116 Waverly Place LLC v Spruce 116 Waverly LLC
2019 NY Slip Op 30300(U)
February 7, 2019
Supreme Court, New York County
Docket Number: 655930/2017
Judge: Arthur F. Engoron

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

----------X

116 WAVERLY PLACE LLC,

Plaintiff,

- v -

SPRUCE 116 WAVERLY LLC, SPRUCE CAPITAL PARTNERS, LLC, S3 CAPITAL, LLC, JOSHUA CRANE, ROBERT SCHWARTZ, PETER ROSENBERG, SWS HOLDINGS, LLC,

Defendants.

----------X

INDEX NO. 655930/2017

MOTION DATE 09/20/2018

MOTION SEQ. NO. 005

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 005) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 94, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendants' motion for summary judgment is granted.

SHORT, SIMPLIFIED VERSION

Prior to the events here in issue, defendants owned a building and had contractors gut-renovate it. They sold it to plaintiff pursuant to a contract that provided that defendants would fix and/or finish certain work prior to closing; that plaintiff was purchasing the building "as is;" and that none of defendants' representations would survive the closing. Shortly after plaintiff inspected the building one final time, the parties closed. Subsequently, plaintiff discovered leaks from the roof and other alleged defects and sued, asserting causes of action for breach of contract; breach of the implied covenant of good faith and fair dealing; violations of General Business Law ("GBL") Sections 349 and 777-a; and fraudulent misrepresentations, concealment, and inducement. Defendants have now moved for summary judgment. The breach of contract claim fails because the building was sold "as is." The breach of the implied covenant of good faith and fair dealing claim fails because it is not a separate cause of action. The GBL § 349 claim fails because the instant transaction was a one-shot deal and not consumer-oriented. The GBL § 777-a claim fails because the building was not "new." And the fraud claims fail because none of defendants' representations survived the closing, and because if defendants failed to fix or finish work prior to closing, their promises of future action cannot sustain a fraud claim; and in any event plaintiff's sole remedy would have been to refuse to close. Furthermore, all claims fail against all but one defendant because the other defendants were not in privity with plaintiff, and there is no evidence that the court should pierce the corporate veil. Finally, after closely examining all of plaintiff's claims about defendants' alleged misrepresentations and affirmative concealments, they appear to be much ado about nothing. The building may be a "white elephant," but that is what plaintiff purchased.

LONG, DETAILED VERSION

Background

In this action, plaintiff, 116 Waverly Place LLC, the purchaser of a single-family Townhome (the "Townhouse") located at 116 Waverly Place, New York, New York (in the heart of Manhattan's historic Greenwich Village), sues for alleged breaches of contract, fraudulent misrepresentations and violations of statutory law, claiming that defendants knowingly sold a substandard building and hid certain defects from plaintiff prior to sale. Defendants, Spruce 116 Waverly LLC, Spruce Capital Partners LLC, S3 Capital LLC, Joshua Crane, Robert Schwartz, Peter Rosenberg, and SWS Holdings LLC, constitute the alleged developers, financiers, and sellers of the Townhouse. (Defendants Spruce Capital Partners LLC, S3 Capital LLC, Joshua Crane, Robert Schwartz, Peter Rosenberg, and SWS Holdings LLC assert that the only relevant party is the seller entity, Spruce 116 Waverly LLC.)

Plaintiff commenced this action on September 19, 2017. The second amended complaint (the current one) consists of 42 pages, 159 paragraphs, and seven causes of action: breach of contract (1st cause of action); breach of the implied covenant of good faith and fair dealing (2nd cause of action); violations of GBL § 777-a (3rd cause of action); fraud/fraudulent misrepresentations (4th cause of action); fraudulent concealment (5th cause of action); violations of GBL § 349 (6th cause of action); and fraudulent inducement (7th cause of action).

Defendants now move, pursuant to CPLR 3212, for summary judgment; or, in the alternative, pursuant to CPLR 3211, for dismissal. As CPLR 3212 essentially subsumes CPLR 3211, this Court will analyze the motion pursuant to the former. In the main, defendants allege that as the contract for sale ("the Contract") contains an "as is" clause, and as no covenants, representations, warranties, or other obligations survive the September 19, 2016 closing, plaintiff's claims must fail.

In opposition, plaintiff claims that defendants' motion is premature, as plaintiff is entitled to further disclosure; and that, in any event, plaintiff has established disputed questions of material fact that require this Court to deny defendants' motion.

The Contract of Sale

Article 11 of the Contract states, in part, "[e]xcept as otherwise expressly set forth in this contract, none of the Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing."

Article 12 of the Contract states:

> Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical conditions, state of repair, use, cost of operation or any other matter related to the

> Premises or the other property included in the Sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(e)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

The First Rider contains a "No Representations" clause in Article 35, which states:

> It is understood that the Seller has made no representations or warranties to the Purchaser with respect to the physical condition or operation of the Premises, except as may otherwise be expressly provided for herein; and the Seller will deliver said Premises at closing in its present condition. The Purchaser represents that he has inspected the Premises and knows the condition thereof and is purchasing Premises and each and every part thereof in "AS IS" condition on the date hereof, less normal wear and tear, subject to (i) Section 2(d) and (e) of the Second Rider and (ii) the Third Rider to Contract of Sale.

The Contract also contains "Conditions to Closing" in Article 16(e), which states, in pertinent part:

> This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent: [...] (e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment, and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

Additionally, the Second Rider to the Contract, sections 2(c) and (d), states, in pertinent part:

> Seller makes the following additional covenants and representations which are true as of the date hereof and shall be true at Closing: [...] (c) The plumbing, heating, electrical and other mechanical systems at the Premises will be in working order at the time of Closing. (d) All appliances, windows and doors will be in working order, normal wear and tear excepted and in operating condition at the time of Closing.

Further, the Third Rider to the contract, states in pertinent part:

> It shall be a condition of Purchaser's obligation to close that prior to Closing, Seller shall perform the following [19 items listed in the Third Rider] at the Premises at Seller's sole cost and expense.

Discussion

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). Only if the movant satisfies that burden must the opponent tender evidence in admissible form "sufficient to require a trial of material questions of fact on which [s]he rests [his or her] claim … mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." Zuckerman v City of New York, 49 NY2d 447, 562 (1980). Summary judgment is a drastic remedy, and a Court must deny it if the issue is "arguable" or "debatable."

First Cause of Action—Breach of Contract

Defendants assert that no cause of action for breach of contract for alleged defects in the Townhouse can survive because the Contract provided for sale of the Townhouse in "as is" condition. See Article 12 of the Contract (Moving Exhibit A.) Indeed, a "First Amendment to Contract of Sale," which the parties entered into at around the time of closing, provided that "Purchaser … shall accept the Property in its 'AS IS' condition." Defendants further assert that because plaintiff closed without demanding any pre-closing relief as to the physical condition of the Townhouse, plaintiff's claim for breach of contract is without merit. This Court agrees. As noted above (and worth repeating) Article 11(c) of the Contract states "[e]xcept as otherwise expressly set forth in this contract, none of the Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing." Moreover, Article 35 of the First Rider to the Contract states that the "Purchaser represents that he has inspected the Premises and knows the condition thereof and is purchasing Premises and each and every part thereof in "AS IS" condition." The Contract's "as is" and "no representations" clauses preclude, as a matter of law, the breach of contract claim. See Rivietz v Wolohojian, 38 AD3d 301, 301 (1st Dep't 2007) ("The contract of sale provided that the premises were sold 'as is,' and contained … a clause stating [that representations] would not survive closing. This clear language more than effectively precludes the claim for breach of contract."). The "Conditions to Closing" are further nails in the coffin of plaintiff's breach of contract claim. As defendants argue, "conditions to closing" expire with the closing. The remedy for their breach is simply not to close, rather than to sue post-closing. Accordingly, the Court must dismiss the first cause of action, for breach of contract.

Second Cause of Action—Breach of The Implied Covenant of Good Faith and Fair Dealing

Plaintiff's second cause of action asserts that defendants breached the implied covenant of good faith and fair dealing by failing to disclose material defects and deficiencies in the Townhouse. Courts have held, and this Court agrees, that claims for breach of the covenant of good faith and fair dealing do not state an independent cause of action, as "such covenant does not impose any obligation upon a party to the contract beyond what the explicit terms of the contract provides." Silvester v Time Warner, Inc., 763 NYS2d 912, 918 (Sup. Ct. 2003) [*aff'd*, 14 AD3d 430

(2005)]. However, even if this Court were, arguendo, to treat it as a separate cause of action, a claim for breach of the implied covenant of good faith and fair dealing cannot be maintained where the alleged breach is "intrinsically tied to the damages allegedly resulting from a breach of the contract." Canstar v J.A. Jones Const. Co., 212 AD2d 452, 453 (1st Dep't 1995). Accordingly, the Court must dismiss the second cause of action, for breach of the implied covenant of good faith and fair dealing.

Third Cause of Action—Breach of Housing Merchant Implied Warranty

Plaintiff argues that the Housing Merchant Implied Warranty found in General Business Law § 777-a is applicable to this transaction. This Court disagrees. This warranty is only applicable to the building and sale of "new homes." While the Townhouse in question may have been subject to massive renovations, it is not a "new home," for the simple reason it is not a new building. The affidavit of Theresia Gouw, the principal and sole shareholder of plaintiff, notes that she "sought and was willing to pay a premium for, a home that had a historic façade, but was gut renovated to a luxury turn-key standard." Gouw Affidavit ¶ 3. Ms. Gouw repeatedly refers to the advertising and marketing of the Townhouse, alleging it was marketed as an "ultra-luxurious, high-end build complete with all the latest technologies." Id. Notably, plaintiff never alleges that the Townhouse was marketed as "a new home"; nor has plaintiff annexed any of the marketing materials to its opposition. This Court finds that a gut renovation of a historic home is not a "new home" for the purposes of GBL § 777-a. The state legislature might have assumed (as this court does) that the builder of a new home has more control over quality than does a contractor renovating a decades-old framework. Interestingly, one of plaintiff's main complaints about the Townhouse is that the roof leaks, a roof that probably rests on, or at least is connected to, a relatively ancient framework. Accordingly, the Court must dismiss the third cause of action, for an alleged breach of the GBL § 777-a implied warranty (without addressing defendants' other defenses to the claim).

Sixth Cause of Action—Violations of GBL § 349

GBL § 349 empowers the Attorney General to bring an action to enjoin "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." In 1980, the Legislature added § 349(h), giving private citizens a right of action for deceptive trade practices. A § 349(h) plaintiff must prove three elements: first, that the challenged act or practice was consumer-oriented; second, that it was misleading in a material way; and third, that the plaintiff suffered injury as a result of the deceptive act. Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A., 85 NY2d 20, 25 (1995). Private transactions not of a recurring nature or without ramifications for the public at large do not fall within the ambit of the statute. See Genesco Entm't v Koch, 593 F Supp 743 (SDNY 1984):

> Section 349(h) provides private parties with a cause of action for injuries "resulting from deceptive practices." The typical violation contemplated by the statute involves an individual consumer who falls victim to misrepresentations made by a seller of consumer goods usually by way of false and misleading advertising. The consumer-oriented nature of the statute is evidenced by the remedies it provides. Section 349(h) provides parties with the opportunity to receive the greater of actual damages or

> $50. The New York cases where plaintiffs have recovered under section 349(h) further reflect its consumer orientation since they uniformly involve transactions where the amount in controversy is small. That the deceptive practices this statute seeks to combat involve recurring transactions of a consumer type is further supported by the origin of the statute. Section 349(h) is substantially modelled on the Federal Trade Commission Act. Hence, in interpreting the phrase "deceptive practices," the New York courts have in large measure relied on the Federal Trade Commission Act's definition of such practices. That Act only prohibits those deceptive practices which affect the public interest. Private transactions not of a recurring nature or without ramifications for the public at large are not a proper subject of Commission inquiry.

Id. at 750-752. No further citation is needed (even assuming that one was needed in the first place) for the proposition that the private sale of a single $20 million townhouse is not "consumer-oriented" and, thus, does not fall under the ambit of GBL § 349. Accordingly, the Court (as it has told the parties from Day One) must dismiss plaintiff's sixth cause of action, for an alleged violation of GBL § 349.

Fourth, Fifth, and Seventh Causes of Action - Fraudulent Misrepresentations, Concealment, and Inducement

Plaintiff's fourth, fifth, and seventh causes of action allege fraudulent misrepresentations, fraudulent concealment, and fraudulent inducement, respectively. Defendants assert that plaintiff has not pleaded its fraud claims with the particularity that CPLR 3016(b) requires. This Court disagrees. CPLR 3016(b) states that "[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful *[sic]* default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

> 'The purpose of section 3016(b)'s pleading requirement is to inform a defendant with respect to the incidents complained of,' thus, '[w]e have cautioned that section 3016(b) should not be so strictly interpreted as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud.' What is '[c]ritical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action[.]'... 'Necessarily, then, section 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct[.]'

Sargiss v Magarelli, 12 NY3d 527, 530-31 (2009) (citations omitted). Here, plaintiff cites to the Contract riders, in which defendants expressly state that the Townhouse and other mechanical systems will be in working order at the time of closing. Viewing this case in perspective, defendants surely know that plaintiff is complaining that the Townhouse is a sieve and that defendants were aware of this when they sold it and tried to fool plaintiff into thinking that it was not. Accordingly, plaintiff has sufficiently informed defendants of the conduct of which plaintiff complains.

New York Courts have long held that breaching a contract is not a tort unless the promisor violates a legal duty independent of the contract itself. E.g Clark-Fitzpatrick. Inc, v Long Is. R.R. Co.. 70 NY2d 382, 389 (1987) (mere breach of contract is not negligence). This is true of fraud claims. Havell Capital Enhanced Mun. Income Fund, L.P. v Citibank. N.A.. 84 AD3d 588 (1st Dep't 2011) ("the fraud claim, which arose from the same facts, sought identical damages and did not allege a breach of any duty collateral to or independent of the parties' agreements, was redundant of the contract claim").

However, "if a plaintiff alleges that it was induced to enter into a transaction because a defendant misrepresented material facts, the plaintiff has stated a claim for fraud even though the same circumstances also gave rise to the plaintiff's breach of contract claim." First Bank of Americas v Motor Car Funding, Inc., 257 AD2d 287, 291-92 (1st Dep't 1999).

In assessing the claims for fraud, this Court notes that the contract included a "No Representations" clause, which states that: "It is understood that the Seller has made no representations or warranties to the Purchaser with respect to the physical condition or operation of the Premises, except as may otherwise be expressly provided for herein; and the Seller will deliver said Premises at closing in its present condition. The Purchaser represents that he has inspected the Premises and knows the condition thereof and is purchasing Premises and each and every part thereof in "AS IS" condition on the date hereof, less normal wear and tear, subject to (i) Section 2(d) and (e) of the Second Rider and (ii) the Third Rider to Contract of Sale."

The Second and Third Riders each, inter alia, include a list of items for repair, as well as language indicating that the representations as to repairs in each respective rider shall be true at the time of closing. Generally, where such a "No Representations" clause exists, there can be no reliance as a matter of law. Danann Realty Corp. v Harris, 5 NY2d 317, 323 (1959) (finding that "[t]o hold otherwise would be to say that it is impossible for two business[persons] dealing at arm's length to agree that the buyer is not buying in reliance on any representations of the seller as to a particular fact"). This is particularly true, where, as here, plaintiff's expert, a licensed contractor, inspected the property on August 18, 2016, shortly prior to the closing, on September 19, 2016. Mindlin Affidavit ¶ 3. As a general rule, if the seller represents facts that are not matters peculiarly within his or her knowledge, and the other party has the means available to him or her of knowing, by the exercise of ordinary intelligence, the truth, or the real quality of the subject of the representations, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations." Schumaker v Mather, 133 NY 590, 596 (1892).

An exception to this general rule exists where the purchaser could not have discovered the alleged defects without destructive testing (e.g., tearing open walls). TIAA Global Investments, LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dep't 2015) ("insulation is a nonvisible component, not easily verified without destructive testing"). Schooley v Mannion, 241 AD2d 677, 678 (3rd Dep't 1997) is instructive:

> [E]ven if the contract had contained specific disclaimers (i.e., that the purchaser of a building was not relying on any general or specific representations), the fact that the alleged defect regarding insulation was

> peculiarly within [the Seller's] knowledge would be sufficient to salvage plaintiffs' cause of action. It is significant that [the seller] is alleged to have recently gutted and renovated the entire property and that insulation is a nonvisible component, not easily verified without destructive testing. [A] clear question of fact exists regarding whether defendants misrepresented the existence of insulation throughout the premises and, if so, whether plaintiffs reasonably relied on such statements.

Plaintiff's expert, Gary Mindlin, asserts that without tearing down the walls, he could not have learned that certain water pipes were not connected and that the sprinkler system pumps were not working. This is just what he did in October 2016 when he necessarily opened the master bathroom walls and ceiling to discover the source of a visible leak. Moreover, Mr. Mindlin asserts that the Townhouse's piping was not placed in accordance with the Townhouse's filed drawings. Mindlin Affidavit ¶¶ 15-20.

Plaintiff argues that as defendants gut renovated the entire Townhouse, they must have known about the condition of the plumbing prior to the closing of the Contract (and the walls!). However, defendants did not perform the subject work themselves; they hired contractors! Thus, the "as is" and "no representations" contractual provisions make perfect sense.

This court has closely examined defendants' various statements (in emails and otherwise) that plaintiff claims demonstrate that defendants misrepresented and affirmative concealed so-called "latent defects." All that they show, as this Court sees the matter, is that defendants were attempting to get their contractors to put the Townhouse in the best shape possible (and, perhaps, to put their best foot forward, which is hardly actionable) prior to closing. An excerpt from defendants' reply brief (at 22-23) (NYSCEF DOC. NO. 130) aptly encapsulates plaintiff's complaints and defendants' explanations:

> Using an email chain dated July 15, 2016, Plaintiff tries to characterize emails between Defendant Robert Schwartz and real estate brokers regarding independent contractors as evidence of active concealment of known latent defects. (NYSCEF Doc No. 108, attached to Affirmation of Stuart P. Slotnick at Exhibit C). Specifically, Plaintiff characterizes David Kornmeier's (real estate broker for defendant) statement that "[s]poke to Alexander he is going to put me in touch with each of the guys. The only one that's a problem is the Hvac guy" and Robert Schwartz's reply, "[w]e need someone to come and inspect. I can get my HVAC guy to come out to the house inspect and say it's good. Let me know if you need that" as a specific example of knowledge of defects and active concealment. That is not a reasonable interpretation of the exchange. As attested by Robert Schwartz, the HVAC contractor was a "problem" only because it was difficult to contact and schedule that particular contractor; the contractor was not responsive. Robert Schwartz's statement that "I can get my HVAC guy to come out to the house inspect and say it's good"

> was merely a solution to dealing with a nonresponsive trade, not an attempt to commit fraud. This is underscored by fact that the email specifically states that a replacement HVAC contractor will "inspect." There would be no need for an inspection if there was a plan to simply create a false report.

Any claim of fraud based on the "all systems will be working at the time of closing" provision also fails because to read it as some sort of perpetual guaranty, rather than just a condition to closing, would, contrary to a basic rule of construction, render the "as is" clause meaningless.

The Court has considered plaintiff's additional claims alleging misrepresentations or affirmative concealment of latent defects in the Townhouse's roofing, plumbing, and electrical systems, and finds them to be similarly unavailing. While plaintiff has identified that many such latent defects do exist, it has failed to identify any evidence demonstrating that defendants actively misrepresented or affirmatively concealed such defects from plaintiff such that plaintiff was fraudulently induced to proceed with closing.

Accordingly, the Court must dismiss plaintiff's fourth, fifth, and seventh causes of action.

Alter Ego Claims

Under New York Law, piercing the corporate veil requires a showing that: (1) the owners completely dominated the corporation in transacting as it did; and (2) that such domination was used to commit a fraud or wrong against the plaintiff that resulted in plaintiff's injury. Morris v New York State Dep't of Taxation and Fin, 82 NY2d 135 (1993). Unless the corporate form was used to commit a fraud or wrong, a court will not pierce the corporate veil. Sheridan Broadcasting Corp v Small, 19 AD3d 331 (1st Dep't 2005). Plaintiff's limited argument that this Court should pierce the corporate veil hardly shows any of this.

Disclosure

Much of plaintiff's papers consist of a plea for disclosure. In particular, it seems plaintiff wants to see communications between the various defendants and between defendants and third parties. However, to establish a fraud claim, plaintiff would have to demonstrate a defect, that the defect was latent, that defendants knew about it, and that they actively misrepresented or affirmatively concealed the condition to plaintiff. Obviously, plaintiff would be aware, and possess any evidence, of any misrepresentations made to itself.

Final Analysis

The legal-philosophical question on which this case balances is whether sophisticates acting at arm's length can draft and execute a contract for the sale of a building (outsourced to third party contractors) that cannot be challenged by a post-closing fraud claim. The answer should be "yes," and this contract fits the bill: "as is"; "no representations," which in any event, do not survive closing. The contract could have said, "no matter how nefariously the seller has acted, and no matter what frauds the seller may have committed; the purchaser hereby absolutely and unconditionally waives any complaint or legal action against the seller." However, aside from whether any purchaser would sign such a contract, courts would probably declare it void as against public policy. But that is not to say that a seller cannot insulate itself by the right

contract, such as the instant one, and by not materially misrepresenting or actively concealing significant latent defects, as was the case here.

Conclusion

For the reasons set forth herein, the Court hereby grants Defendants' motion, pursuant to CPLR 3212, for summary judgment, and the clerk is hereby directed to enter judgment dismissing the complaint in its entirety.

2/7/2019
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE