



May 9, 2012

volume 11 issue 18

### CLEARLY BETTER DOCUMENT REVIEW.

Pangea3 Legal Process Outsourcing

LEARN MORE »



THOMSON REUTERS

#### DOCUMENT REVIEW THAT IS CLEARLY BETTER.

Clear process, workflow and communication. Every step of the way. Pangea3 Legal Process Outsourcing



Join the DRI Community



### In The Voice

[This Week's Feature](#)

[DRI News](#)

[And The Defense Wins](#)

[Quote of the Week](#)

[Leader Spotlight](#)

[DRI Blog—The Defense Perspective](#)

[DRI Cares](#)

[Legislative Tracking](#)

[DRI CLE Calendar](#)

### DRI Publications

[Excess and Umbrella Insurance State-by-State Compendium](#)

## And The Defense Wins

### Robert M. Cavalier and Jordan S. Tafflin



DRI members [Robert M. Cavalier](#) and [Jordan S. Tafflin](#) of [Lucas and Cavalier LLC](#) in Philadelphia recently prevailed on a motion for summary judgment on behalf of TEB Associates, Inc. and two of its principals/employees. The court dismissed plaintiffs' claims against TEB, consisting of negligent inspection/contractual interference

and fraud. On or about January 24, 2009, the plaintiffs entered into an agreement of sale with a now defunct builder for the purchase and construction of a modular home. Prior to the setting/building of the modular home, there was an old house on a portion of plaintiffs' property. Plaintiffs themselves demolished and removed much of the old home, but left the existing foundation underground and entered into a contract obligating the builder to remove the foundation. The builder never removed this foundation.

During the process, the plaintiffs entered into a construction mortgage commitment with a bank (not TEB) for construction financing. Contained within the construction mortgage commitment was a provision stating, "[I]nspections will be performed by TEB Associates and all advances will be made for work completed...[.]Inspections are performed to assure the Bank that the value of the work is at least sufficient to cover our payments to you." In essence, TEB's very limited role in the construction of the plaintiffs' home was to provide the bank with ongoing ground level/visual construction inspections (rather than underground inspections) to determine the funds being requested for work completed on the plaintiffs' property was sufficient. Accordingly, TEB was not retained to perform an underground investigation of plaintiffs' property. Consistent with their responsibilities, TEB conducted five different visual observations for the bank and prepared separate reports for each inspection, which were only submitted to the bank.

Throughout the litigation, the plaintiffs advanced various arguments claiming TEB somehow owed a duty to them, including going so far as to produce an expert report from Jonathan P. Dixon, an engineer and "construction manager." Dixon opined TEB did not satisfactorily perform the services provided to the bank and thus breached a non-specified duty presumably owed to the bank. Further, he contended TEB failed to inspect the quality of one aspect of the work, namely whether the remnants of the old foundation were fully and completely removed from below the surface of the earth, pursuant to a contractual obligation on the part of the builder.

In its motion for summary judgment, TEB argued, and the court agreed, TEB did not owe a duty to the plaintiffs in their role in the construction of plaintiffs' modular home. Specifically, as noted above, the construction mortgage commitment stated TEB's inspections were performed solely for the bank's benefit and not for the plaintiffs. Further, discovery confirmed the bank (and not the plaintiffs) retained TEB, and the plaintiffs never received or reviewed the TEB residential inspection reports until after



## Links

[About DRI](#)

[Amicus Briefs](#)

[Blawgs](#)

[For The Defense Archives](#)

[Membership](#)

[Membership Directory](#)

[News](#)

[CLE Seminars and Events](#)

[Publications](#)

[The Alliance](#)

[DRI International](#)

[Print to PDF](#)

Share this newsletter



litigation had begun. As such, the plaintiffs could not have relied on any TEB inspection report, as they did not know they even existed. The court also rejected plaintiffs' third-party beneficiary argument.

Also, in their motion for summary judgment, TEB argued, and the court agreed, the plaintiffs failed to show TEB committed fraud. The court concurred with TEB in that they had no knowledge (and were not expected to know) the pre-existing foundation and footings still remained underneath the plaintiffs' home at the time of their inspections, since TEB was not retained to perform an underground investigation. In fact, deposition testimony revealed the plaintiffs themselves were aware of the preexisting footing, and the existence of the preexisting foundation and footings could not be seen without the use of some type of excavating equipment.

[Back...](#)