



extensive water damage. Plaintiff commenced this matter by a writ of summons on April 11, 2005, filing a Complaint on September 19, 2005. Thereafter, the various Defendants filed cross-claims and preliminary objections. Only the preliminary objections of Defendant Timothy R. Weis came before the Court. They were sustained by the Honorable F.P. Kimberly McFadden in an Order entered February 2, 2006. Plaintiff filed an Amended Complaint that same day, and a Second Amended Complaint was filed eight days later, on February 10, 2006.

Plaintiff's Complaint brings causes of action against present Defendant in the nature of breach of implied warranty of habitability, breach of contract, fraud and justifiable reliance. By the present motion for summary judgment, Defendant Kociuba contends that Plaintiff's negligence and contract-based claims are barred by the doctrine of merger of title, and that Plaintiff fails to adduce evidence sufficient to sustain her fraud-based claims, under both the UTPCPL and the common law. A motion for summary judgment may only be granted when it is apparent from the entire record, inclusive of pleadings, depositions, affidavits, answers to interrogatories and admissions on file, that there exists no genuine issue of material fact in the case, and thus the movant is entitled to judgment as a matter of law. PA.R.CIV.P. 1035(b). In considering such motion, the Court must view the record in the light most favorable to the non-moving party, and must resolve all doubts in favor of the non-movant. Id. As to matters where the non-moving party has the burden of proof, any failure of that party to sufficiently plead such matters establishes a movant's right to judgment as a matter of law. Schwartzberg v. Greco, 793 A.2d 945, 947 (Pa. Super. Ct. 2002). Summary judgment should only be granted upon an "evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause

of action or defense.” Rabutino v. Freedom State Realty, Co., 809 A.2d 933 (Pa. Super. Ct. 2002).

Plaintiff predicates all of her claims against Defendant on his failure to deliver copies of permits and a valid certificate of occupancy at the time of closing. Defendant moves for summary judgment as to the breach of contract, breach of warranty and negligence claims against him on the basis that Plaintiff fails to make out a *prima facie* case of those claims, pursuant to the doctrine of merger of title.

Under the doctrine, Defendant argues that Plaintiff waived the right to bring a complaint on the basis of any warranties, representations or promises existing between the parties prior to closing when she proceeded with the purchase of the home, and accepted title to the property unconditionally. *See Kiec v. Sherrerd*, 764 A.2d 39, 41(Pa. 2001) *quoting Shontz v. Brown*, 27 Pa. 123, 131 (1856). Once a purchase is complete, a buyer only has recourse against a seller in the instance of fraud, or pursuant to any deed covenants. *Id.* Plaintiff points out that the doctrine of merger of title “does not apply . . . to matters not consummated by the delivery of the deed.” Rappaport v. Savitz, 220 A.2d 401, 404 (Pa. Super. Ct. 1966). *See also Dick v. McWilliams*, 139 A.2d 745 (Pa. 1927); Raab v. Beatty, 96 Pa. Super. 574, 576 (1929).Accordingly, it is Plaintiff’s contention that the agreements to deliver a certificate of occupancy and permits were agreements collateral to the deed, and that therefore, the doctrine of merger of title does not bar her claims.

Thus, resolution of the present motion for summary judgment with respect to the contract and negligence-based claims of Plaintiff rests on a determination of whether or not the agreements between the parties concerning the delivery of permits and a certificate of occupancy

were in fact collateral to the delivery of the deed. Upon examination of the record, Plaintiff offers no proof of any independent covenants regarding the delivery of permits and certificates, nor any proof that the parties intended the same to survive the transfer of the deed. Therefore, the Court finds Plaintiff's negligence and contract-based claims barred by the doctrine of merger of title, and hereby **GRANTS** summary judgment with respect to the same.

By way of his second ground for summary judgment, Defendant contends that Plaintiff cannot satisfy her burden in support of her common law fraud and UTPCPL claims. The elements of both claims are the same. 73 P.S. §201-2(4)(xxi). To establish a fraud claim, a plaintiff must demonstrate evidence of: (1) a representation; (2) material to the subject transaction; (3) made falsely, whether knowingly or recklessly; (4) with the intent of inducing another's reliance thereon; (5) the hearer's justifiable reliance on such representation; and (6) harm resulting therefrom. Sewak v. Lockhart, 699 A.2d 755, 759 (Pa. Super. Ct. 1997); *citing* Gibbs v. Ernst, 647 A.2d 882, 889 (Pa. 1994).<sup>1</sup> Defendant argues that the record is devoid of any evidence that he made any material misrepresentation relative to the sale of the home, and that therefore, the Court should grant his motion for summary judgment.

However, Plaintiff cites to Defendant's failure to satisfy the delivery of permits and a certificate of occupancy, contemplated at Paragraph 29B of the underlying Agreement of Sale, as

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<sup>1</sup> For several years, there was some debate regarding the need to show reliance to establish a UTPCPL claim. However, for the last several years, the Courts have interpreted the law to require such a showing. Weinberg v. Sun Co., 777 A.2d 442, 446 (Pa. 2001); Toy v. Metropolitan Life Ins. Co., 863 A.2d 1, 9 (Pa. Super. Ct. 2004) *reargument denied, appeal granted* 882 A.2d 462, *aff'd* 928 A.2d 156 (Pa. 2007); Accordingly, this Court states the elements of the cause of action to include reliance. However, we note that the element of reliance plays no role in our determination of Plaintiff's failure to establish the elements of her claim. To be clear, she failed to present evidence of any knowing or reckless misrepresentation by Defendant Kociuba.

fraudulent, and contends that “evidence of Defendant’s fraud . . . [is] inferable from his failure to provide copies of the permits and Certificate of Occupancy at the time of closing.” Plaintiff’s Brief at 4. Upon review of the record, the Court finds that Plaintiff has presented no evidence to suggest that Defendant made any knowing or reckless representations with respect to these issues. In fact, the record submitted to the Court makes clear that Plaintiff was well aware of the fact that she had yet to receive copies of permits or a certificate of occupancy when she decided to close on the property.

Plaintiff further urges the Court to find that the reports she submitted on the record, written by various experts in the fields of home construction, plumbing and electrical work are *prima facie* evidence of Defendant’s deliberate efforts to “hid his shoddy workmanship.” Plaintiff’s Brief at 4. While the reports certainly suggest that the Defendant’s remodeling efforts were substandard, Plaintiff makes no allegation in her Complaint that Defendant defrauded her with respect to the workmanship in the home. She only claims that he failed to provide certain permits and a certificate of occupancy. Indeed, Plaintiff had an independent home inspection conducted prior to her purchase of the home, and several of the issues raised in the expert reports were made known to her at that time. In light of the foregoing, the Court finds that Plaintiff has failed to establish a *prima facie* case of her claims against Defendant. Accordingly, the Court hereby **GRANTS** Defendant’s motion for summary judgment.

**BY THE COURT:**

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**WILLIAM F. MORAN,**

**J.**