

Business Law – Sufficient evidence to support fraud in the inducement claim

By Ed Wesoloski

Where a home builder invested in defendant's development based on representations that defendant would provide amenities suitable for an "upscale" development, the trial court correctly sent to the jury plaintiff's claim of fraud in the inducement when the promised amenities were not furnished.

A \$2.5 million damage award is affirmed.

Background

Kheder, a home builder, became involved with Singh Homes Charleston Park in a real estate development. He dealt with Gary and Darshan Grewal.

"According to Kheder, Gary and Darshan conveyed to him that they would develop Charleston Park as an upscale, sophisticated development to attract affluent clients; specifically, the subdivision would contain wrought iron fences surrounding detention ponds, fountains in detention ponds, ornate decorative light posts, a children's play area (or 'tot lot') as a focal point, and landscaped irrigated common areas and cul-de-sac islands planted with grass from sod. ...

"Kheder envisioned selling homes in Charleston Park for about \$300,000 to \$400,000 each. "On September 7, 2005, plaintiff and Singh Homes Charleston Park entered into an option agreement with a commencement date of September 21, 2005.

"Under the option agreement, in which Charleston Park Singh undertook certain duties as 'the Developer,' plaintiff paid an option fee of \$1,500,000 for the right to purchase 96 lots in phase 1 of the Charleston Park subdivision. Plaintiff was to build homes on the lots and sell the lots to home buyers.

"According to Kheder, Singh never developed the Charleston Park subdivision as promised despite his repeated requests; the various amenities were either never provided or provided in an unsatisfactory manner below the standards promised for an upscale development.

"Although plaintiff sold a few homes, plaintiff's venture, the timing of which corresponded with the fall of the real-estate market in the United States, was ultimately unsuccessful.

"In correspondence dated August 26, 2009, Darshan, signing as manager for Singh Homes Charleston Park, notified Kheder that he was terminating the option agreement between plaintiff and Singh Homes Charleston Park."

In the trial court

"Plaintiff brought this action against defen-



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dants for fraud in the inducement, and the trial court conducted a jury trial.

"The jury found that Darshan, acting on behalf of Singh Homes Charleston Park and Charleston Park Singh, made a promise to plaintiff, intending that plaintiff rely on it, and knowing that Singh Homes Charleston Park and Charleston Park Singh did not intend to keep the promise.

"The jury found that plaintiff relied on the promise, that Charleston Park Singh breached the promise, and that the breach caused damage to plaintiff.

"The jury found that plaintiff did not prove that Darshan made a false promise on his own behalf or that Gary made a false promise on behalf of a corporate defendant or on his own behalf.

"The jury awarded damages to plaintiff in the amount of \$2,502,338.71. The trial court entered a judgment in favor of plaintiff on the basis of its fraud claim 'against Charleston Park Singh, L.L.C. (pursuant to vicarious liability) and Darshan Grewal, in the total amount of \$2,502,338.71.'

"Defendants moved the trial court for a new trial or, alternatively, for judgment notwithstanding the verdict (JNOV) or remittitur. The trial court denied the motion."

Causation

"[W]e conclude that a factual question existed regarding whether the fraud caused plaintiff's damages. More specifically, we conclude that a reasonable person could find that the loss of plaintiff's investment in the Charleston Park subdivision was the natural and proximate consequence of the misrepresentation that defendants would develop the subdivision

as an upscale development (with amenities) comparable to other upscale Singh residential developments, particularly Churchill Crossing and Tollgate in Novi.

"There was abundant evidence at trial that defendants did not develop Charleston Park into an upscale subdivision as promised. Instead of wrought iron fencing, chain link fencing surrounded the detention pond. No fountains were installed. And the subdivision did not have light posts, let alone light posts of the ornate decorative variety. Although a tot lot was provided, it was installed much later than expected. Not all common areas and islands were irrigated and landscaped with grass from sod. ...

"Furthermore, there was testimony at trial from Kheder and the Grewals that the upscale amenities discussed above convey a certain image to home buyers and, thus, add value to and are a factor in pricing a home.

"Indeed, there was evidence at trial that homeowners in Charleston Park were required to install irrigation systems and prohibited from having chain link fences. Kheder designed, priced, and built what Darshan described as 'fancy, nicer custom homes' under the belief that defendants would deliver an upscale subdivision to match the homes.

"Defendants did not do so, and plaintiff's business venture in Charleston Park failed. Although defendants insist that Charleston Park failed because of the economic recession and fall of the housing market, trial testimony established that Churchill Crossing — a Singh residential development with upscale amenities and maintained, well-landscaped common areas that Darshan represented Charleston Park would be akin to — did not suffer as Charleston Park did. ...

"[A] reasonable person could find that people did not want to buy a \$300,000 to \$400,000 home in Charleston Park because the lack of amenities and the poorly landscaped, unmaintained common areas did not coincide with an upscale subdivision to justify building an upscale home."

Affirmed.

Kheder Homes at Charleston Park v. Charleston Park Singh. (MiLW No. 08-84078 – 12 pages) (Michigan Court of Appeals) (unpublished per curiam) (Bechering and Shapiro, JJ.) (O'Connell, J., dissenting) On appeal from the Oakland County Circuit Court; Warren, J.