[Cite as *Johnsonite, Inc. v. Welch*, 2011-Ohio-6858.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

JOHNSONITE, INC.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2011-G-3012
- vs -	:	
MARK WELCH, LIQUIDATING TRUSTEE OF THE JRC LIQUIDATING TRUST, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 09M001010.

Judgment: Affirmed.

Dale H. Markowitz and *J. Jaredd Flynn*, Thrasher, Dinsmore & Dolan, 100 Seventh Avenue, #150, Chardon, OH 44024-1079 (For Plaintiff-Appellee).

Andrew A. Kabat, Haber, Polk & Kabat, L.L.P., 737 Bolivar Road, #4400, Cleveland, OH 44115; and *Thomas C. Nader*, Nader & Nader, 5000 East Market Street, #33, Warren, OH 44484 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, The Middlefield Industrial Complex, Inc. ("MIC"), et al., appeal from the judgment of the Geauga County Court of Common Pleas awarding appellee, Johnsonite, Inc., summary judgment on its complaint to quiet title over four parcels of real property. For the reasons discussed in this opinion, we affirm.

{¶2} In 1990, the Johnson Rubber Company merged with Duramax, Inc., and the surviving corporation was named Duramax. There is no dispute that, as a result of

this merger, Duramax became the sole shareholder of all Johnson Rubber Company stock and obtained title to all real property formerly owned by the Johnson Rubber Company. The record demonstrates that the merger was registered with the Ohio Secretary of State and the merger agreement was filed with the Geauga County Recorder's Records of Incorporation.

{¶3} Of the assets acquired by Duramax in the merger, four parcels of real property located in Middlefield, Ohio (the "Thompson Parcels"), are the subject of the underlying lawsuit. There is no dispute that title to the Thompson Parcels passed to Duramax by virtue of its merger with the Johnson Rubber Company in 1990; it is notable, however, that, notwithstanding the transfer of title, the deeds to the Thompson Parcels listed the defunct Johnson Rubber Company as the existing owner of the parcels.

{¶4} From 1990 through 2005, Duramax owned and operated two separate non-incorporated businesses in Middlefield, Ohio. The businesses were respectively referred to as the Johnson Rubber Company Division and the Johnsonite Division. The Johnson Rubber Company Division was primarily an automotive part supplier, while the Johnsonite Division was a vinyl and rubber flooring distributor. The uncontroverted testimony of Chris Webb, Chief Financial Officer of Duramax during the time relevant to this case, demonstrated that Duramax did not conduct business as the Johnson Rubber Company on the Thompson Parcels. Rather, according to Webb, a warehouse was situated on the Thompson Parcels, which was used exclusively by Duramax's Johnsonite Division to store flooring inventory. Webb unequivocally testified that at no

time did the Johnson Rubber Company Division utilize the real estate of, or any of the buildings situated on, the Thompson Parcels.

{¶5} In December 2005, Duramax merged with another company, Tarkett AC ("Tarkett"), thereby forming Johnsonite, Inc. ("Johnsonite"). Prior to the merger, both Webb and Russell Greenberg, Chairman of Duramax at the time of this merger, testified that Tarkett did not want to be involved in the automotive part business. To accomplish the merger, therefore, Duramax made arrangements to sell all assets used by Johnson Rubber Company Division. Greenberg testified, however, that Duramax wished to provide its shareholders with a continuing interest in the business conducted by the Johnson Rubber Company Division. As a result, Duramax, through various agents, created two additional companies, Johnson Rubber Company, Inc., a Delaware Corporation, and JR Holding Corp., to purchase the assets used by the Johnson Rubber Company Division to maintain the automotive part business under these corporate rubrics. On December 8, 2005, the two recently-formed companies entered into an agreement with Duramax, captioned "JR Asset Purchase Agreement" ("APA"), to purchase the assets used by Duramax's Johnson Rubber Company Division in its automotive part business.

{¶6} The APA designated Duramax as the "Seller," and Johnson Rubber Company, Inc., a Delaware Corporation ("JRCI"), and JR Holding Corp., collectively, as the "Purchaser." The APA identified the "Johnsonite Division" as "Seller's Johnsonite Division and the business conducted by such division, which includes the designing, manufacturing, marketing and selling of Rubber Flooring Products." The APA further defined "JR Business" as "Seller's Johnson Rubber Company division and the business

conducted by such division, which includes the manufacturing, design, sales and marketing operations and the JR Assets, and includes all operations conducted by Seller's Johnson Rubber Company division at the Middlefield Facility and NorBalt [North Baltimore] Facility."

{¶7} Article 2.1 of the APA details the assets Duramax was selling to the purchasing companies. In relevant part, that section provides:

{¶8} "On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall accept, acquire and assume from Seller, all of Seller's right, title and interest in, to and under the JR Assets. 'JR Assets' shall mean all of the business, assets properties, contractual rights, goodwill, going concern value, rights and claims of Seller (i) located at Seller's facilities in, respectively, Middlefield, Ohio *** and North Baltimore, Ohio *** or (ii) otherwise used or held for use exclusively in the operation and conduct of the JR Business, wherever situated and of whatever kind and nature, real or personal, tangible or intangible, including, without limitation, each of the following assets (but excluding the Excluded Assets):

{¶9} "(a) the real property located in Middlefield, Ohio, and in North Baltimore and more fully described on Schedule 2.1(a), together with all buildings, facilities, structures, fixtures and other improvements thereon, including those under construction, and all rights, privileges, easements, hereditaments and appurtenances thereto, belonging to or for the benefit of the property (collectively, the 'Real Property');"

{¶10} Schedule 2.1(a) referenced 11 parcels of real property. On the date the APA was entered, Duramax transferred the 11 parcels via the execution and delivery of

a quitclaim deed to JRCI. Conspicuously, the Thompson Parcels were *not* included in this list, and there is no evidence that Duramax ever delivered the deeds of the parcels or caused the deeds to be delivered to JRCI or JR Holding Corp.

{¶11} On the other hand, the merger agreement between Duramax and Tarkett identifies the warehouse at 14996 S. Thompson in Middlefield as Duramax property subject to or included in the merger. And, according to Webb, after the merger, the Thompson Parcels were scheduled in the Johnsonite year-end depreciation reports as assets of that company. Appellants do not dispute that this warehouse, located on the Thompson Parcels, was where the Johnsonite Division of Duramax kept its flooring inventory prior to the merger and eventual formation of Johnsonite. Nor do appellants dispute the evidence indicating that the Johnsonite Division was the exclusive user of the warehouse prior to and at the time of the APA.

{¶12} In December 2007, JRCI filed a Chapter 11 Voluntary Petition for bankruptcy. The bankruptcy court appointed Mark Welch as the liquidating trustee of JRCI. And, in August 2008, the bankruptcy court issued an order confirming the modified, amended joint plan of liquidation, authorizing the sale of assets without further order of the court. In late November 2008, JRCI, by and through Welch, entered into a real estate purchase agreement with American Steel City Industrial Leasing, Inc., assignor of appellant-MIC, for the sale of 15 parcels of real property located in Middlefield, Ohio, for $325,000. The 11 parcels identified in the APA as well as the four Thompson Parcels were included in this agreement. In December 2008, pursuant to the purchase agreement, Welch conveyed the 15 parcels to MIC via quitclaim deed which was ultimately recorded in the Geauga County Deed Records in early 2009.

{¶13} Upon discovering that the Thompson Parcels were included in the foregoing liquidation, Johnsonite filed a complaint alleging claims for slander of title and trespass, as well as a request for quiet title and declaratory judgment. The following parties were named as defendants: Welch, as the liquidating trustee of the JRC Liquidating Trust; MIC; William Marstellar; Title First Agency, Inc.; and First American Title Insurance Company. MIC moved the trial court to dismiss the complaint for lack of subject matter jurisdiction alleging the bankruptcy court possessed exclusive jurisdiction over any dispute relating to the liquidation of JRCI's former assets. While the motion was pending, Johnsonite filed an amended complaint, alleging the same claims, but dismissing Welch as a defendant. MIC subsequently renewed its motion to dismiss.

{¶14} During discovery, Webb and Greenberg were deposed. In his deposition, Webb testified he was instrumental in the Duramax/Tarkett merger and, specifically, reviewed the asset list that was the subject of the APA. Webb repeatedly testified that the Thompson Parcels were not included in the APA between Duramax and JRCI. He further asserted that Duramax never intended to convey its interest in the Thompson parcels to JRCI via the APA.

{¶15} Furthermore, Greenberg testified that he assisted in the preparation of the APA and did not recall descriptions of the Thompson Parcels in the agreement. He testified that the APA was entered for JRCI to receive the assets necessary to operate its business, i.e., supplying automotive parts. Greenberg specifically testified that the Thompson Parcels were unnecessary for JRCI's operations. Finally, Greenberg noted that even had the Thompson Parcels been somehow transferred via the APA, any such transfer would have been inadvertent or a mistake. Following his deposition, Mr.

Greenberg submitted an errata sheet explaining a misstatement in his testimony. MIC moved to strike the errata sheet as improper.

{¶16} In August 2010, Johnsonite filed a motion for partial summary judgment on its claims to quiet title and for declaratory judgment to which it appended, inter alia, Webb's affidavit. MIC subsequently moved to strike portions of the affidavit, which, it argued, were inconsistent with Webb's deposition testimony. MIC then filed a motion for summary judgment on Johnsonite's amended complaint.

{¶17} On February 9, 2011, the trial court overruled MIC's motion to dismiss; overruled MIC's motion to strike Greenberg's errata sheet and motion to strike portions of the Webb affidavit; and denied MIC's motion for summary judgment. In a later entry, the trial court granted Johnsonite's motion for partial summary judgment, declaring that "Johnsonite has all right, title and interest, as well as the right of possession to the Thompson Parcels; and neither MIC nor any other person or entity has any right, title or interest in and to the Thompson Parcels." Johnsonite subsequently dismissed its claims for trespass and slander of title.

{¶18} Appellants now appeal asserting three assignments of error. We shall consider the assigned errors out of sequence.

{¶19} For their second assignment of error, appellants assert:

{¶20} "The trial court erred in denying MIC's motion to strike portions of the affidavit of Chris Webb and the errata sheet of Russell Greenberg."

{¶21} A reviewing court considers a trial court's decision relating to a motion to strike for an abuse of discretion. *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, 2005-Ohio-1509, at ¶10. An abuse of discretion is a term of art, connoting a judgment

which fails to comport with either reason or the record. *Gaul v. Gaul*, 11th Dist. No. 2009-A-0011, 2010-Ohio-2156, at ¶24.

{¶22} Appellants initially contend the trial court abused its discretion in denying their motion to strike Webb's affidavit because it contradicted his previous deposition testimony, and the information within the document was not based upon his personal knowledge. We do not agree.

{¶23} First, appellants assert that Webb contradicted himself when he testified at the deposition that he had no knowledge of what MIC purchased during the bankruptcy proceedings, but later averred he possessed knowledge of that transaction. This is neither a contradiction nor do appellants provide support for their allegation that this statement was made without personal knowledge.

{¶24} The deposition was taken in April 2010, and the affidavit was prepared and executed in July 2010. It is not unreasonable to conclude that Mr. Webb, as the Civ.R. 30(B)(5) representative of Johnsonite in the lawsuit, became gradually more familiar with the details of the property specifically transferred via the APA and consequently aware of those parcels to which JRCI received title by way of the APA. From this basic and readily available information, Webb could have easily obtained personal knowledge of what, in his estimation, transferred to the bankruptcy estate. In evaluating the existing documents, Webb could have deduced that, from the objective paperwork, the trustee's transfer was invalid because, in his opinion, JRCI did not possess title to the Thompson Parcels. We therefore hold Webb's affidavit testimony does not necessarily contradict his deposition testimony and appellants fail to make a compelling argument that his affidavit testimony was not based upon his personal

knowledge. The trial court did not abuse its discretion in denying appellants' motion to strike the Webb affidavit.

{¶25} Next, appellants contend the trial court abused its discretion in denying their motion to strike the errata sheet submitted by Greenberg after his deposition. Again, we disagree.

{¶26} During his deposition, Greenberg was asked: "Is it your testimony that as part of the [APA], the properties in question in this lawsuit were transferred by Duramax, Inc., to [JRCI] and JR Holding Corp.?" Greenberg replied: "Yes."

{¶27} After reviewing his deposition, Greenberg submitted an errata sheet to explain the above testimony. The errata sheet, signed by Greenberg, stated the foregoing testimony was a misstatement. He explained:

{¶28} "Duramax Inc. only transferred to JR Holding Corp. the properties used by the Johnson Rubber business at the time of the merger of Duramax to Tarkett. This is how the split between Johnsonite and Johnson Rubber was accomplished. Then during the bankruptcy proceeding, the bankruptcy trustee tried to convey certain Johnsonite properties known as the Thompson parcels to the buyer of the J.R. Holding real estate."

{¶29} Appellants assert the trial court should have granted the motion to strike the errata sheet because it contradicts Greenberg's deposition testimony. A review of Greenberg's deposition, however, reveals that the statement which caused Greenberg to submit the errata sheet was isolated and fundamentally inconsistent with the overall substance of his testimony.

{¶30} Although Greenberg did indicate in the above-quoted testimony that the APA included the Thompson parcels, his remaining testimony suggested the opposite.

Greenberg testified that Duramax intended to transfer only those assets to JRCI that were used in the Johnson Rubber Company Division's business, viz., automotive supply, *not* flooring. Greenberg also testified that it was his understanding that the Thompson Parcels would remain owned by Duramax and later, via the merger, by Johnsonite. Finally, Greenberg testified that, prior to his deposition, he reviewed the APA and did not recall seeing any references to the Thompson Parcels as assets to be transferred. As the great balance of Greenberg's testimony is consistent with the qualification made on the errata sheet, we hold the trial court did not abuse its discretion in allowing the errata sheet to remain in evidence.

{¶31} Appellants' second assignment of error is overruled.

{¶32} Appellants' first assigned error provides:

{¶33} "The trial court erred in denying MIC's motion for summary judgment or, in the alternative, in not determining that an issue of material fact remained to be tried."

{¶34} Summary judgment is a procedural tool that terminates litigation and therefore should be awarded with great caution. *Davis v. Loopco Industries, Inc.,* 66 Ohio St.3d 64, 66, 1993-Ohio-195. Keeping this in mind, an award of summary judgment is proper where (1) there is no genuine issue of material fact remaining to be litigated; (2) the movant is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence in favor of the non-movant, that conclusion favors the moving party. Civ.R. 56(C); see, also, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶35} An appellate court must adhere to the same standard of review employed by the trial court. In the argot of appellate law, we review an award of summary

judgment de novo. See, e.g., *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336. That is, an appellate court considers the entire record anew and accords the trial court's determination on summary judgment no deference. *Brown v. Cty. Commrs.* (1993), 87 Ohio App.3d 704, 711. If, upon review, there is a sufficient disagreement on a material issue of fact such that the case cannot be resolved as a matter of law, an award of summary judgment must be reversed and the cause submitted to a jury. "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248.

{¶36} Under their first assignment of error, appellants initially assert the trial court erred (1) in failing to enter summary judgment in their favor and (2) in entering summary judgment in Johnsonite's favor. As they are related, we shall consider these arguments together.

{¶37} In support of their positions, appellants claim the unambiguous language of the APA demonstrates the Thompson Parcels were sold to JRCI. Appellants specifically note that the APA gave JRCI all interest in Duramax's Johnson Rubber Company Division assets. Appellants further point out that such assets included "*** properties *** rights and claims of [Duramax] *** located at [Duramax's] facilities in *** Middlefield, Ohio." Because the Thompson Parcels were real properties owned by Duramax in Middlefield, Ohio, and recorded under the name "Johnson Rubber Company," appellants assert the bankruptcy trustee legitimately sold parcels to MIC in the course of liquidating JRCI's assets. Therefore, appellants maintain the trial court

erred as a matter of law in granting Johnsonite's motion and, moreover, committed error in denying MIC's motion. We do not agree.

{¶38} The evidence demonstrated that the APA transferred all of Duramax's interest in Johnson Rubber Company Division's assets to JRCI. However, there was nothing in the record indicating the Thompson Parcels were ever used or considered part of Duramax's Johnson Rubber Company Division's assets. Webb testified that the property and facilities of the Thompson Parcels were used *exclusively* for the Johnsonite Division of Duramax's business. Both Webb and Greenberg testified that the 45,000 square foot warehouse on the Thompson Parcels was filled with Duramax's Johnsonite Division's rubber and vinyl flooring inventory. There was no evidence to contradict these points and nothing in the record that could support the inference that Duramax's Johnson Rubber Company Division, an automotive part supplier, utilized any aspect of the parcels such that they could be reasonably viewed as assets of that division. Simply because the Thompson Parcels were owned by Duramax prior to the APA and were located in Middlefield, Ohio, does not imply those parcels were assets of Duramax's Johnson Rubber Company Division.

{¶39} Finally, and perhaps most significantly, the APA set forth a list of the real property parcels included in the sale of assets. The four Thompson Parcels do not appear on this list. Similarly, the summary of asset schedules for JRCI's bankruptcy was included in Johnsonite's amended complaint. The only real property listed within the asset schedule is that which was expressly transferred by way of the APA; namely, the 11 properties in Middlefield, Ohio, and various properties in North Baltimore, Ohio. In other words, the Thompson Parcels *do not appear on the schedule of assets*

prepared for JRCI's bankruptcy proceeding. To the extent the parcels were neither listed as specific properties being sold to JRCI on the APA nor listed by JRCI in its schedule of assets for the bankruptcy case, we cannot conclude JRCI had title to the parcels at the time it filed for bankruptcy.

{¶40} We recognize that the deeds to the Thompson Parcels designated the Johnson Rubber Company as their owner; this designation, however, neither suggests the parcels were included in the APA as property contemplated for sale in 2005, nor does it suggest that the bankruptcy trustee possessed authority to sell these parcels during the bankruptcy liquidation process.

{¶41} The record is uncontroverted that the Johnson Rubber Company preceded Duramax as owner of the parcels. In 1990, Johnson Rubber Company was completely merged into Duramax and, with that merger, Duramax became the owner of all existing Johnson Rubber Company assets and the owner and holder of the issued and outstanding shares of common and preferred stock of Johnson Rubber Company. At this point, the record indicates the incorporated entity designated as the Johnson Rubber Company *ceased* to formally exist.

{¶42} There is no dispute that Duramax was the lawful owner of the parcels at the time of the APA and no dispute that the parcels were used for the sole purpose of conducting Duramax's Johnsonite Division's business. The appearance of the defunct company's name on the deeds is therefore inconsequential. The question, for purposes of determining lawful title to the Thompson Parcels, is whether they were a Johnson Rubber Company Division asset and therefore transferred via the APA to JRCI. As

discussed above, the evidence and testimony demonstrates the parcels were not such assets.

{¶43} Given this analysis, we hold the trial court did not err in denying MIC's motion for summary judgment. Moreover, even when the evidence is viewed in a light most favorable to appellants' position, this court concludes Johnsonite was entitled to summary judgment as a matter of law.

{¶44} Appellants' final argument under their first assignment of error asserts that, even if Johnsonite was the owner of the parcels at the time MIC entered its agreement with the trustee to purchase the 15 parcels, they are nevertheless entitled to equitable relief because MIC was an innocent purchaser for value. We do not agree.

{¶45} To be an innocent purchaser for value, one must be a purchaser, pay value, and have no notice of other equities. *Hartman v. Tillett* (1948), 86 Ohio App. 20, 24. The record indicates MIC purchased the parcels for value; MIC also took the parcels, however, by quitclaim deed. In Ohio, a quitclaim deed, in and of itself, is notice that there may be title imperfections. *Finomore v. Epstein* (1984), 18 Ohio App.3d 88, 91. Here, such imperfections were readily discoverable by a simple inspection of the bankruptcy estate's record.

{¶46} As indicated above, the Thompson Parcels were not listed on the schedule of assets in the JRCI bankruptcy estate. In entering the purchase agreement to buy these parcels, however, MIC evidently failed to cross-reference the bankruptcy schedule. The schedule of assets was part of the bankruptcy record; and, as a result, MIC had constructive notice, at the very least, of a potential imperfection in the title to the four Thompson Parcels. The absence of the Thompson Parcels from the schedule

of assets placed MIC on notice that JRCI may not have possessed good title to the properties. MIC therefore had notice of other equities and cannot enjoy the status of an innocent purchaser for value. Appellants' argument is without merit.

{¶47} Appellants' first assignment of error is without merit.

{¶48} For their third assignment of error, appellants allege:

{¶49} "The trial court erred in denying MIC's motion to dismiss for lack of subject matter jurisdiction because the bankruptcy court had exclusive jurisdiction over the real property at issue."

{¶50} A trial court's disposition of a Civ.R. 12(B)(1) motion to dismiss, as well as this court's standard of review, may be summarized as follows:

{¶51} "After a party files a Civ.R. 12(B)(1) motion to dismiss, the trial court must determine whether the complaint contains allegations of a cause of action that the trial court has authority to decide. *** The Ohio Supreme Court has further noted that the 'trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction pursuant to a Civ.R. 12(B)(1) motion to dismiss, and it may consider material pertinent to such inquiry.' *** We apply *de novo* review to the trial court's decision on a motion to dismiss for lack of subject matter jurisdiction." (Emphasis sic and internal citations omitted.) *Brethaur v. Fed. Express Corp.* (2001), 143 Ohio App.3d 411, 413.

{¶52} A matter is within the jurisdiction of a bankruptcy proceeding if it is simply "related to" the bankruptcy. *Intl. Total Servs, Inc. v. Garlitz*, 8th Dist. No. 90441, 2008-Ohio-3680, at ¶11, citing *Peabody Landscape Constr., Inc. v. Schottenstein* (S.D. Ohio, 2007), 371 B.R. 276. The Sixth Circuit Court of Appeals has determined that a claim is

"related to" a bankruptcy proceeding if the result of the matter "'*** could alter the debtor's rights, liabilities, options, or freedom of action and which in any way impacts upon the handling and administration of the bankrupt estate.'" *Browning v. Levy* (C.A.6, 2002), 283 F.3d 761, 773, quoting *In re Dow Corning Corp.* (C.A.6, 1996), 86 F.3d 482, 489.

{¶53} Appellants contend the Thompson Parcels were clearly related to the JRCI bankruptcy proceedings because MIC's purchase of the parcels occurred as a result of the bankruptcy liquidation process and the proceeds of the sale were used to satisfy JRCI's creditors. MIC further contends that, even if the trial court judgment stands, it will have a cause of action against the bankruptcy estate for breach of the purchase agreement. As the underlying dispute impacts the bankruptcy trustee's liquidation, appellants maintain the bankruptcy court possesses exclusive jurisdiction over the issue. Thus, appellants conclude the trial court erred in denying their motion to dismiss.

{¶54} In response, Johnsonite argues the trial court did not err in denying appellants' motion to dismiss because JRCI never owned the parcels. Because the properties were never an actual part of the bankruptcy estate, Johnsonite maintains they are completely unrelated to the bankruptcy. If the parcels were never the property of the bankruptcy estate, they have no legal impact upon the bankruptcy, irrespective of the trustee's erroneous inclusion of the parcels in the liquidation process.

{¶55} As previously discussed, the Thompson Parcels were not assets listed in JRCI's schedule of assets. As the Thompson Parcels located in Middlefield were not among the 11 properties set forth in the schedule of assets, the underlying action to

establish title to the parcels is not "related to" the bankruptcy. More to the point, it is clear that the disposition of the case will affect the rights of Johnsonite and MIC; however, because the Thompson Parcels were not assets to which the bankrupt estate claimed title in its schedule, the disposition of the underlying complaint could not alter the rights, liabilities, options, or freedom of action of JRCI, nor could it in any way impact the handling and administration of the bankruptcy.

{¶56} "It is well-settled that when a deed is delivered and accepted without qualification pursuant to a real estate purchase agreement, the agreement merges with the deed and no separate cause of action under the contract exists." *Westwinds Dev. Corp. v. Outcault*, 11th Dist. No. 2008-G-2863, 2009-Ohio-2948, at ¶79, citing *Fuller v. Drenberg* (1965), 3 Ohio St.2d 109, paragraph two of the syllabus. When a merger occurs, therefore, the parties to the real estate transaction are limited to the covenants of the deed. *Westwinds*, supra, at ¶80.

{¶57} Here, pursuant to the purchase agreement, MIC received quitclaim deeds for the properties. This court has observed that a quitclaim deed transfers only the rights a grantor possesses at the time of conveyance and does not warrant the grantor free and clear or good title. *Finomore*, supra, at 90. Applying these points of law, MIC has no cause of action against JRCI or the trustee. MIC accepted the terms of the purchase agreement and once the agreement merged with the quitclaim deed, MIC was precluded from proceeding against the trustee for a breach of contract.

{¶58} The trial court, therefore, did not err in overruling appellant's Civ.R. 12(B)(1) motion to dismiss.

{¶59} Appellants' third assignment of error lacks merit.

{¶60} For the reasons discussed in this opinion, the appealed judgment entries of the Geauga County Court of Common Pleas are hereby affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.