

14-0291

IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

CHARLES J. EVANS and CYNTHIA B. EVANS, ET AL,

Plaintiffs,

vs.

CIVIL ACTION NO.: 09-C-94  
ROBERT A. IRONS, CIRCUIT JUDGE

UNITED BANK, INC., a  
West Virginia corporation,  
STAN MCQUADE, individually,  
THELMA MCQUADE, individually,  
and d/b/a MCQUADE APPRAISAL SERVICES,

Defendants.

FILED IN MONROE COUNTY  
CIRCUIT COURT  
2014 FEB 27 PM 3:25

ORDER- GRANTING DEFENDANTS' MOTIONS TO DISMISS

This matter came before the Court on May 2, 2011 for a hearing on motions to dismiss filed by Defendant United Bank Inc. (hereinafter "United") and Defendants Stan McQuade and Thelma McQuade both individually and as McQuade Appraisal Services (hereinafter "McQuades"). Plaintiffs appeared by counsel John H. Bryan. United appeared by counsel, C. William Davis and the McQuades appeared by counsel, John Jessee.

12(b)6 STANDARD

The Defendants' motions to dismiss are based procedurally on Rule 12(b)6 of the *West Virginia Rules of Civil Procedure*. A motion pursuant Rule 12(b)6 is a motion to dismiss for failure to state a claim for which relief may be granted. See generally Rule 12(b)6, *West Virginia*

*Rules of Civil Procedure*. Thus, “[t]he trial court's inquiry will be directed to whether the allegations constitute a statement of a claim under Rule 8(a).” *Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 538, 236 S.E.2d 207, 212 (1977). “All that the pleader is required to do is to set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.” *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 159 (1978).

#### JUDICIAL NOTICE OF TAX APPEAL

In connection with their Motion to Dismiss, United moves that the Court take judicial notice of the adjudicative facts in *MBMA, LLC, et al.* a matter before the Monroe County Commission sitting as the Board of Equalization and Review, the subsequent appeal of that matter to this Court in civil action number 07-C-30, and the appeal of that matter to the West Virginia Supreme Court of Appeals in *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 687 S.E.2d 768, 771 (2009). Essentially, United moves that the Court take judicial notice that the Plaintiffs or their co-owners challenged the 2007 real estate tax assessments of the properties subject of this litigation before the Monroe County Board of Equalization and Review on February 7, 2007. The principal basis of the Plaintiffs' challenges was that their tax assessments were not based on the true and actual value of their property. Plaintiffs respond that determination of such facts is not appropriate for resolution on a motion to dismiss.

The West Virginia Supreme Court of Appeals has held:

Notwithstanding [the] general rule, it has been recognized that, in ruling upon a motion to dismiss under Rule 12(b)(6), a court may

consider, in addition to the pleadings, documents annexed to it, and other materials fairly incorporated within it. This sometimes includes documents referred to in the complaint but not annexed to it. *Further, Rule 12(b)(6) permits courts to consider matters that are susceptible to judicial notice.*

*Forshey v. Jackson*, 222 W. Va. 743, 747, 671 S.E.2d 748, 752 (2008)(internal citations omitted, emphasis added).

Under Rule 201 of the *West Virginia Rules of Evidence*, “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.” W. Va. R. Evid. 201(d). Moreover, “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” W. Va. R. Evid. 201(b). Lastly, “it seems clear that a court may take judicial notice of its own records concerning the same subject matter and substantially the same parties under Rule 201(b)(2).” 1 Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers*, § 201.03[3][e] (5<sup>th</sup> ed. 2012).

In this matter, Plaintiffs appealed the Board of Equalization and Review’s rejection of their tax assessment challenges to this Court. The file of the appeal contains the record of the Board and Equalization and Review hearing and the subsequent opinion of the West Virginia Supreme Court of Appeals. As such, the Court finds that the facts and circumstances of the Plaintiffs’ tax appeals are “not subject to reasonable dispute” and are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” W. Va. R. Evid. 201(b)(2).

Accordingly, United's motion that the Court take judicial notice of the adjudicative facts in *MBMA, LLC, et al.*, Monroe County Civil Action 07-C-30, and *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 687 S.E.2d 768, 771 (2009) is **GRANTED**.

### STATUTES OF LIMITATION

United and the McQuades assert that the Plaintiffs' causes of action are barred by the applicable statutes of limitation.<sup>1</sup> Plaintiffs respond that they pled in the Complaint that they did not know and could not have known of their claims until they filed the present action. Plaintiffs further argue that determination of when they discovered their claims is a question of fact not appropriate for resolution on a motion to dismiss.

In considering a motion to dismiss based on applicable statutes of limitations, the Court applies the following analysis found in *Dunn v. Rockwell*:

A five-step analysis should be applied to determine whether a cause of action is time-barred. First, the court should identify the applicable statute of limitation for each cause of action. Second, the court (or, if questions of material fact exist, the jury) should identify when the requisite elements of the cause of action occurred. Third, the discovery rule should be applied to determine when the statute of limitation began to run by determining when the plaintiff knew, or by the exercise of reasonable diligence should have known, of the elements of a possible cause of action, as set forth in Syllabus Point 4 of *Gaither v. City Hosp., Inc.*, 199 W.Va. 706, 487 S.E.2d 901 (1997). Fourth, if the plaintiff is not entitled to the benefit of the discovery rule, then determine whether the defendant fraudulently concealed facts that prevented the plaintiff from discovering or pursuing the cause of action.

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<sup>1</sup> United argues that the applicable statutes of limitation bar all of the Plaintiffs' claims save for breach of the implied covenant of good faith and fair dealing and breach of fiduciary duty. The McQuades argue that all claims asserted against them are barred by the statutes of limitation except for constructive fraud and detrimental reliance. The Court reviews all of the Plaintiffs' independent causes of action under the statute of limitations analysis.

Whenever a plaintiff is able to show that the defendant fraudulently concealed facts which prevented the plaintiff from discovering or pursuing the potential cause of action, the statute of limitation is tolled. And fifth, the court or the jury should determine if the statute of limitation period was arrested by some other tolling doctrine. Only the first step is purely a question of law; the resolution of steps two through five will generally involve questions of material fact that will need to be resolved by the trier of fact.

Syl. Pt. 5, *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255 (2009).

1. The Court finds that that the following statutes of limitation are applicable to the independent<sup>2</sup> causes of action asserted by the Plaintiffs:

<u>Cause of Action</u>	<u>Limitations Period</u>	<u>Authority</u>
Fraud in the Inducement and Aiding and Abetting Fraud in the Inducement	2 years	<i>W. Va. Code</i> § 55-2-12; <i>Dunn v. Rockwell</i> , 225 W. Va. 43, 56, 689 S.E.2d 255, 268 (2009).
Negligence	2 years	<i>W. Va. Code</i> § 55-2-12; <i>Dunn v. Rockwell</i> , 225 W. Va. 43, 56, 689 S.E.2d 255, 268 (2009).
Intentional or Negligent Infliction of Emotional Distress/Tort of Outrage	2 years	<i>W. Va. Code</i> § 55-2-12; Syl. Pt. 7, <i>Travis v. Alcon Laboratories, Inc.</i> , 202 W. Va. 369, 504 S.E.2d 419 (1998).
Breach of Implied Covenant of Good Faith and Fair Dealing	5 years	<i>W. Va. Code</i> § 55-2-6; <i>HSBC Bank USA, Nat. Ass'n v. Resh</i> , 3:12-CV-00668, 2013 WL 312871 (S.D.W. Va. Jan. 25, 2013).
Breach of Fiduciary Duty	2 years	<i>W. Va. Code</i> § 55-2-12; <i>Dunn v. Rockwell</i> , 225 W. Va. 43, 56, 689 S.E.2d 255, 268 (2009).

<sup>2</sup> The Plaintiffs also assert claims based on the theories of civil conspiracy and *respondeat superior*, which the Court finds to be dependent upon the stand alone causes of action asserted by Plaintiffs. In addition, the Plaintiffs seek to recover punitive damages, which if appropriate, are dependent upon the independent causes of action asserted by the Plaintiffs.

Constructive Fraud	2 years	<i>W.Va Code § 55-2-12; Dunn v. Rockwell, 225 W. Va. 43, 56, 689 S.E.2d 255, 268 (2009); Stanley v. Sewell Coal Co., 169 W. Va. 72, 76, 285 S.E.2d 679, 682 (1981)</i> (Stating: "The word 'fraud' is a general term and construed in its broadest sense embraces both actual and constructive fraud.").
Detrimental Reliance	Laches Applies	<i>Hatfield v. Health Mgmt. Associates of W. Virginia, 223 W. Va. 259, 266, 672 S.E.2d 395, 402 (2008)</i> (Discussing that establishing a claim for detrimental reliance involves establishing a claim for equitable estoppel).  <i>Dunn v. Rockwell, 225 W. Va. 43, 54, 689 S.E.2d 255, 266 (2009)</i> ("Our law is clear that there is no statute of limitation for claims seeking equitable relief.").  <i>Syl. Pt. 2, Condry v. Pope, 152 W. Va. 714, 166 S.E.2d 167 (1969)</i> ("Laches applies to equitable demands where the statute of limitation does not.")

2. Based on the allegations in the Plaintiffs' Second Amended Complaint, the Court finds that Plaintiffs seek to recover damages from the Defendants on the theory that the Plaintiffs paid more than fair market value for their property because of the alleged wrongful acts of the Defendants. Plaintiffs' Second Amended Complaint alleges those purchases occurred on or before June 30, 2006.

The record in the matter evidences that the original Complaint was filed on behalf of Plaintiffs Charles J. Evans and Cynthia B. Evans against United on November 30, 2009. The Second Amended Complaint, which names the additional Plaintiffs in this action and the

McQuade Defendants, was filed on September 15, 2010.

3. The West Virginia Supreme Court of Appeals has held:

In tort actions, unless there is a clear statutory prohibition to its application, under the discovery rule the statute of limitations begins to run when the plaintiff knows, or by the exercise of reasonable diligence, should know (1) that the plaintiff has been injured, (2) the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty, and (3) that the conduct of that entity has a causal relation to the injury.”

Syl. Pt. 3, *Dunn v. Rockwell*, 225 W. Va. 43, 46, 689 S.E.2d 255, 258 (2009).

In the Second Amended Complaint, Plaintiffs allege that they could not have known of their causes of action until the institution of the present action because the Defendants camouflaged information contained in appraisals requested by United and prepared by the McQuades.

Assuming those allegations to be true, the Court finds that Plaintiffs, by the exercise of reasonable diligence, should have known of their claims no later than the date of their hearing before the Monroe County Board of Equalization and Review. First, the Plaintiffs claimed before the Board that their tax assessments exceeded the true and actual value of their property. Second, the fair market value of Plaintiffs' property is the basis of Plaintiffs' claims against Defendants in this civil action. Third, the Plaintiffs' were represented by counsel and retained a certified general real estate appraiser in connection with their challenges. Fourth, although the Plaintiffs did not present evidence of the fair market value of their respective properties at the hearing, the Plaintiffs had the means to determine the fair market value at that time and should have known that the land they purchased was

overvalued. Last, knowing that their land was overvalued, a reasonable person would have inquired as to the identity and conduct of the parties involved in the sales of their property, i.e. the Defendants.

Therefore, the Court finds that the statutes of limitation for Plaintiffs' claims against Defendants were tolled under the discovery rule until no later than February 7, 2007.

4. The alleged fraudulent concealment of facts that prevented the Plaintiffs from discovering or pursuing their causes of action against the Defendants is the asserted basis for the application of the discovery rule as set forth above. There is no other alleged fraudulent concealment of facts that prevented the Plaintiffs from discovering or pursuing their causes of action.

5. Plaintiffs have asserted no other tolling doctrine which arrests the applicable statutes of limitations.

As such, the Court finds that the Plaintiffs instituted this civil action more than two (2) years after they should have known of their claims subject of this civil action. Plaintiffs' causes of action for breach of the implied covenant of good faith and fair dealing and detrimental reliance were timely filed. However, Plaintiffs' claims for fraud in the inducement and aiding and abetting fraud in the inducement, negligence, intentional or negligent infliction of emotional distress/tort of outrage, breach of fiduciary duty, and constructive fraud, were not timely filed and are **DISMISSED**.

#### **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

United argues that in order for the Plaintiffs to maintain a claim for breach of the implied covenant good faith and fair dealing they must first allege that United has breached its contracts

with them. Plaintiffs argue that breach of contract is not required to maintain an action for breach of the implied covenant of good faith and fair dealing in West Virginia.

Federal Courts in West Virginia have held that a claim for breach of the implied covenant of good faith and fair dealing does not exist absent a breach of contract claim. See *Powell v. Bank of Am., N.A.*, 842 F. Supp. 2d 966, 981 (S.D.W. Va. 2012) (“[T]he West Virginia Supreme Court of Appeals has ‘declined to recognize an independent claim for a breach of the common law duty of good faith,’ and has instead held that such a claim sounds in breach of contract.”) (Internal citations omitted); See also *Wittenberg v. Wells Fargo Bank, N.A.*, 852 F. Supp. 2d 731, 750 (N.D.W. Va. 2012) (“West Virginia does not recognize a stand-alone cause of action for failure to exercise contractual discretion in good faith. As such, a claim for breach of the implied covenant of good faith and fair dealing can only survive if the borrower pleads an express breach of contract claim.”) (Internal citations omitted).

The West Virginia Supreme Court of Appeals has stated: “[W]e recognize that it has been held that an implied covenant of good faith and fair dealing does not provide a cause of action apart from a breach of contract claim[.]” *Highmark W. Virginia, Inc. v. Jamie*, 221 W. Va. 487, 492, 655 S.E.2d 509, 514 (2007) (Citing *Stand Energy Corp. v. Columbia Gas Transmission*, 373 F.Supp. 2d 631, 644 (S.D.W.Va. 2005).

Although, the state Supreme Court has not expressly adopted the position of the federal courts, this Court views its recognition of the rule without adverse comment as persuasive. As such, the Court holds that Plaintiffs’ failure to allege a breach of contract is fatal to their claim for breach of the implied covenant of good faith and fair dealing.

Accordingly, Plaintiffs' claims for breach of implied covenant of good faith and fair dealing are **DISMISSED**.

#### **DETRIMENTAL RELIANCE**

United and the McQuades argue that the Plaintiffs have failed to plead that the Defendants made any express promise to the Plaintiffs. The McQuades further argue that the Plaintiffs failed to plead reliance. Plaintiffs respond that they sufficiently alleged in their Complaint that the Defendants made express promises and that the Plaintiffs reasonably relied on them.

The Court finds it unnecessary to reach the merits of the parties' arguments concerning the elements of detrimental reliance in that it is without jurisdiction to entertain Plaintiffs' detrimental reliance claims. First, a detrimental reliance claim sounds in equity. See *Hatfield v. Health Mgmt. Associates of W. Virginia*, 223 W. Va. 259, 266, 672 S.E.2d 395, 402 (2008) (Discussing that establishing a claim for detrimental reliance involves establishing a claim for equitable estoppel).

Second, "[a] court of equity is without jurisdiction to entertain a suit based on an alleged fraudulent misrepresentation to the prejudice of the complaining party, where the sole relief sought therein is the recovery of damages. In such a case the remedy of the injured party at law is plain, adequate and complete." Syl. Pt. 4, *Mountain State Coll. v. Holsinger*, 230 W. Va. 678, 742 S.E.2d 94, (2013)(Per Curiam). Moreover, "[e]quity will not entertain a suit to recover damages for a fraud which amounts to a tort remediable by an action at law for fraud and deceit." *Id.* at Syl. Pt. 5.

Plaintiffs seek damages for the Defendants alleged fraudulent misrepresentations surrounding the sale of properties at Walnut Springs. In stating their claim for detrimental reliance the Plaintiffs allege, in part, that:

Defendants, each individually, as well as pursuant to their joint venture/conspiracy with WSMR, made representations and express promises to the Plaintiffs that the lots they were financing were of a certain minimum value, and that all parties were complying with state and federal law and not committing mortgage fraud, bank fraud, or otherwise providing fraudulent sales and financial records in any way. Defendants further made representations that that the signed and approved loan and real estate documents complied with state and federal law and were not fraudulent, misrepresented, or falsified.

(Pl's Second Amended Compl. ¶ 199).

Plaintiffs' detrimental reliance claim are essentially a restatement of their fraud in the inducement claims under Count One. Accordingly, the Court finds that the Plaintiffs had an adequate remedy at law, albeit untimely filed, pursuant to their fraud in the inducement claims and are precluded from bringing an equitable claim for detrimental reliance.

Accordingly, Plaintiffs' claims for detrimental reliance are **DISMISSED**.

#### **CONCLUSION AND ORDER**

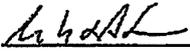
The Court having ruled above that all of the Plaintiffs' independent causes of action are dismissed, the above-styled action is **DISMISSED** in its entirety.

It appearing proper to do so, it is hereby **ORDERED** and **ADJUDGED** as follows:

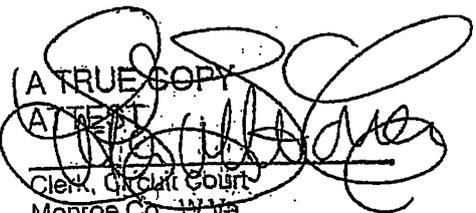
1. The above-styled action is **DISMISSED** with prejudice and removed from the active docket of Court.

2. The Circuit Clerk is directed to provide certified copies of this order to counsel of record and any party proceeding pro se.

DATED: FEBRUARY 27, 2014.

  
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ROBERT A. IRONS, CIRCUIT JUDGE

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Clerk, Circuit Court  
Monroe Co., W.Va.

**IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA**

CHARLES J. EVANS and CYNTHIA B.  
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STAN MCQUADE, individually,  
and d/b/a MCQUADE APPRAISAL  
SERVICES,

Defendants.

**PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT, OR IN  
THE ALTERNATIVE MOTION FOR RELIEF FROM JUDGMENT**

Comes now the plaintiffs, by counsel, John H. Bryan, pursuant to Rule 59(e) and Rule 60(b) of the West Virginia Rules of Civil Procedure and moves this Honorable Court to set aside the February 27, 2014 Order Granting Defendants' Motion to Dismiss.

1. In the February 27, 2014 Order, the Court characterized the Plaintiffs' claims as allegations that they "paid more than fair market value for their property because of the alleged wrongful acts of the Defendants." (February 27, 2014 Order at 6.) To the contrary, Plaintiffs' claims allege fraudulent misrepresentations, and fraudulent acts, which induced the Plaintiffs, who were innocent investors, into buying into a "ponzi-scheme" type real estate investment which is now the product of federal criminal prosecution.

2. The fraud underlying the entire development, and forming the basis of the Plaintiffs' claims, is the "fraudulent Schonberger transaction" which was a nonexistent real estate transaction used by the developers, appraisers and United Bank, to sell

inflated and fraudulent investments to the Plaintiffs. This wasn't the only fraudulent act, but it was the primary fraudulent act which forms the basis for the Plaintiffs' claims.

3. The "fraudulent Schonberger transaction" was known only to the WSMR developers, and the defendants herein until after the inception of the original 2009 lawsuit filed by Charles and Cynthia Evans. Following the filing of the 2009 lawsuit, a subpoena was issued to the McQuade appraisers, which resulted in all original appraisals being produced to the Plaintiffs' counsel. Following an intense investigation of the appraisals, the undersigned counsel discovered the "fraudulent Schonberger transaction" which was the keystone to every subsequent appraisal in the WSMR development. Following the discovery of the overt fraud, counsel notified other victims of the fraud, most of whom are now the Plaintiffs in the above-styled action. **There is no other source for the Plaintiffs to have discovered the "fraudulent Schonberger transaction" other than through notification by the undersigned counsel.** There was no discussion, or discovery of, the Schonberger fraud during the 2007 tax litigation. In fact, the tax litigation was being prosecuted, and represented, by the developers who engaged in the fraud. The record from the 2007 litigation does not contain any mention of the fact that the entire development was a "ponzi-scheme" of fake appraisals.

4. The "fraudulent Schonberger transaction" is now the subject of a federal criminal prosecution of one of the developers. It also forms the basis of a federal criminal investigation of other involved individuals, which is believed to be ongoing.

5. The federal criminal investigation into the "fraudulent Schonberger transaction" has revealed that **defendant United Bank was notified by co-developer Jonathan Halperin in October of 2005 that the fraud had occurred.** Jonathan

Halperin has provided these documents to federal investigators in order to exonerate himself from criminal charges, but has refused to provide the same to the Plaintiffs' counsel. Halperin did however, acknowledge to Plaintiffs' counsel in a telephone conversation that the documents indeed exist. Plaintiffs' counsel has been unable to serve requests for production of documents on United Bank due to the fact that motions to dismiss have been pending for several years. Nor are they easily obtained via subpoena from Mr. Halperin due to the fact that he now resides out-of-state. If these issues were before the Court at the summary judgment stage rather than 12(b)(6), the Plaintiffs would be able to present these documents to the Court.

6. United Bank is in possession of these documents proving their upper management had knowledge of the "fraudulent Schonberger transaction" as early as October of 2005. With this knowledge, they continued to finance defrauded investors who were buying into the scam, and continued to refinance original investors. Most egregiously, United Bank called in the balloons and raised the adjustable rates on investors, causing many, if not most of them, into foreclosure. All-the-while United Bank engaged in these actions, they are on record as having knowledge of the fact that the development was a fraud. Additionally, United Bank continued to use the McQuade appraisers to produce fake appraisals for many of the Plaintiffs.

7. The United Bank loan officer who worked with the WSMR developers to create the WSMR development and financing, is now, and has been for some time, in federal prison. Upon information and belief, United Bank officials have recently been interviewed by federal investigators, and have been served with subpoenas by federal investigators in regards to the "fraudulent Schonberger transaction". Upon information

and belief, as of the date of this filing, United Bank is scheduled to produce documents related to WSMR to federal investigators within days.

8. A 2007 tax lawsuit against the Monroe County Assessor, arguing about the treatment of WSMR as a “neighborhood” for purposes of increasing the tax values, does not place the Plaintiffs on notice of the fact that they have been the victims of fraud. For the Court to unilaterally conclude otherwise in ruling under 12(b)(6) is to impermissibly decide issues of fact.

9. It is undisputed that the “discovery rule” as explained in Dunn v. Rockwell, 689 S.E.2d 258 (W.V. 2009) applies to the above styled action. The defendants admitted that it applies. The Court cited Dunn in its’ Order. Syllabus Point 5 of Dunn held that only identification of the applicable statute of limitations period is a question of law, and that the remaining issues surrounding application of the “discovery rule” are questions of fact, to be resolved by a jury. Syl. Pt. 5, Dunn v. Rockwell, 689 S.E.2d 258 (W.V. 2009). The plaintiffs did demand a trial by jury.

10. Here, the Court has gone well beyond the identification of the applicable statute of limitations period, and has encroached into “the remaining issues”. For the Court to conclude that the 2007 tax litigation instituted the running of the statute of limitations for the plaintiffs’ claims, the Court necessarily concluded that each plaintiff herein gained knowledge of the fact that the WSMR developers had engaged in bank fraud and appraisal fraud, and furthermore that United Bank and the McQuade appraisers were complicit in, and/or had knowledge of the same.

11. To the contrary, each of the respective plaintiffs allege within the Complaint that they were unaware until the initiation of this litigation that the fraud had

occurred, and that with regard to the Defendants' appraisals, the "appraisals contained information which was camouflaged and nearly devoid of identifying information . . ." and that "[o]nly the bank, the appraisers, and WSMR could have known of the fraud and misconduct which occurred." See, e.g., Second Amended Complaint at paragraph 93.

12. Thus, while a jury might determine that the plaintiffs, by the exercise of reasonable diligence, should have discovered the fraud in 2007, it is reversible error for the Court to make that determination for them - especially at the 12(b)(6) stage. The individual plaintiffs had nothing to do with the 2007 litigation, other than the use of their names as parties by the developers. Again, these were the very developers who concealed the fraud throughout that time period.

13. Plaintiffs respectfully request that the Court ask counsel for United Bank if they are in possession of documents evidencing communications from Jonathan Halperin in 2005 to United Bank, putting them on notice of the fact that fraud had occurred in the creation and financing of the WSMR development. Plaintiffs further request that the Court ask counsel for United Bank if they ever notified their customers about the fraud - whether before or after they financed their lot purchases, or whether that information was concealed? To release the defendants of all liability without them ever having to answer these questions would be an injustice.

WHEREFORE, the Plaintiffs request that the February 27, 2014 Order be vacated so as to place this action back on the trial docket, and for such other and further relief as this Court deems just and fit.

CHARLES J. EVANS, CYNTHIA

B. EVANS and OBIE WOODS,  
and WAYNE CLIBURN and  
LUCY CLIBURN, and SERGIO  
BAEZ, and PETER CALDERON  
and MIKE HOLLANDSWORTH,  
VIVIAN HOLLANDSWORTH, and  
JAN JERGE and JAMES  
CARROLL, JR. and FREDA  
LIVESAY and JIM MACKEY,  
SHAYNA MACKEY,  
and PETER DEL CIOPPA  
and JEAN MILLARD,  
MICHELLE MILLARD and  
STEPHEN RICE, LAUREEN  
RICE and LON FOUNTAIN,  
LOUISE FOUNTAIN and  
MICHAEL ROBEY, LORRI  
ROBEY, ROBERT  
SCHLOSSBERG, HELENE  
SCHLOSSBERG,  
SALVATORE ZAMBRI,  
MARY ZAMBRI, JOSEPH  
ZAMBRI, ANTHONY  
ZAMBRI, and ZAMBRI  
ENTERPRISES, LLC, a  
Maryland limited liability  
company, and ROBERT  
AMICO, BEVERLY AMICO,  
and JOSEPH KIM,  
By Counsel



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West Virginia corporation,  
STAN MCQUADE, individually,  
and d/b/a MCQUADE APPRAISAL  
SERVICES,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, John H. Bryan, counsel for the Plaintiffs, do hereby certify that the foregoing  
PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT, OR IN THE  
ALTERNATIVE MOTION FOR RELIEF FROM JUDGMENT has been served upon the  
following counsel of record via first class mail, and by facsimile, to the following  
address:

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and Joyce Durham*

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Roanoke, VA 24006  
Fax: (540) 510-3050

*Counsel for the McQuades*

Dated this the 7 day of March, 2014.



JOHN H. BRYAN