

IN THE COURT OF CLAIMS OF OHIO

JACK BARGA, et al.

Plaintiffs

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2025-00027JD

Judge David E. Cain

DECISION

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COURT OF CLAIMS
OF OHIO

On July 11, 2025, Plaintiffs filed their Amended Complaint in this matter. On July 24, 2025, Defendant filed a Motion to Dismiss, requesting that this Court dismiss all but one of Plaintiffs' claims pursuant to Civ.R. 12(B)(6). Defendant's Motion is now fully briefed before the Court. For the reasons stated herein, Defendant's Motion to Dismiss is GRANTED, in part, and DENIED, in part.

I. Background

Plaintiffs are a group of Ohio State University students and their parents who allege that the University failed to provide safe and habitable housing in Lawrence Tower, a dormitory for first-year students. The students entered into residential agreements with Ohio State and moved into Lawrence Tower in August 2024. Shortly thereafter, they began experiencing respiratory symptoms, cognitive issues, and other health concerns, which they attribute to mold and other environmental hazards present in the dormitory. Amended Complaint at ¶¶ 1-3; 12; 22.

Lawrence Tower, previously a Holiday Inn Express, was purchased by Campus Partners in 2009 and then transferred to Ohio State. Plaintiffs allege that the building had known mold and asbestos issues at the time of purchase, and that Ohio State failed to remediate these hazards adequately. Although mold remediation was performed in 2009, subsequent testing revealed elevated levels of Cladosporium mold, which persisted in the building. *Id.* at ¶¶ 14-20. Plaintiffs further claim that Defendant's

renovations were rushed—completed in two months instead of the recommended two years—raising concerns about the adequacy of environmental safety measures. *Id.* at ¶ 21. In November 2024, media coverage revealed that mushrooms were growing out of walls in Lawrence Tower, prompting further investigation and independent mold testing by students. These tests allegedly uncovered black, yellow, and purple mold behind wallpaper and other surfaces. *Id.* at ¶ 3; 23–25.

Plaintiffs assert five causes of action against Defendant: negligence, alleging failure to maintain Lawrence Tower in a safe condition and asserting negligence per se based on violations of R.C. 5321.04; breach of the implied warranty of habitability, which Plaintiffs contend arises from the same statutory duties in R.C. 5321.04 requiring landlords to keep premises fit and habitable; breach of contract, alleging Defendant failed to meet its obligations under the Housing Contract; nuisance, claiming Defendant's conduct substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their dorm rooms; and fraud, alleging material misrepresentations and omissions regarding the safety and habitability of the residence hall both before move-in and after move-in, during remediation efforts. Defendant's Motion challenges all of Plaintiffs' claims except for breach of contract.

II. Standard of Review

A motion to dismiss filed pursuant to Civ.R. 12(B)(6) tests the sufficiency of the claims asserted in a complaint. *Gordon v. Ohio Dept. of Rehab. & Corr.*, 2018-Ohio-2272, ¶ 13 (10th Dist.). In performing such an analysis, the court must “presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party.” *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). The Court's review must remain confined to the allegations within the complaint and any documents attached and incorporated therein. *Pruitt v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-3743, ¶ 5 (10th Dist.); *Mariner Fin., LLC v. Childs*, 2021-Ohio-3935, ¶ 8 (10th Dist.). The Court may not consider any evidence outside of the four walls of the

complaint unless it converts the motion to dismiss into a motion for summary judgment with notice to the parties. *Powell v. Vorys*, 131 Ohio App.3d 681, 684-685 (10th Dist. 1998). Nonetheless, the court may consider legal memoranda and briefs on legal issues to determine whether the complaint failed to state a claim upon which relief can be granted. *State ex rel. Scott v. City of Cleveland*, 2006-Ohio-6573, ¶ 6. Courts are not required to “accept as true any unsupported and conclusory legal propositions advanced in the complaint.” *Fluellen v. Miller*, 2024-Ohio-265, ¶ 6 (10th Dist.).

III. Law and Analysis

A. Implied Warranty of Habitability, Negligence, and the Landlord–Tenant Act

In 1974, the General Assembly enacted R.C. Chapter 5321, commonly known as the Ohio Landlord–Tenant Act. “The Act codifies the law of [Ohio] regarding rental agreements for residential premises, and governs the rights and duties of both landlords and tenants.” *Vardeman v. Llewellyn*, 17 Ohio St.3d 24, 26 (1985). These duties include compliance with health and safety codes, maintaining the premises in a fit and habitable condition, keeping common areas safe and sanitary, and ensuring plumbing fixtures are in good working order. See R.C. 5321.04(A). These statutory duties form the basis of the implied warranty of habitability, which guarantees that the residential premises will be safe and fit for human habitation throughout the tenancy, regardless of whether the lease expressly provides for such conditions. *Shroades v. Rental Homes*, 68 Ohio St.2d 20, 25 (1981). Furthermore, a landlord’s violation of the duties imposed by R.C. 5321.04(A) constitutes negligence per se, subject to a limited notice defense. *Sikora v. Wenzel*, 88 Ohio St.3d 493, 498 (2000); *Mann v. Northgate Investors, L.L.C.*, 2014-Ohio-455, ¶ 32; *McKenzie v. FSF Beacon Hill Assocs., LLC*, 2006-Ohio-6894, ¶ 11 (10th Dist.).

Plaintiffs allege that Defendant breached the implied warranty of habitability and acted negligently by failing to maintain dormitory conditions at Lawrence Tower in a safe

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and habitable state, resulting in the students immediate and prolonged exposure to mold, legionella, and other hazards. They assert that Defendant, as landlord, violated statutory duties under R.C. 5321.04 by disregarding health and safety codes and failing to make necessary repairs to keep the premises habitable. Amended Complaint at ¶¶ 103–107; ¶¶ 111–116. Plaintiffs further claim that Defendant’s conduct supports two negligence theories: (1) general negligence, based on Ohio State’s failure to exercise reasonable care in maintaining the premises and supervising staff and (2) negligence per se, grounded in alleged violations of R.C. 5321.04. *Id.* at ¶¶ 84–117. Plaintiffs contend that these statutory violations automatically establish breach of duty and support liability for resulting injuries.

Defendant contends that Plaintiffs’ negligence and implied warranty of habitability claims must be dismissed because both are duplicative of Plaintiffs’ breach of contract claim. Defendant argues that all duties Plaintiffs rely on—maintaining the premises in a safe and habitable condition—arise solely from the landlord–tenant relationship and the housing contract. Ohio law, argues Defendant, precludes tort claims that are factually intertwined with breach of contract. Defendant further maintains that any implied warranty of habitability is merely an implied contractual covenant. Because Plaintiffs’ breach of contract claim already alleges that Ohio State failed to provide safe and habitable housing, the implied warranty claim is subsumed within the contract claim and therefore not properly stated as a separate cause of action. Defendant asserts that Plaintiffs’ negligence claim fails for the same reason. In response, Plaintiffs contend that Defendant, as a landlord, has statutory obligations under R.C. 5321.04 that exist independently of any contractual duties and are actionable on their own.

The Ohio Supreme Court has long recognized that R.C. Chapter 5321 imposes duties on landlords independent of the common law. *See Shroadess*, 68 Ohio St.2d 20. The *Shroadess* Court held that “a landlord is liable for injuries sustained on the demised residential premises, which are proximately caused by the landlord’s failure to fulfill the

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duties imposed under R.C.5321.04.” *Id.* at 25. The Court further concluded that Chapter 5321 was “intended . . . to provide tenants with greater rights.” *Id.*

More recently, the Supreme Court reaffirmed *Shroades* and emphasized that R.C. Chapter 5321 was intended to provide tenants with greater rights and to abrogate prior landlord immunities. See *Mann* 2014-Ohio-455, at ¶ 16. Furthermore, the Court clarified that the duties imposed by R.C. 5321.04 extend not only to tenants but also to their guests who are lawfully on the premises. *Id.* at ¶ 23. This reinforces the view that the statutory duties under R.C. Chapter 5321 are substantive and actionable, and that they may be enforced by individuals beyond the immediate contracting parties.¹ It also supports the broader interpretive principle that statutory claims under R.C. 5321.04 may coexist with common law claims, such as breach of contract, because they arise from distinct legal sources and serve complementary remedial purposes. In other words, the Ohio Landlord–Tenant Act imposes statutory duties upon landlords independent of the lease, and said duties supplement, rather than supplant, the common law.

Federal courts have echoed this interpretation. In *Aetna Cas. & Sur. Co. v. Neff*, the court explained that the remedies available under R.C. Chapter 5321 are cumulative and neither displace common law claims nor provide an exclusive remedy to landlords and tenants. 30 F. Supp. 2d 990, 994 (S.D. Ohio 1998). As the court stated, “the remedies afforded the tenant, as well as the landlord, in R.C. Chapter 5321, are in addition to the common law remedies possessed by both landlord and tenant prior to the enactment of R.C. Chapter 5321 in 1974.” *Id.*

Ohio appellate courts have likewise permitted both contract and R.C. 5321 claims to proceed concurrently. In *Lloyd v. Roosevelt Properties, Ltd.*, the court observed that R.C. Chapter 5321 “imposes duties on landlords that did not exist at common law and provides tenants with leverage to redress breaches of those duties.”

¹ See R.C. 5321.12 which allows “any party” to “recover for damages for the breach of contract or the breach of any duty that is imposed by law.”

2018-Ohio-3163, ¶ 15 (8th Dist.). Ultimately, the court upheld the lower court's finding in favor of the plaintiff's breach of implied warranty of habitability and breach of contract claims. *Id.* at ¶ 31.

Defendant relies on cases such as *Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc.*,² and *Nichols v. Chicago Title Ins. Co.*,³ which hold that tort claims cannot proceed when they arise solely from contractual duties. However, those cases involved purely contractual obligations without independent statutory duties. Here, Plaintiffs allege violations of R.C. 5321.04, which imposes duties by operation of law, not merely by contract. This distinction is critical because Ohio courts, including *Shroadess* and *Mann*, recognize that statutory duties supplement contractual obligations and support separate causes of action. Accordingly, and based on this authority, the Court concludes that Ohio law permits a plaintiff to concurrently pursue a breach of contract claim and claims pursuant to R.C. 5321.04, including breaches of implied warranty of habitability and negligence per se. These claims are not automatically duplicative of a contract claim merely because they arise from the same landlord–tenant relationship or share some overlapping factual allegations. Rather, they represent distinct legal theories—statutory duties versus common law principles governing contractual obligations. Whether the claims ultimately survive will depend on the evidence presented and the extent to which each claim asserts independent duties and damages. Accepting all factual allegations as true and drawing all reasonable inferences in Plaintiffs' favor, the Court finds that dismissal under Civ.R. 12(B)(6) is not warranted as to either the implied warranty of habitability or negligence claims.

B. Nuisance and Breach of Contract

Plaintiffs also assert a nuisance claim, alleging that Defendant's failure to remediate mold and maintain safe living conditions at Lawrence Tower substantially

² 2005-Ohio-5409.

³ 107 Ohio App.3d 684 (8th Dist.1995).

interfered with their right to reasonably use and enjoy their dorm rooms. They allege that mold infestation caused physical discomfort, inconvenience, property damage, and loss of use. Amended Complaint at ¶¶ 144–149. Defendant argues that the nuisance claim, like the R.C. 5321 claims, is merely duplicative of the breach of contract claim because the alleged nuisance arises from the same landlord–tenant relationship and the same allegations of unsafe and uninhabitable conditions. Arguing that Plaintiffs have failed to identify any duty or harm independent of the contract, Defendant asserts that the nuisance claim must be dismissed. Plaintiffs reply that a nuisance claim protects a tenant’s possessory interest in the use and enjoyment of the property and that associated damages are not necessarily coextensive with contract remedies.

The Housing Contract, attached as Exhibit A to the Amended Complaint, obligates the Defendant to provide accommodations for residential purposes, maintain the premises in a safe and sanitary condition, and make necessary repairs through authorized personnel. These provisions overlap factually with Plaintiffs’ nuisance allegations. However, the legal theories differ. A breach of contract claim enforces bargained-for obligations under the Housing Contract. In contrast, nuisance is a common-law tort protecting a tenant’s possessory interest in the reasonable use and enjoyment of property. See *Taylor v. Cincinnati*, 143 Ohio St. 426 (1944). This duty exists independently of any lease and applies to anyone lawfully in possession. Nuisance also allows recovery for annoyance, discomfort, and inconvenience—categories of harm that are not typically available under a contract theory—so long as the plaintiff establishes physical discomfort. *Banford v. Aldrich Chem. Co.*, 2010-Ohio-2470, ¶¶ 3; 17. Thus, although some of the same facts may support both claims, nuisance is not automatically duplicative of the contract claim. Whether Plaintiffs can ultimately recover under both theories will depend on the evidence and the avoidance of double recovery, but at the pleading stage, the nuisance claim states a distinct legal theory and also survives dismissal under Civ.R. 12(B)(6).

C. Fraud

Finally, Plaintiffs allege two instances of fraud: (1) pre-move-in representations that Lawrence Tower was safe and habitable and that Ohio State would support student health, and (2) post-move-in assurances in November 2024 that mold was caused by a minor leak and posed no health risk, coupled with instructions to create an “artificial environment” before air-quality testing. Defendant argues that both must be dismissed for failure to satisfy the heightened pleading standard of Civ.R. 9(B).

To prevail on a claim for civil fraud, the plaintiff must prove:

- (1) a representation (or concealment of a fact when there is a duty to disclose);
- (2) that is material to the transaction at hand;
- (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred;
- (4) with intent to mislead another into relying upon it;
- (5) justifiable reliance; and
- (6) resulting injury proximately caused by the reliance.

Dunlop v. Ohio Dept. of Job & Family Servs., 2012-Ohio-1378, ¶ 19. “A party bringing a claim for fraud is held to a heightened standard of pleading.” *RAE Assocs., Inc. v. Nexus Communications, Inc.*, 2015-Ohio-2166, ¶ 15 (10th Dist.). Specifically, “Civ.R. 9(B) provides that ‘[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity.’” *Ettayem v. Land of Ararat Invest. Group, Inc.*, 2017-Ohio-8835, ¶ 44 (10th Dist.). “To satisfy this requirement, a pleading must contain allegations of fact that tend to show every element of a claim for fraud.” *Adams v. Margarum*, 2017-Ohio-2741, ¶ 14 (10th Dist.). “Typically, the requirement of particularity includes the time, place, and content of the false representation, the fact represented, the individual who made the representation, and the nature of what was obtained or given as a consequence of the fraud.” *Id.* “The purpose of this requirement is to give the defendant sufficient notice of that which the plaintiff complains, so that an effective response and defense may be prepared.” *State Savs. Bank v. Gunther*, 127

Ohio App.3d 338, 345 (3d Dist.1998). A failure to plead such facts warrants dismissal under Civ.R. 12(B)(6). *Adams* at ¶ 14. Furthermore, Courts are not required to “accept as true any unsupported and conclusory legal propositions advanced in the complaint.” *Fluellen v. Miller*, 2024-Ohio-265, ¶ 6 (10th Dist.). However, specific documentary evidence of alleged fraud is not required at the pleading stage. *Volbers-Klarich v. Middletown Mgt.*, 2010-Ohio-2057, ¶ 29.

As to the “pre-move-in” fraud, Defendant argues Plaintiffs allege only vague assurances regarding safety and habitability without identifying specific statements, timing, or the declarant of such statements. The allegations attribute representations to “Ohio State University” generally and span “2009–Present,” which Defendant contends is insufficient. For the “post-move-in” fraud, Defendant asserts that while Plaintiffs reference the mold crisis and testing instructions, they still fail to identify the “who, what, when, where, and how” required by Civ.R. 9(B), including the medium or source of the statements. Plaintiffs respond that the Amended Complaint identifies the substance of the misrepresentations—pre-move-in assurances of safety and post-move-in statements in November 2024 minimizing the mold issue—and that these allegations, combined with reliance allegations, provide sufficient notice under Civ.R. 9(B).

The Court agrees with Defendant that neither alleged instance of fraud satisfies the heightened pleading requirement of Civ.R. 9(B). The allegations supporting the first instance of fraud lack detail regarding the method, manner, time, place, or medium through which the purported statements were made. Plaintiffs’ own argument that these statements were made over a 15-year period—extending to the “present,” which apparently includes the date of filing the Amended Complaint in July 2025—only underscores the vagueness of the claim and the absence of any meaningful temporal specificity. Furthermore, although naming a specific employee is not strictly required to survive at the pleading stage, Plaintiffs fail to identify even a general source—such as a

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department or communication channel—responsible for the statements. This does not satisfy the particularity requirement necessitated by Civ.R. 9(B).

Similarly, the second instance, while narrower in timeframe, omits the medium, context, and source of the alleged misrepresentations. Plaintiffs do not allege whether the statements were made in writing, verbally, or through any official university channels.⁴ While Plaintiffs are not required to cite or submit documentary evidence at the pleading stage, the post-move-in allegations also lack the specificity required under Civ.R. 9(B), even when interpreted liberally. Although the conduct described may be relevant to other claims, a fraud claim requires more than a general narrative of misleading behavior.

Accordingly, Plaintiffs' fraud claim—based on both pre-move-in and post-move-in representations—is dismissed pursuant to Civ.R. 12(B)(6).

IV. Conclusion

For the above stated reasons, Defendant's Motion to Dismiss is GRANTED, in part, and DENIED, in part. Plaintiffs' fraud claim is DISMISSED pursuant to Civ.R. 12(B)(6). The remainder of Plaintiffs' claims remain for trial.



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⁴ Plaintiffs assert in their Memo Contra that the Amended Complaint "clearly states" the University "emailed Plaintiffs" prior to air-quality testing. However, the Complaint contains no allegation that such instructions were communicated via email or any other specific medium. It merely states that "Ohio State instructed the students" to perform certain cleaning tasks. Amended Complaint at ¶¶ 166–167. Furthermore, the assertion that Ohio State emailed "Plaintiffs"—a group including both students and parents—underscores the lack of particularity and internal consistency in the fraud claim required to sufficiently place Defendant on notice.

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JUDGMENT ENTRY

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For the reasons set forth in the decision filed concurrently herewith, Defendant's Motion to Dismiss is GRANTED, in part, and DENIED, in part. Plaintiffs' fraud claim is DISMISSED pursuant to Civ.R. 12(B)(6). The remainder of Plaintiffs' claims remain for trial.



DAVID E. CAIN

Judge

cc:

Jedidiah I. Bressman
David A. Bressman
2727 Tuller Parkway, Suite 100
Dublin, OH 43017

Kristina S. Baehr
2606 West 8th Street, Unit 2
Austin, TX 78703

Peter E. DeMarco
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, OH 43215

Garrett M. Anderson
Celina J. Needle
52 East Gay Street
Columbus, OH 43216-1008

Andrew P. Guran
50 South Main Street, Suite 1200
Akron, OH 44308

Marcel C. Duhamel
200 Public Square, Suite 1400
Cleveland, OH 44114