

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MARY E. RUSH

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

FOX & ROACH LP D/B/A BERKSHIRE
HATHAWAY HOMESERVICES, FOX
AND ROACH, REALTORS, AND
BERKSHIRE HATHAWAY HOME
SERVICES FOX AND ROACH,
REALTORS AND LASZLO GARAY -----

PARITOSH WATTAMWAR AND
RANJANA SINGH-WATTAMWAR, H/W

v.

FOX & ROACH LP D/B/A BERKSHIRE
HATHAWAY HOMESERVICES, FOX
AND ROACH, REALTORS, AND
BERKSHIRE HATHAWAY HOME
SERVICES FOX AND ROACH,
REALTORS AND LASZLO GARAY -----

JOSE AND JULIE ROBERTSON, H/W

v.

FOX & ROACH LP D/B/A BERKSHIRE
HATHAWAY HOMESERVICES, FOX
AND ROACH, REALTORS, AND
BERKSHIRE HATHAWAY HOME
SERVICES FOX AND ROACH,
REALTORS AND LASZLO GARAY -----

[Mary F. Rush ("Rush"), Paritosh Wattamwar and Ranjana Singh-Wattamwar, husband and wife (collectively, "the Wattamwars"), Jose and Julie Robertson ("the Robertsons"), and Kathleen Makowka ("Makowka") (collectively, "Plaintiffs"),] initiated the above-entitled actions on September 15, 2017, by filing [C]omplaints against Defendants. Plaintiffs' actions are two of four cases filed on the same day[,] raising identical claims against identical Defendants. These cases are as follows:

- ... Rush vs. [] Defendants (docketed at 2017-08904)
- [The Wattamwars] vs. [] Defendants (docketed at 2017-08905)
- [The Robertsons] vs. [] Defendants (docketed at 2017-08906)
- [] Makowka vs. [] Defendants (docketed 2017-08907)

[Plaintiffs] in all four cases asserted claims against Defendants for "Fraud" and "Violations of the Unfair Trade Practices and Consumer Protection Law" [("UTPCPL"),] arising out of [Plaintiffs'] purchases of newly constru[ct]ed homes in a residential community known as "Pickering Crossing." The underlying factual basis for [Plaintiffs'] claims in each case are virtually identical and is set forth more fully in the footnote appended to the [trial court's] September 25, 2019 [O]rder.

On May 7, 2018, the [trial court] entered an Order consolidating "for all purposes" the four related actions pursuant to Pa.R.C.P. 213(a). The [O]rder did not specify that the parties should continue filing legal papers under the docket number assigned to each case; rather, it stated that the cases were consolidated under the Rush action at docket number 2017-08904.

On June 8, 2018, the individual Defendant in the four related actions, [] Garay [], filed an original action against Jose Robertson ([o]ne of the two plaintiffs in the 2017-08906 action) asserting a claim for defamation. Shortly thereafter, [Jose] Robertson, in his capacity as defendant in the Garay action, moved to consolidate the Garay action with the [Robertsons'] fraud/UTPCPL action against Garay. The [trial court] denied the [M]otion by an [O]rder dated October 17, 2018, reasoning in a footnote that the

Robertson Plaintiffs' action against Garay and the other Defendants had "already been consolidated" under the Rush action at docket number 2017-08904, and that further consolidation "would tend to mislead or confuse the jury" because it would introduce new theories of liability and defenses into the cases[,] which were applicable only to a sub-set of parties.

Subsequently, on November 28, 2018, the [trial court] entered three (3) [O]rders that restricted the manner in which the four related actions (Rush, Wattamwar, Robertson, and Makowka) and the Garay defamation action were consolidated. First, the [trial court] vacated its prior consolidation [O]rder of May 7, 2018, thereby undoing the original consolidation of the four related actions. Second, the [trial court] *sua sponte* consolidated three of the four related actions—Rush, Wattamwar, and Makowka—"for discovery, pretrial and trial purposes[,] under case number 2017-08904." Finally, the [trial court] *sua sponte* consolidated "for discovery, pretrial and trial purposes[,] the Garay defamation action against Jose Robertson with the [Robertsons'] fraud/UTPCPL action against Garay. Consequently, as of November 28, 2018, the procedural posture of the aforesaid cases stood as follows:

- Garay's defamation action Jose Robertson was consolidated with the [Robertsons'] Fraud/UTPCPL action against Garay and the other Defendants;
- Separately, the Rush, Wattamwar, and Makowka actions were consolidated for purposes of pre-trial and trial administration.

* * *

Jose Robertson subsequently moved for summary judgment in the Garay defamation action. On September 23, 2019, the [trial court] granted the [M]otion and entered judgment against Garay, thereby ending Garay's defamation claim against [Jose] Robertson. In a footnote to the [O]rder, the [trial court] explained [that], in light of the fact that [Jose] Robertson's summary judgment [M]otion was granted, the separate consolidations of the Garay-Robertson actions and the three related actions was no longer necessary. Accordingly, the [trial court's] September 23, 2019[,] [O]rder also[,] *sua sponte*[,] directed that the [Robertson] Plaintiffs' fraud/UTPCPL action against Garay and the

other Defendants was "Reconsolidated for pre-trial and trial purposes" under the Rush action at docket number 2017-08904, thereby once again united all four cases for purposes of pre-trial and trial disposition.

On September 25, 2019, the [trial court] entered an identical [O]rder on the docket of all four actions[,] granting the [M]otions for summary judgment filed by Defendants against the Wattamwar Plaintiffs, the Robertson Plaintiffs, and the Plaintiff Makowka, and entered judgment in favor of Defendants. This is the [O]rder from which the Wattamwar[]s and Makowka filed [N]otices of [A]ppeal.

On October 3, 2019, the [trial court] issued an [O]rder, entered on the docket in all four actions, which denied as moot multiple outstanding [M]otions[,] which had previously been filed by Defendants. The final sentence of that Order states: "[T]he above-captioned consolidated cases are hereby severed," and explained in a footnote that consolidation was "no longer necessary as summary judgment had been granted in all but one of the consolidated cases."

On October 23, 2019, the Wattamwar Plaintiffs and Plaintiff Makowka filed [N]otices of [A]ppeal from the [trial court's] September 25, 2019[, O]rder granting summary judgment in favor of Defendants. Notably, the Wattamwars and Makowka each filed two [N]otices of [A]ppeal: One under the Rush action at docket number 2017-08904, and the other under the docket number assigned to their case at the time it was filed. This caused four docket numbers to be generated in the Superior Court as follows:

- The Wattamwars' [N]otice of [A]ppeal filed under the Rush action at 2017-08904 was docketed in the Superior Court at 3109 EDA 2019;
- [] Makowka's [N]otice of [A]ppeal filed under the Rush action at 2017-08904 was docketed in the Superior Court at 3110 EDA 2019;
- The Wattamwars' [N]otice of [A]ppeal filed under the Wattamwar action at 2017-08905 was docketed in the Superior Court at 3112 EDA 2019;

- Makowka's [N]otice of [A]ppeal filed under the Makowka action at 2017-8907 was docketed in the Superior Court at 3111 EDA 2019.

The [trial court] suggests that the [N]otices of [A]ppeal filed by the Wattamwar Plaintiffs and Plaintiff Makowka under the docket number assigned to the Rush actions should be dismissed[,] because they are duplicative of the [N]otices of [A]ppeal filed under the docket numbers assigned to the Plaintiffs' respective cases....

Trial Court Opinion, 12/30/19, at 1-6.

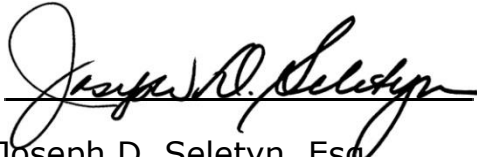
In ***Commonwealth v. Walker***, 185 A.3d 969 (Pa. 2018), our Supreme Court mandated that "when a single order resolves issues arising on more than one lower court docket, separate notices of appeal must be filed." ***Id.*** at 977. It appears that, out of an abundance of caution, Makowka filed two Notices of Appeal. The instant appeal, 3110 EDA 2019, was filed at the trial court's docket number for the deconsolidated Rush action. As Makowka's action is no longer consolidated with the Rush action, and because the instant appeal is duplicative of Makowka's appeal filed at 3111 EDA 2019, we dismiss the above-captioned appeal. Makowka may proceed with her appeal filed at 3111 EDA 2019.¹

Appeal dismissed.

¹ We note that the certified record filed at 3111 EDA 2019 includes all relevant court filings necessary to resolve Makowka's appeal.

J-S46032-20

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/12/2021