

RONALD G. RAMSEY et al.

v.

PEPPERELL BANK & TRUST

Argued March 12, 2008

Decided April 29, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD,
and GORMAN, JJ.

MEMORANDUM OF DECISION

Ronald G. and Ann M. Ramsey, individually and as the principals of Quarterdeck Market LLC, appeal from the judgment of the Superior Court (York County, *Brennan, J.*) granting partial summary judgment in favor of Pepperell Bank & Trust on the Ramseys' multi-count complaint alleging damages from the manner in which Pepperell exercised its power of sale and auctioned real and personal property.

Contrary to the Ramseys' contention, the trial court did not err in granting summary judgment on the Ramseys' tort claims of negligence, malpractice, and wrongful foreclosure in the sale of Quarterdeck's real and personal property. *See First NH Banks Granite State v. Scarborough*, 615 A.2d 248, 250-51 (Me. 1992) (declining to impose an implied duty of good faith and fair dealing except in specific circumstances); *see also* 11 M.R.S. § 9-1604(1) (2007) (providing that the default provisions of Article 9-A of the Uniform Commercial Code do not apply to the auction of personal property performed in conjunction with realty if the party, as conceded to be the case here, elects to proceed in accordance with the rights with respect to the real property). Furthermore, the Ramseys did not plead a cause of action for breach of contract.

Nor did the Superior Court err in entering summary judgment in Pepperell's favor on the Ramseys' unfair and deceptive trade practices claim, *see* 5 M.R.S. §§ 205-A to 214 (2007), and by treating the statutory exemption to the Maine Unfair Trade Practices Act, found in 9-B M.R.S. § 244 (2007), as not having been waived, *see Jones & Jones v. Pineda & Pineda*, 22 F.3d 391, 400 (1st Cir. 1994).

Furthermore, the Superior Court properly entered summary judgment in favor of Pepperell on the Ramseys' fraudulent transfer claim, *see* 14 M.R.S. §§ 3571-3582 (2007), because the Ramseys failed to establish that they qualify as creditors under the Uniform Fraudulent Transfer Act, *see* 14 M.R.S. § 3572(3), (4). Finally, the Superior Court did not err in awarding Pepperell attorney fees where the parties' contract allowed for recovery of attorney fees incurred in the enforcement of the agreement and the Ramseys initiated a suit collaterally attacking Pepperell's enforcement of the agreement. *See First NH Banks Granite State*, 615 A.2d at 251 (allowing fees incurred defending against counterclaims).

The entry is:

Judgment affirmed.

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