. As part of the loan, Defendants evaluated whether the mortgaged property was within the special flood hazard area. Federal law prohibits lenders from issuing loans for properties in special flood hazard areas unless the borrowers have flood insurance. *See* 42 U.S.C. § 4012a(b)(1)(A).¹ Defendants determined the property was not within the special flood hazard area, although it is within the five hundred year flood zone. As a result, Defendants allegedly told Plaintiffs they did not need to purchase flood insurance. Defendants issued the loan and Plaintiffs did not purchase flood insurance. Hurricane Irene flooded Plaintiffs’ property. Plaintiffs now argue the property was within the special flood hazard area and they relied on Defendants’ statements when deciding not to buy flood insurance.

¹ Lenders may “not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C.A. § 4001 et seq.], unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property...” 42 U.S.C. § 4012a(b)(1)(A).

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Defendants argue the building is not within the special flood hazard area and therefore they did not err in telling Plaintiffs they did not need flood insurance. Plaintiffs admit the main part of the building is not within the special flood hazard area. Nevertheless, Plaintiffs argue the edge of the special flood hazard area encompasses much of a concrete slab that is adjacent to the building. The special flood hazard area may also encompass the corner of a raised portion of the slab that supports a clothing donation bin, which is adjacent to the building. It is unclear if the slab touches the building.

The issue in this motion is whether the portion of the concrete slab that is within the special flood hazard area is part of the building. The Court must therefore determine what the building includes. Neither section 4012a, nor the definitions sections of the statute define what building includes. *See* 42 U.S.C. §§ 4004, 4121. Nevertheless, both federal law and Vermont cases discussing what buildings include indicate the slab in this case is not part of the building.

First, the Code of Federal Regulations for the national flood insurance program provides a helpful definition for building. *See* 44 C.F.R. 59.1. The regulations defining building refer to structure. 44 C.F.R. 59.1. The regulations then define structure as “a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.” *Id.* The concrete slab is neither roofed nor wall and therefore cannot be a building.

Yet, the concrete slab may still be part of the foundation of the building. At least one federal case discussed when a concrete slab is part of a building under 42 U.S.C. § 4013, section after section 4012a. *Jackson v. Nat’l Flood Insurers Ass’n*, 398 F.Supp. 1383 (S.D. Tex 1974). In *Jackson*, the plaintiff, who had flood insurance, sued his insurer for damage done to the soil beneath a slab. *Id.* at 1384–85. The insurance policy covered residential buildings. *Id.* at 1385. The slab was “an unbroken layer of concrete covering the entire area beneath the house...” *Id.* at 1385. The Court found that damage done to the slab fell within the definition of building because the “slab form[ed] an integral part of the under structure of the building and would be understood as part of the foundation by the average person seeking insurance for this beach home.” *Id.* at 1386. The Court also acknowledged “there may well be a point where the extension of a slab beyond the pilings would cease to be a part of the dwelling and become nothing more than something laying on the lawn.” *Id.*

Our case is distinguishable from *Jackson* because the concrete slab does not reinforce the foundation. For the most part, the slab appears to be a parking lot, although a small portion of it also supports a clothing box. The slab is not integral to the structure because it does not go under the entire building or provide necessary support to the foundation. *See id.* at 1385. Unlike the slab in *Jackson*, this slab is “nothing more than something lying on the lawn.” *See id.* at 1386.

Next, the Court considers what a building would include under Vermont law. In reading statutes, the Court seeks to determine legislative intent and presumes term have their plain meaning. *See In re Handy*, 171 Vt. 336, 341 (2000). Black’s Law Dictionary (8th Ed.) defines building as “[a] structure with walls and a roof, esp. a permanent structure.” Similarly, Vermont case law clarifies: “building ordinarily refers to a structure

inclosing a space within walls and a rood.” *Addison v. Blackmer*, 101 Vt. 384, 389 (1928). Moreover, “a boundary [of a building] would be taken to mean that portion constituting its exposed structural limit.” *Forshund v. Cookman*, 125 Vt. 112, 115 (1965).

In this case, there is no evidence to suggest the portion of the concrete slab within the special hazard flood area is part of the building. The slab does not include any part of the building that is enclosed with walls or a roof. *See Blackmer*, 101 Vt. at 389. Furthermore, there is no indication the slab is important for the structural stability of the building. *See Forshund*, 125 Vt. at 115. It is unclear if the slab even touches the building. Under Vermont law defining building, the portion of the slab within the special hazard flood area is not part of the building. Thus, federal and Vermont law preclude this slab for bringing the building within the special hazard flood area.

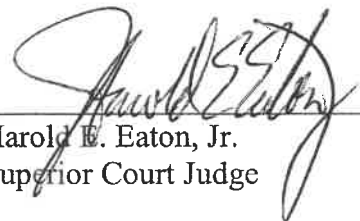
The Court must grant Defendants’ motion for summary judgment because there are no disputed facts and they are entitled to judgment as a matter of law. *See V.R.C.P.* 56. With the building outside of the special flood hazard area, Defendants did not commit any of the torts claimed. All of the claims require that Defendants stated something false, and Plaintiffs cannot show a false statement. Therefore, the Court must grant summary judgment in favor of Defendants on all counts.

Defendants also raised other arguments against Plaintiffs. Defendants asked the Court to impose sanctions under V.R.C.P. 37 for Plaintiff’s failure to respond to discovery requests. Defendants also argue Plaintiffs cannot show reliance, which would bar many of Plaintiffs’ claims. *See Marble v. First Am. Flood Data Servs., Inc.*, No. 2003-428, 2004 WL 5582088 (Vt. 2004). The Court concludes the building is not within the special flood hazard area and grants summary judgment for Defendants. In these circumstances, the Court need not reach Defendants other arguments.

Order

The Court *grants* Defendants’ motion for summary judgment.

Dated at Woodstock, Vermont on June 14, 2013


Harold E. Eaton, Jr.
Superior Court Judge

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