

**COMMERCIAL LAW CASE BRIEF**

Name and Date of Case: McLamb, Sutton, Handy, McKay and Owen v. T.P. Inc, 173 N.C. App. 586. 619 S.E. 2d 577. N.C. App LEXIS 2122 (2005)

Procedural Posture: Case was tried in Wake County, NC Superior Court and was then appealed in the N.C. Court of Appeals after the Superior Court dismissed the case under Rule 12(b)(6).

Facts: Plaintiffs contracted to purchase real estate in the Oceanaire Subdivision, which T.P. Inc planned to develop in Surf City, NC. During different times in 2002 and 2003 each plaintiff signed a reservation agreement with defendant. Each reservation gave the plaintiffs the right to purchase one or more lots in Oceanaire Estates. The cost of the reservations was \$500 per reservation and noted "as consideration" from each plaintiff. The deposits were to be held by Anchor Real Estate Corp. until one of the following was first to occur:

- (a) Plaintiff requests cancellation of agreement and refund of deposit
- (b) Parties enter into offer to Purchase and Contract and deposit would then be credited to the Plaintiff at the time of the closing.

Some of the reservations included the following wording:

- (a) Seller expects to have infrastructure in place and the plat map recorded by "x" date
- (b) Buyer shall enter into an Offer to Purchase and Contract with seller within two weeks after "c" has been completed with a closing date not to exceed 30 days from the date of the contract.

Some of the reservations listed a clause making the reservation void if the buyer had not either requested the deposit back or entered into a contract to Purchase and Contract by a specific date. The defendant stopped the project in 2003 claiming they were unable to obtain necessary permits. The defendant cancelled the reservation agreements and returned the deposits to the Plaintiffs in December 2003. The Plaintiffs filed a claim alleging the Defendant committed unfair and deceptive trade practices. The trial court dismissed the claim under Rule 12(b)(6) and the Plaintiffs appealed that ruling. The court of appeals affirmed the ruling of the trial court and the Defendant was not held liable of unfair and deceptive trade practices.

Issue(s): Whether or not the court erred in dismissing the claim of breach of contract by plaintiffs. Whether Plaintiffs alleged an offer to sell land. Whether Plaintiffs gave consideration to make the alleged offer to sell irrevocable. Whether or not an option contract existed. Whether or not the Defendant was in violation of unfair and deceptive trade practices.

Rule of Law:

- (1) On Rule 12(b)(6) motion to dismiss:
  1. *Wood v. Guilford Cty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002).
- (2) On the elements of a claim for breach of contract:
  1. *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000)
- (3) On error to dismiss the breach of contract claim under N.C. Gen. Stat. S 1A-1, Rule 12(b)(6):

1. *Toomer v. Garrett*, 155 N.C. App. 462, 481-82, 574 S.E.2d 76, 91, appeal dismissed, disc. review denied, 357 N.C. 66, 579 S.E.2d 576 (2003).
- (4) On definition of contract:
  1. *Copy Products, Inc. v. Randolph*, 62 N.C. App. 553, 555, 303 S.E.2d 87, 88 (1983).
- (5) On option contracts:
  1. *Normile v. Miller*. 313 N.C. 98, 105, 326 S.E.2d 11, 16 (1985).
  2. *Ward v. Albertson*, 165 N.C. 218, 81 S.E. 168 (1914).
  3. *Id.* At 219, 81 S.E. at 168.
  4. *Thomason v. Bescher*, 176 N.C. 622, 97 S.E. 654 (1918).
  5. *Id.* at 624, 97 S.E. at 654.
  6. *Kidd v. Early*. 289 N.C. 343, 222 S.E.2d 392 (1976).
  7. *Id.* at 346, 222 S.E.2d at 396.
  8. *Normile*, 313 N.C. at 105, 326 S.E.2d at 16.
  9. *Id.* at 106, 326 S.E.2d at 16.
- (6) On consideration:
  1. *Normile*, 313 N.C. at 105, 326 S.E.2d at 16; see also *Ward*, 165 N.C. at 222, 81 S.E. at 169.
  2. *Home Elec. Co. v. Hall & Underdown Heating & Air Conditioning Co.*, 86 N.C. App. 540, 542, 358 S.E.2d 539, 540 (1987), *Aff'd*, 322 N.C. 107, 366 S.E.2d 441 (1988).
  3. *Benson v. Chalfonte Dev. Corp.*, 348 So. 2d 557, 559-60 (Fla. Dist. Ct. App. 1976).
  4. disc. review denied, 354 So. 2d 979 (Fla. 1977); *King v. Hall*, 306 So. 2d 171, 173 (Fla. Dist. Ct. App. 1975).
  5. *Kadis v. Britt*, 224 N.C. 154, 163, 29 S.E.2d 543, 548 (1944).\
  6. *Wilmar, Inc. v. Liles*, 13 N.C. App. 71, 78-79, 185 S.E.2d 278, 283 (1971).
  7. Cert. denied, 280 N.C. 305, 186 S.E.2d 178, 208 N.C. 305 (1972).
  8. *Ford V. McGregor*, 314 Ky. 116, 234 S.W.2d 493, 495 (Ky. 1950).
  9. *First Dev. Corp. v. Martin Marietta Corp.*, 959 F.2d 617, 622 (6<sup>th</sup> Cir. 1992).
  10. *Country Club Oil Co. v. Lee*, 239 Minn. 148, 58 N.W.2d 247, 250 (Minn. 1953).
  11. *Aspinwall v. Ryan*, 190 Ore. 530, 226 P.2d 814, 817 (Or. 1951).
- (7) On whether or not Defendant was in violation of unfair and deceptive trade practices in violation of N.C. Gen. Stat. S 75-1.1:
  1. *Spartan Leasing v. Pollard*, 101 N.C. App. 450, 460-61, 400 S.E.2d 476, 482 (1991).
  2. *Forbes v. Par Ten Group, Inc.*, 99 N.C. App. 587, 601, 394 S.E.2d 643, 651 (1990), disc. review denied, 328 N.C. 89, 402 S.E.2d 824 (1991).

Holding: Affirmed by Court of Appeals.

Reasoning: Trial Court properly dismissed Plaintiff's claim of Unfair and Deceptive Trade for practices pursuant to N.C. Gen. Stat. S 1A-1, Rule 12(b)(6). Assignment of error overruled. There was no option contract, no consideration by Plaintiffs and since Plaintiffs were refunded their reservation fees, there was no violation of unfair and deceptive trade practices by the Defendant.

Conclusion/Disposition: Plaintiff s cannot appeal this ruling.