

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

REGIS DEVELOPMENT	:	
CORPORATION	:	MAY TERM 2003
	:	NO. 3336
v.	:	
	:	
CITY OF PHILADELPHIA	:	
	:	

FINDINGS OF FACT

- 1-42. The Joint Stipulation of Facts is incorporated herein by reference. (See Court Exhibit).
43. There was no evidence presented at trial as to whether or not a Petition to remove the bodies from the cemetery and burial at the 528 Christian Street parcel was ever filed with the Quarter Sessions Court by anyone prior to or after the City's condemnation of the Property.
44. Gary Reisner, Regis' president, has been a real estate developer for more than 20 years.
45. Regis could have determined, prior to its purchase of the Property, that the 528 Christian Street parcel had at one time been used as a cemetery and burial ground.
46. The "chain of title" for the 528 Christian Street parcel was a matter of public record.
47. Prior to purchasing the Property from the City, Regis did not procure title insurance on the property; did not conduct any environmental assessment of the property; did not conduct a title search on the Property; and did not determine the prior record title owners of the Property. Admissions in Plaintiff's Reply to New Matter of the City.
48. Regis could have performed a "title search" on the Property before purchasing the Property. Regis could have performed a "title search" on the Property immediately after purchasing the Property.
49. Old cemeteries are a common occurrence in the City of Philadelphia.
50. Regis could have determined soon after its purchase of the Property that the 528 Christian Street parcel had at one time been a cemetery and burial ground.
51. Regis could have performed borings or test pits or exploratory excavation after purchasing the Property to determine whether any bodies still remained.
52. After its purchase of the Property, Regis had possession and control over the Property with

the right of entry and the right to demolish existing conditions on the Property and to excavate the Property.

53. The presence of the bodies still buried at the 528 Christian Street parcel could have been ascertained soon after the purchase of the Property.

54. If Regis had acted reasonably, it would have discovered the existence of the bodies well before two and half years after it purchased the Property.

55. Regis filed suit in the instant case on May 27, 2003.

56. The Agreement of Sale between the City and Regis provides as follows:

BUYER has inspected the Premises or hereby waives the right to do so, and has agreed to purchase the Premises as a result of such inspection and not because of or in reliance upon any representation made by Seller or any employee, agent or representative of Seller. Buyer has agreed to purchase the property AS-IS, in its present condition, including all defects, patent and latent.

57. The Court finds as a fact that, considering all of the circumstances of this case, Regis has not satisfied its burden of persuasion that it acted reasonably in filing suit so long after the usual period of the statute of limitations expired. These circumstances include, but are not limited to, that Regis is a real estate developer; that Regis purchased the property "as is;" that Regis never obtained a title report; that Regis intended to use the property to build residential homes; that Regis intended to expend a substantial amount of money and obtain a substantial profit; that Philadelphia is an old city, and so many properties therein have been used for various purposes; and that Regis did not conduct any test borings of the soil until more than six years after it bought the property.

58. The Agreement of Sale between the City and Regis provides as follows:

TITLE is to be good and marketable and such as will be insured at regular rates by any responsible title insurance company; otherwise, the Buyer, at Buyer's option, may take title as available without abatement of the purchase price or may be repaid all money paid by the Buyer on account of the purchase price as Buyer's sole remedy and, in the latter event this Agreement shall be null and void.

59. Regis did not and does not seek to exercise its remedy under this provision of the Agreement of Sale.

60. Any reliance by Mr. Reisner upon statements of City employees regarding the Property and its prior history was not reasonable.

CONCLUSIONS OF LAW

1. Tort claims are governed by a two-year statute of limitations.
2. Breach of contract actions, including claims for detrimental reliance, are governed by a four-year statute of limitations.
3. However, if the “discovery rule” applies, it tolls the running of the statute of limitations.
4. The “discovery rule” arises from the inability of the injured party, despite the exercise of reasonable diligence, to know of the injury or its cause. Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 85, 468 A.2d 468, 471 (1983). Under the “discovery rule,” the period of time during which the injured party is reasonably unaware of the injury or its cause is excluded in determining whether the statute of limitations period has run.
5. There are very few facts which reasonable diligence cannot discover. Fine v. Checcio, 870 A.2d 850, 858 (Pa. 2005), citing Crouse v. Cyclops Industries, 560 Pa. 394, 404, 745 A.2d 606, 611 (2000). Although reasonable diligence is an objective test, “it is sufficiently flexible...to take into account the differences between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question.” Id.
6. The party seeking to invoke the discovery rule bears the burden of establishing the inability to know of the injury despite the exercise of reasonable diligence. Dalrymple v. Brown, 549 Pa. 217, 224, 701 A.2d 164, 167 (1997).
7. Plaintiff filed suit more than seven years after purchasing the Property. The Court has found as a fact that if Regis had acted reasonably, Regis would have discovered the existence of the bodies well before two and half years after it purchased the Property (see Finding of Fact number 54 above). Thus, the statute of limitations began to run well before two and half years after Regis purchased the Property. To comply with the two year statute of limitations, plaintiff was required to have filed suit well before four and a half years after the purchase of the Property and to comply with the four year statute of limitations, plaintiff was required to have filed suit well before six and a half years after the purchase of the Property.
8. Plaintiff's claims are barred either by the two year or the four year statute of limitations.
9. To the extent that Regis has asserted a claim for fraud or fraudulent concealment, or to the extent that Regis' claims are based on fraud or alleged misrepresentations of the City, or the failure of the City to disclose material facts, such a claim sounds in tort.
10. Fraud is an intentional tort.
11. The City is absolutely immune from intentional tort claims pursuant to the Political Subdivision Tort Claims Act, 42 Pa. C. S. § 8541, et seq.

12. The City is absolutely immune from negligence tort claims pursuant to the Political Subdivision Tort Claims Act, 42 Pa. C. S. § 8541, et seq., unless the conduct fits within one of the eight exceptions enumerated therein.

13. The City's conduct does not fall within any of the eight exceptions set forth in the Tort Claims Act.

14. Any claims against the City for fraud, fraudulent concealment or failure to disclose are barred by immunity. Green Valley Dry Cleaners, Inc. v. Westmoreland County Industrial Development Corp., 832 A.2d 1143, 1154 (Pa. Cmwlth. 2003).

15. Assuming for the sake of argument only, that defendant breached the title clause provision of the Agreement of Sale (see Finding of Fact number 58 above), by the terms of that provision, plaintiff would be entitled to a return of the purchase price and would be required to return the Property or alternatively, plaintiff could accept the Property with the defects in title. Any alleged breach of the title clause does not entitle defendant to recover the damages it seeks and thus, cannot be the basis for a judgment in plaintiff's favor.

16. Plaintiff's argument that the City breached the Agreement of Sale provision regarding notices (see Plaintiff's Trial Brief, page 16) has no merit. The Agreement of Sale does not have a provision imposing any requirement on the City for notices the City issued before the signing of the Agreement of Sale and, in any event, there was no evidence of any notices that the City issued before the signing of the Agreement of Sale that apply to the instant case.

17. Plaintiff has not proved the elements of its claim for detrimental reliance. For example, the Court has found as a fact that under the circumstances it was not reasonable for plaintiff to rely upon any alleged statements by City employees (see Finding of Fact number 60 above).

FINDING

The Court finds in favor of the Defendant, City of Philadelphia, and against Plaintiff, Regis Development Corporation.

BY THE COURT:


HOWLAND W. ABRAMSON, J.

Dated: June 23, 2005

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PURSUANT TO Pa.R.C.P. 236(b)

JUN 23 2005

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FIRST JUDICIAL DISTRICT OF PA
USER I.D.: OSP
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REGIS DEVELOPMENT CORP
Plaintiff

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

vs.

MAY TERM, 2003

CITY OF PHILADELPHIA
Defendant

NO. 3336

JOINT STIPULATION OF FACTS

1. Plaintiff, Regis Development Corporation (herein referred to as "Regis"), is a Pennsylvania corporation with an address at 340 North 12th Street in Philadelphia.
2. Defendant, City of Philadelphia (herein referred to as the "City"), is a municipality organized under Pennsylvania Law.
3. Regis is the owner of certain property located at 524-34 Christian Street in the city of Philadelphia (the "Property").
4. The Property owned by Regis is situated between 5th and 6th Streets and fronts both Christian Street and Montrose Street in the city of Philadelphia.
5. The Property consists of two parcels on Christian Street, formerly 524 and 526 Christian Street, and seven parcels on Montrose Street, formerly 531, 533, 535, 537, 539, 541, and 543 Montrose Street. It also includes a larger parcel at 528 Christian Street (the "528 Christian Street parcel"). See Tax Map marked as Exhibit P-2.
6. On or about February 7, 1831, Francis Brown conveyed the 528 Christian Street parcel to Christian Church Mount Zion ("Mt. Zion") upon condition that it was to be used as a church and cemetery.
7. On or about October 9, 1888, a Mortgage was given by the Christian Church of Mt. Zion to Diantha Billings in the amount of \$2,000.00.

8. On or about June 17, 1903, Mt. Zion conveyed the 528 Christian Street parcel to College Settlement of Philadelphia ("College").
9. On or about September 2, 1904, Mt. Zion conveyed the 528 Christian Street parcel to Bethany Congregational Church ("Bethany").
10. On or about November 22, 1906, College conveyed the 528 Christian Street parcel to Bethany Congregational Church ("Bethany").
11. On or about November 22, 1904, a Mortgage was given by the Bethany Congregational Church to Thomas B. W. Fales and was subsequently assigned to Joseph A. Robbins in the amount of \$3,607.65.
12. In January 1912, the legal heirs of the original conveyor, Francis Brown, filed an ejectment action against Bethany to recover title to the 528 Christian Street parcel, claiming that the terms of the original covenant wherein the 528 Christian Street parcel was conveyed to the Christian Church of Mt. Zion had been breached. See Exhibit P-3.
13. On or about May 14, 1914, to avoid foreclosure, Bethany conveyed the 528 Christian Street parcel to Anna E. Woods for \$100 and with the understanding that Anna E. Woods would assume the two outstanding mortgages on the property. See Exhibit P-4.
14. Ms. Woods was not a plaintiff in the ejectment action.
15. On or about May 29, 1914, the heirs of Francis Brown (Harry Haws, et al.) also conveyed the 528 Christian Street parcel to Ms. Woods by a quit claim deed. See Exhibit P-5.

16. On August 18, 1914, an Ordinance was passed authorizing the condemnation of the Property for park purposes. See Exhibit P-6.
17. On November 11, 1914, the City petitioned to condemn the Property for use as a playground and recreation center. See Exhibit P-18.
18. A Board of View was appointed on November 25, 1914. See Exhibit P-18.
19. On March 30, 1915, an Ordinance was passed amending the prior Ordinance of August 18, 1914, in order to correct minor errors in legal description of Property. See Exhibit P-7.
20. On May 28, 1915, a third Ordinance was passed authorizing the Board of Recreation to immediately enter upon and take possession of the Property. See Exhibit P-8.
21. Thereafter, the City constructed a public playground known as the "Sunshine Playground and Recreation Center" on the site, and operated the playground until the Property was sold to Regis.
22. The Board of View issued a report on May 22, 1916, awarding Ms. Woods the sum of \$15,500 for the Christian Street Parcel. As a condition of this award, Anna E. Woods' attorney agreed to indemnify the City from any claims resulting from persons who purchased burial lots, but as of yet had not used them. See Exhibit P-9 and P-18.
23. On or about November 3, 1916, Ms. Woods conveyed the 528 Christian Street parcel to the City for \$1.00. See Exhibit P-10.
24. The record of the Board of View hearing evidences a covenant by a condemnee, Anna E. Wood, who was awarded \$15,500.00, to protect the rights of the lot holders in the cemetery:

Formal assurances of record was given before the Board of View by Counsel for Anna E. Wood [sic] that all rights of lot holders in the cemetery as which her land was used would be protected by her and the City of Philadelphia protected by her against any such claims.

25. At the time of the conveyance of the Property by Ms. Woods, the City was aware that the 528 Christian Street had been used as a cemetery and burial ground.
26. On June 28, 1917, an Ordinance was passed designating the Property as the "Sunshine Playground and Recreation Center." See Exhibit P-11.
27. Over time, the City made improvements to the Property, including the installation of a small wading pool, a sandbox, a playground building, playground equipment, and lighting.
28. In 1995, an Ordinance was passed authorizing the sale of the Property at auction.
29. Thereafter, the City offered the Property for sale at auction and Regis submitted a bid to the City offering to purchase the Property for \$45,000. See Exhibit D-14.
30. The City accepted Regis' offer and, on August 29, 1995, the parties executed an Agreement of Sale. See Exhibit P-12.
31. On May 17, 1996, in satisfaction of the Agreement of Sale, the City conveyed the Property to Regis.
32. Thereafter, in 2003, Regis began a townhouse development consisting initially of 12 to 18 townhouses.
33. During excavation work in April 2003, Regis discovered that bodies were still buried on the property.

34. During the construction of the first six basements in April 2003, Regis discovered 12 caskets buried in the ground and thereafter, discovered more human remains buried on the property.

35. Regis immediately stopped construction and notified the City of the discovery.

36. After being notified of the discovery of the bodies by Regis, the City denied any obligation to remove the humans remains and the City refused to arrange for the disposition of the human remains.

37. On or about September 29, 2003, a Decree was entered by the Honorable Anne Lazarus in the case of In Re: Abandoned Burial Ground Located at 524-34 Christian Street f/k/a Sunshine Playground as follows:

1. Petitioner Regis and/or its agents and designees, under the direction of a licensed funeral director, are authorized to remove and relocate all human remains from the abandoned burial ground located at 524-34 Christian Street, Philadelphia, Pennsylvania;
2. Petitioner Regis and/or its agents and designees, under the direction of a licensed funeral director, are authorized to transport and reinter the remains with an appropriate permanent marker; and
3. Petitioner Regis shall provide to the Division of Vital Records of the Department of Public Health and to the City Archives of the City of Philadelphia a copy of this Decree, along with a brief statement identifying the site from which the remains were removed and the site where the remains are reinterred.

38. After obtaining a Court Order from a Judge of the Orphans' Court permitting removal and reinterment of the human remains, Regis arranged for the removal and reinterment of the human remains discovered at the Property.

39. Regis incurred additional costs in arranging for the removal and disposition of the human remains.

40. Regis incurred the following direct costs and expenses resulting from the disinterment and reinterment of the human remains found at the Property:

A.	Additional excavation cost to exhume graves	\$110,583.53
B.	Laborers to exhume caskets, hand dig, separate and bag remains and tag location	42,404.00
C.	Mitchum Funeral Home fee for supervision	10,000.00
D.	Mount Zion Cemetery fee for mass grave plot	10,000.00
E.	Tri State Monument Co. for grave stone monument	4,660.00
F.	True Gospel Tabernacle Church burial fee for Reverend to supervise reinterment and funeral	3,750.00

TOTAL \$181,397.53

41. All documents attached hereto as exhibits P-1 through P-16 and P-18 are hereby stipulated to and admitted into evidence.

42. All documents attached hereto as Exhibits D-14 and D-18 are hereby stipulated to and admitted into evidence.

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

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