

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
3rd DIVISION
CASE NO. 07-CI-3780

JAN 28 2011

CHARLES HAUSMAN and
CHRISTINE HAUSMAN, his wife

PLAINTIFFS

**SUMMARY JUDGMENT
IN FAVOR OF DEFENDANTS
DAVID DENHAM AND GARRY BIZZACK ON ALL CLAIMS**

DAVID DENHAM;
GARY BIZZACK;
BILL WAUN;
BILL MICHUL, BROKER;
THE PRUDENTIAL A.S. DE MOVELLAN REAL ESTATE
d/b/a A.S. DE MOVELLAN REAL ESTATE, INC.; and
A.S. DE MOVELLAN, BROKER

DEFENDANTS

This case came before the Court for special hearing on December 16, 2010, to address numerous pending motions, including dispositive motions filed by the parties in compliance with the Court's pretrial order entered June 21, 2010. Both sides of the case (i.e., plaintiffs and all defendants) have moved for summary judgment alleging there are no material issues of fact and that the Court can and should determine the issues presented as a matter of law. The Court agrees that certain matters are ripe for decision and summary judgment is appropriate as to certain issues and parties.

The Court orally made lengthy Findings of Fact and Conclusions of Law on the record, and those are adopted and incorporated herein by reference. For the reasons stated by the Court on the record during the hearing on December 16, 2010, Defendants Denham's and Bizzack's various motions for summary judgment ^{as to all claims against them} are granted but material issues of fact remain with respect to the claims between Plaintiffs and the other

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Defendants precluding their summary judgment requests at this time.

All other pending motions not specifically addressed herein are continued generally by the Court and may be renoticed by the remaining parties for hearing.

As the Court agrees with the parties that there are no material issues of fact remaining with respect to any of the claims asserted by Plaintiffs against Defendants

Denham and Defendant Bizzack, the Court ^{GRANTS} ~~SUSTAINS~~ in all respects the dispositive

~~Motions of Defendants Denham and Bizzack for Summary Judgment, including their~~ ^{MOTIONS AS TO ANY AND ALL CLAIMS AGAINST THEM.}

~~Motion for Partial Summary Judgment (filed on or about October 14, 2010) as to Count~~

~~IV of Plaintiffs' First Amended Complaint, and their Motion for Summary Judgment on~~

~~all claims filed on or about October 26, 2010.~~

The Court therefore DENIES Plaintiffs' various cross motions for summary judgment against Denham and Bizzack including Plaintiffs' (1) Motion for Summary Judgment on Construction Defect and Code Violation Claims Pursuant to KRS 198B.130

and the Implied Warranty of Habitability filed on 10/26/10; (2) Motion for Judgment of \$22,148 to Install Escape Windows, Wells and Egress Windows filed 11/9/10; (3) Motion

~~for Summary Judgment on Counterclaim of Denham and Bizzack and in Opposition to their Corresponding Motion for Summary Judgment filed 11/16/10; and (4) Motion to~~

Dismiss Counterclaim of Denham and Bizzack for Lack of Subject Matter Jurisdiction and For Failure to State a Claim Upon which Relief may be Granted filed 11/17/10.

IT IS HEREBY ORDERED AND ADJUDGED that Defendants Denham's and Bizzack's Motion(s) for Summary Judgment are **SUSTAINED** in all respects; all claims against Defendants Denham and Bizzack are hereby **DISMISSED WITH**

PREJUDICE; and as a result Defendants Denham's and Bizzack's Motion for Summary Judgment as to their Counterclaim to enforce the April 13, 2006 Uniform Real Estate Sale and Purchase Contract terms and for specific performance of it is **MOOT**. Because there is no genuine issue as to any material fact, Denham and Bizzack are each entitled to Judgment as a matter of law and to be dismissed from this case. Likewise, Plaintiffs' cross motions to dismiss Denham's and Bizzack's counterclaim and for summary judgment against Denham and Bizzack are all **DENIED** and all claims that Plaintiffs have asserted or could have asserted against Defendant Denham and/or Defendant Bizzack are hereby **DISMISSED WITH PREJUDICE**.

Defendant Michul's motions for summary judgment are **OVERRULED** at this time and the Court has not specifically ruled on the Statute of Limitations argument set forth by Michul and Prudential.

Plaintiffs' Motion for Leave to File their third amended Complaint is **OVERRULED**.

Plaintiffs' statutory claims arising under KRS 324.160 set forth in their First Amended Complaint against Defendants Denham, Bizzack, Michul and Prudential are **DISMISSED WITH PREJUDICE**.

This is a final and appealable order and there is no just cause for delay in enforcement.

DATED: 7/28/11

James P. [Signature]
JUDGE, FAYETTE CIRCUIT COURT

HAVE SEEN;

Consistent with the Court's ruling from the Bench on December 16, 2010; and rulings in response to Motions to clarify at the January 14, 2011 hearing.

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CLERK'S CERTIFICATE OF SERVICE

This is to certify that the foregoing was served by mailing same first class mail, postage prepaid, on January ~~28~~ 2011, to:

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