

RONALD M. RAIFORD, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
MORTON INVESTMENTS, INC., et. al.,	*	BALTIMORE CITY
Defendants.	*	Case No. 24-C-03-003898

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MEMORANDUM OPINION

Plaintiff Raiford is one of four plaintiffs who allege that in the late 1990’s, the sellers of various houses in Baltimore City purchased distressed properties and subsequently resold them to Plaintiffs at inflated prices, often three to four times more than the actual market value. Defendant Bank of America, N.A. (“Bank of America”) is the lender in connection with Raiford’s purchase of 535 N. Rose Street. Raiford alleges fraud, civil conspiracy, fraudulent misrepresentation, negligent misrepresentation and negligence against Bank of America and requests a jury trial. Bank of America has filed a Motion to Strike Jury Trial Election. A hearing was held on that motion on July 1, 2004.

DISCUSSION

Bank of America argues that Raiford waived his right to a jury trial when he executed both the Promissory Note (“Note”) and the Deed of Trust (“Deed”), and citing *ST Systems Corp. v. Md. Natl. Bank*, 112 Md. App. 20, 34 (1996), argues that these waivers are enforceable. Raiford argues that *ST Systems Corp.* does not apply because unlike the Complaint in *ST Systems Corp.*, his Complaint includes an “allegation that the jury waiver provision was not entered into knowingly and intelligently.” 112 Md. App. at 34 n. 6. Raiford argues that the waiver provision does not apply because (1) this is not a breach of

contract action; (2) the contracts containing the waiver are unenforceable because of the Complaint alleges that the underlying transaction was fraudulent; and (3) he “did not execute the jury waiver knowingly and intelligently.”

Parties may contractually agree to waive the right to a jury trial. *ST Systems Corp.* 112 Md. App. at 34. In analyzing a written jury trial waiver provision, a court applies the rules of construction used to interpret any contract.

The rules of construction, . . . , cannot be used to limit artificially the scope of a jury waiver provision in contrast to the language used by the parties in the contract itself.

*Id.* (footnote omitted). Thus, “the Court’s duty is . . . determine what a reasonable person in the parties’ position would have meant by the language used in the contract.” *Id.* (citations omitted). If the language is “plain and unambiguous, . . . [then the] court must presume that the parties meant what they expressed.” *Taylor v. NationsBank*, 365 Md. 166, 179 (2001). An examination of the language used in these contracts makes clear that the Motion to Strike the Jury Trial Election must be granted.

The Note that Raiford signed contains the following waiver of “the right to trial by jury” in bold-faced type above Raiford’s signature:

**I hereby waive the right to trial by jury on any action on this Promissory Note or this Loan or on any other matter arising in connection with this Promissory Note or this Loan.**

The Deed contains a similar language, also in bold:

**Waiver of right to trial by jury. Grantor hereby waives the right to trial by jury in any action brought on this Deed or the Note or any other matter arising in connection with this Deed of Trust or the Note.**

Thus, Plaintiff has waived his right to a jury trial on “*any action*” that may be brought on the

“Promissory Note,” or the “Loan,” or on any “*matter arising in connection with* ” either of them. The waiver in the Deed is equally comprehensive and applies to “any action” or “any other matter arising in connection with” the Deed or Note.

There is *nothing* in the language of either the Note or the Deed that limits the waiver to a breach of contract claim. To the contrary, the language of the contracts he signed makes clear that Raiford waived his right to a jury trial in any kind of action brought against Bank of America for its loan to him in connection with 535 N. Rose Street.

Raiford failed to direct the Court’s attention to any statutes or case law to support his argument that the waivers are not valid because he has alleged that the underlying transaction was fraudulent. By granting the motion to strike the jury trial, this Court is not deciding the fraud claims, but simply deciding that as to Bank of America, the trial will not be a jury trial.

Finally Raiford alleges that he is “unsophisticated and did not execute the waivers knowingly and intelligently.” As factual basis for this claim, Raiford cite to Paragraphs 87 and 88 in his Second Amended Complaint:

At each settlement, SELLERS, BROKERS and TITLE COMPANIES presented a large stack of papers before PLAINTIFFS, requiring PLAINTIFFS to sign and initial in numerous places.

PLAINTIFFS:

- A: Were unsophisticated in real estate transactions;
- B. Received deceptive explanations from Sellers, Brokers and Title Companies regarding the purposes of the various legal documents they signed;
- C. Were not told by SELLERS, BROKERS, or TITLE COMPANIES that they (PLAINTIFFS) had a right to consult their own attorneys;
- D. Were told that the transactions had to occur quickly before another buyer purchased the properties;

E. And were not aware of the fraudulent or negligent misrepresentations made by TITLE COMPANIES in the settlement Documents they signed.

As to the claim that he was “unsophisticated in real estate transactions,” Raiford has not directed this Court’s attention to any cases that suggest that this Court should consider his level of sophistication in deciding whether the jury trial waiver is valid. Nor has Raiford presented the Court with any legal authority to suggest that any of the other allegations are sufficient to show that the waiver is not valid. Raiford does not allege that he was under duress when he signed the Note and the Deed. He had the choice to sign or not sign, and he chose to sign. The fact that he was told that the transactions “had to occur quickly,” is not duress. Raiford does not allege that a gun was held to his head or that he was threatened or forced to sign anything. He had the option of requesting time to read the documents. The allegation that he “received deceptive explanations” on the purpose of the documents does not explain why he should not be held responsible for the words in the documents. Essentially, he is asking this Court to release him from that provision of the contracts because he did not read it, or he read and did not understand it, or he did not believe what he read. This Court is not aware of any legal support for Raiford’s position.

Raiford also alleges he was not told that he “had a right to consult [his] own attorneys,” and at oral argument cited Md. Business Occupations and Professions § 17-524(a)(5) for the proposition that Bank of America was required to advise him of his right to counsel. That section provides in relevant part:

Each *real estate contract* submitted to a party by a *real estate broker, an associate real estate broker, or a real estate salesperson* for use in the sale of a single-family dwelling shall contain, in bold-faced type, a statement that the buyer has the right to select the buyer’s own:

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(5) title lawyer.

(Emphasis added) Neither the Note nor the Deed is a “real estate contract,” and Bank of America was the lender not the “real estate broker, an associate real estate broker, or a real estate salesperson.” Thus, Bank of America was not required to advise Raiford that he had a right to consult with his own attorney.

Finally the allegations that the documents contained “fraudulent or negligent misrepresentations,” do not void the waiver of the jury trial. The allegations must be tried to the Court.

#### CONCLUSION

For ALL THE reasons stated above, this Court will enter an order granting Bank of America’s Motion to Strike Jury Trial Election.

Dated: July 1, 2004

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Judge Evelyn Omega Cannon

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