IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA, by DAVID W. SUNDAY JR., ATTORNEY GENERAL,	:	
Plaintiff,	:	No. ~~652~~ 1827 of ~~2024~~ 2023
v.	:	JUDGE LINDA R. CORDARO
JOSEPH F. JOHN, and JOSEPH F. JOHN, II,	:	
Defendants.	:	

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FAYETTE COUNTY
PROTHONOTARY

OPINION AND ORDER

Linda R. Cordaro, J.

Before the Court is the Motion for Partial Judgment on the Pleadings filed by the Plaintiff, the Commonwealth of Pennsylvania, acting by Attorney General David W. Sunday, Jr. ("Attorney General")[1]. Upon review of the Motion and the responses and briefs filed by the parties and consideration of the oral arguments offered by the parties, the Court enters the following Opinion and Order granting the Motion in part and denying the Motion in part.

Background

The Defendants in this matter, Joseph F. John, and his son, Joseph F. John, II, own (either individually or together) approximately fifty (50) residential properties in Greene and Fayette Counties in Pennsylvania, which they lease or lease with an option to purchase. The Attorney

[1] The original Complaint in this matter was filed on September 13th, 2023. At the time, Michelle A. Henry was serving as the Attorney General for the Commonwealth, having been appointed by Governor Josh Shapiro to replace himself in the role. On January 29th, 2025, the Commonwealth filed a Statement Regarding Substitution of Successor Pursuant to Pa. R.C.P. 2352(a), as David W. Sunday, Jr., was sworn into office as Attorney General on January 21st, 2025, succeeding the prior elected and appointed Attorneys General.

General filed the above-captioned action in September of 2023 in part pursuant to the Unfair Trade Practices and Consumer Protection Law ("UTPCPL") §201-4[2], which permits the Attorney General to bring an action in the name of the Commonwealth when he has reason to believe that any person is using or is about to use any method or practice deemed unlawful by the UTPCPL. In his First Amended Complaint ("Amended Complaint"), the Attorney General avers that the Johns engaged in conduct and business practices in the context of residential leases ("Lease" or "Leases") and residential lease with option to purchase agreements ("Lease to Purchase" or "Leases to Purchase") that violated the UTPCPL and other enumerated laws relating to residential property transactions and/or consumer protection.

The Motion for Partial Judgment on the Pleadings is limited to four claims in the Amended Complaint: 1) that the Leases to Purchase used by the Johns contractually obligated lessees to pay interest at the rate of 12% per year in violation of the Loan Interest and Protection Law;[3] that the Johns' Leases and Leases to Purchase provide for unreasonable and unlawful late fees in violation of the UTPCPL; that the Johns did not comply with the Real Estate Seller Disclosure Law[4] with respect to Leases to Purchase and that this failure constitutes a violation of the UTPCPL; and that the failure to provide written statement of account to consumers with Leases to Purchase violates the UTPCPL.

Standard of Review

A motion for judgment on the pleadings should only be granted where there are no unknown or disputed issues of material fact. *Del Quadro v. City of Philadelphia*, 437 A.2d 1262, 1263 (Pa. Super. 1981). A court should consider such motions as if they were preliminary

[2] 73 P.S. §201-1 *et seq.*
[3] Act of January 30th, 1974 (P.L. 13, No. 6), 41 P.S. §101 *et seq.*
[4] 68 Pa. C.S.A. §7301 *et seq.*

objections in the nature of a demurrer and confine the consideration to the pleadings and any documents properly attached to them.[5] Judgment on the pleadings should only be granted where the moving party's right to prevail is so clear that a trial would clearly be fruitless. *Nevling v. Natoli*, 434 A.2d 187, 188 (Pa. Super. 1981). The grant of a motion for judgment on the pleadings may be appropriate in cases that turn upon the construction of a written agreement. *Gallo v. J.C. Penney Cas. Ins. Co.*, 476 A.2d 1322, 1324. Since a motion for judgment on the pleadings is not a motion for summary judgment, no affidavits, depositions, or briefs may be considered, nor is any matter before the court except the pleadings. *Del Quadro*, at 1263. This is an important distinction here, as this Court has already held hearings related to injunctive relief in this action. Though testimony and evidence were presented at those hearings, that testimony and evidence is not properly considered here in the context of a motion for judgment on the pleadings unless it was also properly attached to a pleading.

In a motion for judgment on the pleadings, all well-pleaded allegations of the party opposing the motion must be accepted as true, with only those facts specifically admitted by the opposing party may be considered against him. *Nevling*, at 188. However, pursuant to Rule 1029(c), a general denial or a statement that a party is without sufficient knowledge or information to determine the truth of an averment is not sufficient when it is clear the party must know whether a particular allegation is true or false. *Cercone v. Cercone*, 386 A.2d 1, 4 (Pa.

[5] Defendants previously raised a Preliminary Objection to the Amended Complaint on the basis that the Amended Complaint did not include the referenced Exhibits. This Court overruled that Objection on the basis that the Amended Complaint "amends and restates in its entirety" the original Complaint, which included the attachments, (though the Amended Complaint does not specifically incorporate the attachments by reference or state that they remain unchanged), and the Plaintiff had attached a copy of the exhibits to the Response to Objections, confirming they were unchanged. As preliminary objections and any response thereto are included in the "Pleadings Allowed" under Rule 1017, any documents properly attached to the objections or response are appropriate for consideration on a Motion for Judgment on the Pleadings. See: *Com., Office of Attorney General ex rel. Corbett v. Richmond Twp.*, 975 A.2d 607, n.5 (Pa. Cmwlth. 2009). Any references in this Opinion and Order to exhibits are referring to these exhibits attached to the original Complaint and to the Response to Objections.

Super. 1978). When reliance on Rule 1029(c) does not excuse a failure to make a specific denial, the court may properly look to an answer in its entirety to determine whether a party has admitted all material factual allegations. *Id.* at 5. In *Frazier v. Ruskin*, 199 A.2d 513, 518 (Pa. Super. 1964), the Superior Court held (in the context of payments made under a lease-sales agreement) that where plaintiffs alleged they made payments to the authorized agents of defendants, and defendants answered that after a reasonable investigation they were without sufficient information to form a belief as to the truth of the averments, such a denial is "patently insufficient since it is clear that the defendants must know whether or not they received the payment." *Id.* The Court further held that the failure to make a specific denial was an admission they had received payment. *Id.*

Discussion

1. Interest Rate on Leases to Purchase and the Loan Interest and Protection Law

The Pennsylvania Loan Interest and Protection Law, 41 P.S. §§ 101 *et seq,* ("Act 6") is a comprehensive interest and usury law which, among other things, provides a limit on the rate of interest on residential mortgages.[6] *Anderson Contracting Co. v. Daugherty,* 417 A.2d 1227, 1229 (Pa. Super. 1979). To qualify as a "residential mortgage" for the purposes of Act 6, a transaction must meet four elements: 1) an obligation to pay a sum of money in the amount of the base figure or less; 2) evidenced by a "security document;" 3) secured by a lien upon real property in Pennsylvania; and 4) containing two or fewer residential units or on which two or

[6] Section 101 of Act 6 sets forth the definitions through which the Act is interpreted. This section, as amended September 8th, 2008, redefined the term "residential mortgage" as "an obligation to pay a sum of money in an original bona fide principal amount of the base figure or less, evidenced by a security document and secured by a lien upon property located in this Commonwealth." The amended statute defined the "base figure" as "two hundred seventeen thousand eight hundred seventy-three dollars ($217,873), as adjusted annually for inflation by the department (the Department of Banking of the Commonwealth) through notice published in the Pennsylvania Bulletin." *See: Johnson v. Phelan Hallinan & Schmieg, LLP,* 202 A.3d 730, n.5 (Pa. Super. 2019).

fewer residential units are to be constructed. *Anderson*, at 1230. The fourth element is not at issue here. In *Anderson,* the Superior Court addressed the second and third elements in considering the definition of "security document" set forth in the regulations promulgated to clarify various provisions of Act 6, 10 Pa. Code §7.2, and adopted a broad view of the requirement that the transaction must be secured by a lien, holding that the provisions of Act 6 applied to land installment contracts. *Id.* at 1232. The Superior Court concluded that the rights and remedies provided by Act 6 "should not be denied to a class of Pennsylvania home purchasers solely because their obligation to pay the balance of the purchase price is evidenced and secured by a land installment contract as opposed to some other transaction also designed to create a security interest in real estate." *Id.*

The Johns argue that their "Lease with Option to Purchase Agreement"[7] is not an "obligation to pay a sum of money" (as required for the first element) as these agreements grant the lessee an *option* to buy at the specified price but do not create an *obligation* to buy, and that the lessee may "walk away" from their lease without any further payment or obligation to pay the principal balance. This argument is not persuasive. First, the definition of "security document" in §7.2 of the regulations expressly includes an installment land contract, land contract, or lease purchase agreement, and then goes on to "include any similar document if it is a lease of real property where the lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the real property involved and it is agreed that the lessee will become, or for no other (or a nominal) consideration *has the option to become*, the owner of the real property upon full compliance with the terms of the agreement."

[7] The Amended Complaint at paragraph 25 refers to Exhibit "A" as examples of the general form of the Leases used by the Johns and to Exhibit "B" as the general form of the Lease to Purchase agreements. The Johns admit this paragraph in their Answer to the Amended Complaint.

The inclusion of the phrase, "has the option to become" expressly contemplates a scenario, like the Leases to Purchase at issue here, where a lessee holds an option rather than an obligation. Further, the language of the Johns' Lease to Purchase does not provide any express provision by which a lessee may give notice and "walk away" from the Lease to Purchase, nor does it specify any lease term (month-to-month or otherwise). To the contrary, the Lease to Purchase requires payment "each and every month thereafter" (p. 1) and provides that if the lessee fails to consummate the transaction, all sums paid are forfeited to the lessor as liquidated damages (p. 4).

Therefore, this Court finds that "Lease with Option to Purchase Agreements" similar in nature to the example at Exhibit "B" are within the scope of the protections of Act 6. As the terms of the Lease to Purchase in Exhibit "B" require an interest rate of 1% per month *of the purchase price* (resulting in a minimum interest rate of 12% per annum),[8] and the published Act 6 maximum lawful interest rate pursuant to §301 of the Act did not exceed 7.5% during the period from 2013 through and including December of 2023, the Court further finds that any Lease to Purchase agreements used by the Johns with a reference to an interest rate of 1% per month during that period are *per se* violations of §301 of Act 6 (subject to any applicable statute of limitations or other relevant affirmative defenses) and that any other similar language appearing in the Johns' lease to purchase agreements shall also be a violation of §301, where the lessee paid a rate of interest in excess of that permitted by Act 6.

[8] As the Attorney General notes in footnote 2 to his Brief in Support of Motion for Partial Summary Judgement, though the interest rate in the Johns' agreements may appear to be 12% per annum (1% per month), the agreement states the rate as "1% per month of the purchase price" rather than 1% of the amortization of the balance due, which would result in an effective interest rate that increased with each subsequent monthly payment.

2. Late Fees

The following language regarding late fees appears in the examples of the Leases and Leases to Purchase regularly used by the Johns included in Exhibits "A" and "B", respectively:

> If the tenant fails to pay rent on the due date, the LANDLORD may end this lease. If the rent is more than ZERO days late, the tenant must pay a late fee of $25.00, and then another $5.00 for each additional day that the rent is late. The late fee specified are (sic) reasonable estimations of the losses the landlord will suffer as a result of the late payment of rent. (Leases, Exhibit "A")
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> Late payments shall be charged a late fee of $25.00 for the first day and $5.00 for each and every day thereafter. TIME IS OF THE ESSENCE. (Lease to Purchase, Exhibit "B")

The Landlord Tenant Act of 1951, ("LTA")[9] does not set any numeric value or formula for what may be considered a "reasonable" late fee in a residential lease, nor does any other Pennsylvania statute of which this Court is aware as of the date of this Opinion and Order. Similarly, the existing precedent on the issue of reasonable late fees appears to be limited to decisions from various Courts of Common Pleas.[10] §250.301 of the LTA allows the recovery of interest on rent in arrears in an action in assumpsit at the legal rate on the amount of rent due if deemed equitable under the circumstances of the particular case.[11]

In *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450 (1974), the Pennsylvania Supreme Court held that residential leases fell within the purview of the UTPCPL. In *Monumental Properties*, the Attorney General initiated an action against four companies that printed form leases that the Attorney General contended violated the UTPCPL, and against

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[9] 68 P.S. §250.101, *et seq.*

[10] See *Cohick v. Mazza*, 68 Pa. D. & C. 5th 145 (C.C.P. of Lycoming County, 2017), for its recitation of the limited precedent or applicable statutory guidance on this issue, citing *Enx Enters. V. Humphries*, 2017 Pa. D. & C. Dec. LEXIS 1830, *3 (2017). In *Humphries*, the Court found that a $5 per day late fee was unreasonable *per se* and limited late fees to $50 per month. The *Cohick* Court overruled a preliminary objection by demurrer on a $3 per day late fee as excessive and punitive as being an issue of fact, noting that it fell almost equally between the amounts found as reasonable and unreasonable in *Humphries*.

[11] The Superior Court, in its non-precedential decision in *Tsung Tsin Association v. Luen Fong Produce, Inc.*, 2019 WL 1531884, n.3 (Pa. Super. 2019) noted, "while the law of contracts governs unpaid rent, equity governs whether a landlord can collect interest on the amount of unpaid rent."

twenty-five landlords that used these printed form leases. *Id.* at 454. The Court also considered whether nine specified provisions in the printed form leases were unfair and deceptive and adopted the analysis of existing law and conclusion of the Commonwealth Court that the allegations, *as pleaded,* failed to state a cause of action, as it could not conclude that the general descriptions of the clauses described in the Attorney General's complaint would be unenforceable under all circumstances.[12] *Id.* at 483.

Here, in the procedural posture of a Motion for Judgment on the Pleadings, this Court is asked to decide whether the specific provisions used in the example Leases and Leases to Purchase violate the UTPCPL based on the documents themselves and any admissions by the Johns in the pleadings without considering any of the evidence and testimony admitted at the hearings already conducted in this matter. This is more information than what was available in *Monumental Properties,* where the court could only consider general descriptions of types of provisions in a residential lease rather than specific contract language in a specific set of circumstances, but without the advantage of the more fully developed record that would be available for a motion for summary judgment or after a trial.

Landlords and tenants can generally include any terms and conditions in a lease that are not prohibited by statute or other rule of law. *Bayne v. Smith*, 965 A.2d 265, 267 (Pa. Super. 2009). Such terms are governed by the law of contracts, with standard contract defenses and remedies. *Id.* at 266. This includes the principles relating to adhesion contracts and unconscionability. The LTA also invokes equitable principles in §250.301 with respect to a landlord's ability to recover interest for unpaid rent.

[12] For example, the Commonwealth Court considered a tenant's waiver to oppose 'amicable' action in ejectment and found that the right to enter an amicable action in ejectment remained the law in Pennsylvania.

Unconscionability is generally recognized as the absence of choice on the part of one party, together with contract terms which are unreasonably favorable to the other party. *Germantown Mfg. Co. v. Rawlinson*, 491 A.2d 138, 145 (Pa. Super. 1985). "The need for application of this standard is most acute when the professional seller is seeking the trade of those most subject to exploitation- the uneducated, the inexperienced and the people of low incomes." *Id.*[13] "In such a context, a material departure from the standard puts a badge of fraud on the transaction and here the concept of fraud and unconscionability are interchangeable." *Id.* One type of unconscionability is that of unfair surprise, which occurs when a party, typically in the consumer contract, signs a contract where an unexpected clause appears in the boilerplate of a printed form and, if read at all, is often not understood. *Id.*, at 146. The second type of unconscionability is one where the signer reads and understands the contract in its entirety but requires goods or services important to his physical or economic well-being and has little choice but to assent to the terms of a printed form dictated by the party with superior bargaining power. This is a contract of adhesion. *Id.*, at 147. However, not all contracts of adhesion are unconscionable. A court must consider the terms of the contract to determine whether the entire contract or any specific provisions of it are unconscionable. *Bayne*, at 270.[14]

In the Leases and Leases to Purchase used by the Johns, the provisions relating to late fees were simply worded and appear on the first page of the document near the other terms regarding rent and payment. This is not a situation where confusing or erudite language was hidden deep in a document filled with dense text as with the first type of unconscionability. To determine whether these documents fall within the second type of unconscionability, the late fee

[13] Adopting the reasoning of the Supreme Court of New Jersey in *Kugler v. Romain*, 279 A.2d 640, 652 (N.J. 1971).
[14] In *Bayne* the Superior Court considered an attorneys' fees-shifting clause in a residential lease that provided that the prevailing party in any litigation arising from the lease could recover attorneys' fees and held that the provision was neutral in its application and therefore not unconscionable.

provisions must be considered with the rest of the Lease or Lease to Purchase and in the context of the admissions in the Johns' Answer to the Amended Complaint. Per the terms of both types of leases, tenants are assessed a late fee of $25 on the first day after rent is due (with no grace period) and continue to accrue at a rate of $5.00 per day afterwards. Tenants are required to pay their monthly rent *at Landlord's residence* (and not by mail).[15] The Johns admit that tenants in the approximately fifty properties they own live between one and twenty miles from the residence where they require rent to be paid in person each month. (Answer, paragraphs 1,5.) Though the Johns deny in paragraph 27 that their Leases and Leases to Purchase require payment in cash, the Lease to Own in Exhibit "B" requires "Payments of $500 per month, cash in hand to be paid at Lessors place of residence" and the Johns admit that tenants have "agreed to payment in cash at the residence". In paragraph 28, the Johns admit that tenants are told to "call ahead to make sure the landlord is home" to make their monthly rent payments and that some tenants "slide cash under the garage door." This paragraph of the Answer does not deny the averment in paragraph 28 of the Amended Complaint that tenants go to the residence but have to wait for the John (Sr.) if he is not there, nor does the statement that "Defendant John provides a handwritten receipt to every tenant upon request" directly address the issue that giving tenants the option to slide cash under a garage door does not allow for a contemporaneous receipt of a cash payment.

Based solely on the examples of Leases and Leases to Purchase in Exhibits "A" and "B" and the admissions in the Johns' Answer to Amended Complaint, this Court finds that the following facts are not in dispute:

[15] The Answer uses the terms "residence" and "place of business" interchangeably to refer to the place where tenants are required to pay rent, including using both terms in paragraph 5. The Johns admit in paragraphs 17 and 18 of their Answer that they reside in separate buildings on a subdivided parcel at 104 and 116 Hunting Hills Road, Greensboro, PA, 15338. The address listed on all three examples of Leases and Leases to Purchase require payment at 104 Hunting Hills Road.

1. The late fee provisions of the Leases and Leases to Own used by the Johns assess a late fee of $25 on the day after rent is due and $5 for each subsequent day that payment is late;

2. Payments are required to be made in person to John's residence (not by mail);

3. Tenants live between one and twenty miles from the residence where rent payments must be made;

4. If a tenant wants to ensure that someone will be present to receive their payment and issue a receipt they are encouraged to call ahead;

5. If neither of the Johns nor any designated agent is present, tenants are told to place money under a garage door with no means of obtaining a contemporaneous receipt for cash payments;

6. The Leases to Purchase used by the Johns require payment by "cash in hand to be paid at Lessors place of residence"; and

7. Though the Leases used by the Johns do not specifically require cash payments, it is the Johns' practice to require tenants to agree to cash payments.

This Court finds, as a matter of law, that the Leases and Leases to Purchase are contracts of adhesion and the assessment of a $25 late fee on the day after rent is due and $5 per day late thereafter is unconscionable, where tenants agree to or are required to make cash payments at the Johns' residence under the facts set forth above. These facts favor the Johns to an extreme, shifting a significant burden onto the tenants in making their monthly payments under circumstances that may be outside the tenant's control, and reflecting a clear imbalance of bargaining power between the parties. This constitutes fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding within §201-2(4)(xxi) of the UTPCPL.

3. Failure to Comply with Real Estate Seller Disclosure Act

The Attorney General alleges that the Johns failed to comply with the Pennsylvania Real Estate Seller Disclosure Law (RESDL) §7303 by failing to provide a property disclosure statement that complies with the requirements of §7304 prior to signing Lease to Purchase agreements. This requirement applies to residential real estate transfers pursuant to §7103(a),

which expressly includes installment sales contracts and leases with option to purchase. Therefore, the Johns were required to provide written disclosures of material defects as required by §7303 and §7304 of the RESDL prior to signing a Lease to Purchase agreement.

The relevant paragraphs from the Amended Complaint and the Johns' Answer to Amended Complaint are as follows:

> 69. This written disclosure was required prior to entering into Rent to Own contracts with consumers, yet the Commonwealth believes that Defendants did not provide it prior to entering into any Rent to Own contracts. In fact, Defendants have regularly entered into multiple Rent to Own contracts each year for at least the past 12 years, without making disclosures regarding the condition of the home being sold as required by the *Real Estate Seller Disclosure Law.*
>
> > 69. Denied. The averment is a proposed conclusion of law. It is denied that the defendant acted in violation of the Real Estate Seller Disclosure Law.
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> 116. No property disclosure statements were ever delivered by Defendant John in connection with residential real estate transactions in Pennsylvania, as required by Section 7303, 7304 and 7305 of the *Real Estate Seller Disclosure Law.* Defendant John never complied with the requirements of Section 7303, 7304 or 7305 of the *Real Estate Seller Disclosure Law* with respect to *any* Rent to Own agreements entered into by Defendant John in Pennsylvania.
>
> > 116. Denied. It is denied that John failed to comply with the Real Estate Seller Disclosure Law as alleged.

Pursuant to Pa. R.C.P. 1029(b), factual averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial (except for certain enumerated exceptions which are not applicable here) shall have the effect of an admission. Whether an allegation is one of fact or law is determined by the context of the circumstances of the case and the purpose of the allegation. *Srednick v. Sylak*, 343 Pa. 486, 493 (Pa. 1941). Though both of the paragraphs from the Amended Complaint quoted above contain elements of both factual allegations and legal conclusions, the underlying factual allegation in both paragraphs is that the Johns failed to provide any disclosures of material

defects as described in §7303 and §7394 of the RESDL. A general denial that the Johns did not violate the RESDL does not address the factual allegation that the Johns did not provide any disclosures. The Answer should have admitted or denied whether the Johns provided any disclosures and could have done so without conceding the legal conclusion that any failure to provide disclosures was a violation of the RESDL. The failure to address the factual allegations in these two paragraphs of the Amended Complaint has the effect of an admission.

However, this Court need not rely on this analysis of the effect of the Johns' Answer to arrive at the conclusion that they did not provide any disclosures of material defects. On page 5 of their Memorandum in Opposition to Plaintiff's Motion for Partial Judgment on the Pleadings, the Johns acknowledge that they have not provided written property disclosure statements to tenants prior to the execution of their Lease to Purchase agreements. Therefore, there is no dispute of material fact as to whether the Johns provided disclosures of material defects prior to signing their Lease to Purchase agreements. The Johns admit that they did not, and this Court finds that their failure to do so constitutes a violation of the RESDL.

The Johns contend in their Response to Commonwealth Motion to Enter Partial Judgment on the Pleadings that there are certain situations where the requirement to provide disclosures of material defects is not appropriate, even if the RESDL generally applies to such transactions. The Johns cite the example of an existing tenant who wishes to convert an existing Lease arrangement into a Lease to Purchase, as a tenant would be in a better position to know of material defects than a landlord under those circumstances. This argument is not persuasive, however, as the RESDL expressly anticipates and addresses in §7308 the seller/landlord's affirmative duties, and does not require a seller/landlord to make any specific investigation or inquiry in an effort to complete the property disclosure statement, requiring only that the seller

not make any representations that are false, deceptive, or misleading, and requiring the seller to disclose any known material defect. Furthermore, §7302 specifically enumerates the exceptions to the requirements for written disclosure of material defects, none of which apply to the Johns' Lease to Purchase agreements.

Though the failure to provide disclosures of material defects is a clear violation of the RESDL, this Court cannot find that every failure is also automatically a violation of the UTPCPL for the purposes of a judgment on the pleadings. Violations of the RESDL may constitute violations of the UTPCPL under certain circumstances.[16] The fraudulent or deceptive conduct at issue would be the failure to disclose material defects known to the seller where the seller has a statutory affirmative obligation to do so. However, this assumes that there were material defects that were not disclosed, and that the buyer suffered damages because of the failure to disclose. This determination would need to be made on a case-by-case basis for each tenant/buyer.

4. Failure to Provide Regular Account Statements

The Attorney General alleges that the Johns failed to provide clear and written statements regarding current and cumulative principal and interest payments to tenants with Lease to Purchase agreements, and that the failure to provide statements on at least an annual basis is a violation of the "catch-all" provision of the UTPCPL.[17] In his Response to Memorandum at page 8, the Attorney General cites to §902 of the Installment Land Contract Law ("ILCL"),[18]

[16] See *Nicholas-Gould v. McDonald*, 2023 WL 1812611, 9 (Pa. Super. 2023), a non-precedential decision which this Court adopts for its persuasive value.

[17] The "catch-all" provision is the phrase commonly used in the case law to refer to 73 P.S. §201-2(4)(xxi) which refers to "engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding" as the final enumerated "unfair methods of competition" and "unfair or deceptive acts or practices" in the definitions section of the UTPCPL.

[18] 68 P.S. §902 *et seq.*

relating to legislative findings and declaration of policy, for the proposition that the ILCL requires or favors monthly statements. §902(3) states:

> By reason of the fact that the installment sales agreement is executory in nature under its terms and final settlement is not contemplated for an extended period of time, the buyer is entitled to have full information and disclosure of the terms of his agreement, the status of the account, the balance due on the purchase price and a statement of the application of his monthly installment with the proper itemization of what constitutes principal payments and carrying charges during the existence of the agreement.

However, the stated policy preference for "a statement of the application of his monthly installment" does not necessarily require that the statement be provided monthly, only that the statement, when issued, include an itemization of each monthly payment made during the statement period showing the amounts allocated to principal, interests, and costs. In fact, §907(a)(2) of the ILCL, relating to implied covenants of the seller, requires the seller to provide statements "Upon the purchaser's written request at reasonable intervals, no oftener than once every six months."

The Johns essentially admit that they do not proactively provide written statements on their Lease to Purchase accounts as a matter of course, stating in paragraph 77(e) of their Answer that "tenants are free to review their account with defendant at any time."[19] Because this Court must accept the Johns' averment that tenants could review their account at any time as true for the purposes of the Motion for Judgment on the Pleadings (See *Nevling*, supra, at 188.), further development of the factual record[20] would be necessary to find as a matter of law that the Johns'

[19] The analysis of the Johns' answers to Plaintiff's allegations on this issue is similar to that of the paragraphs relating to disclosures of property defects in that the Johns have effectively admitted they do not provide written statements as a matter of course by failing to specifically deny the allegations.

[20] As discussed, *supra*, though there is already a substantial record from the hearings on the injunction in this matter, the evidence and testimony from those hearings are part of the record but outside the scope of a Motion for Judgment on the Pleadings.

conduct on this issue constitutes fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding to fall within §201-2(4)(xxi) of the UTPCPL.

Conclusion

This grant of Partial Judgment on the Pleadings is limited to the following findings:

1. The language in the example Lease to Purchase in Exhibit "B" of the Complaint setting the interest rate at "1% per month of the purchase price" (and any similar variations of a Lease to Purchase agreement where the interest rate on the face of the document exceeded the maximum lawful interest rate as defined by §301) is a *per se* violation of the Pennsylvania Loan Interest and Protection Law;

2. A residential Lease or Lease to Purchase that assesses a late fee on unpaid rent due of $25 on the day after the due date and $5 per day thereafter, where tenants are required (either by express terms of the lease or by practice) to pay rent in cash and in person at the landlord's residence is unconscionable and in violation of the catch-all provision of the UTPCPL at §201-2(4)(xxi).

3. The failure to provide written property disclosure statements to tenants/buyers prior to the execution of Lease to Purchase agreements is a violation of §7303 and §7304 of the RESDL, but whether the violation is also a violation of the UTPCPL must be determined on a case-by-case basis.

The Order granting the Motion for Partial Judgment on the Pleadings proposed by the Attorney General includes language ordering the Johns to take specifically enumerated remedial actions, including the modification of their contracts and providing refunds of overpayments. Such a blanket order would be premature in the context of the Motion for Judgment on the Pleadings. The Johns are entitled to an evidentiary hearing on any Lease or Lease to Purchase where the applicability of this Court's ruling is in question or where there may be an affirmative defense (including, but not limited to, the statute of limitations). Furthermore, the remaining claims in the Amended Complaint are still at issue and given the sheer volume of potential Leases and Leases to Purchase at issue, efficiency in the use of court time to resolve the remaining issues is a priority. The intent of this Opinion and Order is to issue certain general

conclusions of law on key issues to guide the parties in the hopes that further negotiations may lead to a global settlement of all issues.

WHEREFORE, the Court issues the following Order:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA, by DAVID W. SUNDAY JR., ATTORNEY GENERAL,	:	
Plaintiff,	:	No. 652 of 2024
v.	:	JUDGE LINDA R. CORDARO
JOSEPH F. JOHN, and JOSEPH F. JOHN, II,	:	
Defendants.	:	

ORDER

AND NOW, this 14th day of March, 2025, upon consideration of the Plaintiff's Motion for Judgment on the Pleadings, the Motion is hereby GRANTED in part, and DENIED in part, for the reasons set forth in the Opinion filed with this Order. It is further ORDERED and DECREED that the Motion is GRANTED, in part, as follows:

1. The language in the example Lease to Purchase in Exhibit "B" of the Complaint setting the interest rate at "1% per month of the purchase price" (and any similar variations of a Lease to Purchase agreement where the interest rate on the face of the document exceeded the maximum lawful interest rate as defined by 41 P.S. §301) is a *per se* violation of the Pennsylvania Loan Interest and Protection Law, 41 P.S. §101, *et seq.*;

2. A residential Lease or Lease to Purchase that assesses a late fee on unpaid rent due of $25 on the day after the due date and $5 per day thereafter, where tenants are required (either by express terms of the lease or by practice) to pay rent in cash and in person at the landlord's residence is unconscionable and in violation of the catch-all provision of the Unfair Trade Practices and Consumer Protection Law at 73 P.S. §201-2(4)(xxi); and

3. The failure to provide written property disclosure statements to tenants/buyers prior to the execution of Lease to Purchase agreements is a violation of 68 Pa. C.S.A. §7303 and §7304 of the Pennsylvania Real Estate Sellers Disclosure Law, but whether the violation also constitutes a violation of the UTPCPL must be determined on a case by case basis.

It is further ORDERED and DECREED that the Motion is DENIED, in part, as to whether the failure to proactively provide written account statements on Leases to Purchase constitutes a violation of the UTPCPL at 73 P.S. §201-1 *et seq,* and whether the violation of the RESDL for failure to provide disclosures of material defects also constitutes a violation of the UTPCPL.

ATTEST:

PROTHONOTARY

BY THE COURT:

LINDA R. CORDARO, JUDGE