

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

FEDERAL DEPOSIT INSURANCE  
CORPORATION, IN ITS CAPACITY  
AS RECEIVER FOR NETBANK,  
FSB

Plaintiff,

v.

CASE NO.: 8:10-cv-1486-T-23MAP

OPTIMUM TITLE, LLC,

Defendant.

---

**ORDER**

The defendant, Optimum Title, LLC, moves (Doc. 10) to dismiss Count II of the plaintiff's complaint on the basis that the "economic loss rule" bars a tort claim. The defendant claims that, because of the parties' contractual privity and because the plaintiff alleges both a contract claim and a tort claim, the "economic loss rule" requires dismissal of the claim. However, the Florida Supreme Court states that:

"[W]e again emphasize that by recognizing that the economic loss rule may have some genuine, but limited, value in our damages law, we never intended to bar well-established common law causes of action . . . the rule was primarily intended to limit actions in the product liability context, and its application should generally be limited to those contexts or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis. We hesitate to speculate further on situations not actually before us. The rule, in any case, should not be invoked to bar well-established causes of actions in tort . . ." Moransais v. Heathman, 744 So.2d 973, 983 (Fla. 1999).

The “[economic loss rule] is designed to prevent parties to a contract from circumventing the allocation of losses set forth in the contract by bringing an action for economic loss in tort.” Indemnity Ins. Co. of North America v. American Aviation, Inc., 891 So.2d 532, 536 (Fla. 2004).

Because a claim for breach of fiduciary duty addresses the breach of a duty imposed by law for reasons that serve the public and enforce public policy but a claim for breach of contract addresses the breach of a duty imposed by a discrete contract for reasons serving the interest of the contracting parties, the plaintiff properly maintains each claim. The motion (Doc. 10) is **DENIED**.

ORDERED in Tampa, Florida, on October 15, 2010.



---

STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE