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NO. COA11-577

NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

MARTIN CARAVANTES and EMMA LABRA,
Plaintiffs,

v.

Bladen County
No. 09 CVD 229

MCCRAE DOWLESS,
Defendant.

Appeal by Plaintiffs from order entered 16 April 2010 by Judge Sherry Dew Tyler in Bladen County District Court. Heard in the Court of Appeals 14 November 2011.

Christopher W. Livingston, Esq., for Plaintiffs.

No brief filed for Defendant.

STEPHENS, Judge.

As noted by a former Chief Judge of this Court, "[i]n Paradise Lost John Milton described Hell as 'confusion worst confounded.'" *Small v. Small*, 107 N.C. App. 474, 477, 420 S.E.2d 678, 681 (1992). The time and effort required by this panel to resolve what should be a straightforward appeal in an

unremarkable case, reflects the "confusion worst confounded" brought on by the over-brief, incomplete, and contradictory order entered by the trial court here. Plaintiffs Martin Caravantes ("Plaintiff") and Emma Labra (collectively, "Plaintiffs") appeal from an order purporting to grant a Rule 12(b)(6) motion to dismiss in favor of Defendant McCrae Dowless ("Defendant") following a bench trial. Because dismissal pursuant to Rule 12(b)(6) *following a bench trial* was not proper, and because the trial court's order did not resolve the issues raised by the pleadings and at trial, and includes erroneous, inconsistent, and contradictory conclusions of law, we vacate and remand.

Factual Background and Procedural History

Plaintiffs' 25 March 2009 complaint alleged breach of contract and violation of the North Carolina Unfair and Deceptive Trade Practices Act ("UDTP") on the part of Defendant in connection with the sale of two mobile homes, one constructed in 1982 and the other in 1991.¹ Plaintiff alleged that in

¹Plaintiffs initially alleged common-law fraud by Defendant as well, but Plaintiffs' counsel withdrew this claim at the close of all evidence. In addition, all claims by Plaintiff Labra were dismissed at the close of all evidence, with the consent of Plaintiffs' counsel. Thus, only Plaintiff Caravantes' claims for breach of contract and UDTP remained for the trial court to resolve.

December 2005 Defendant represented to Plaintiff that he could purchase the mobile homes for \$20,700 and then collect rent from the tenants of the mobile homes. Plaintiff's complaint further alleged that Defendant did not own any title or interest in the mobile homes and that in July 2006, after Plaintiff made payments totaling \$20,700 to Defendant, Defendant told Plaintiff that parking and septic issues related to the mobile homes prevented Defendant from selling the mobile homes or refunding Plaintiff's money.

In March 2010, the court conducted a bench trial at which both Plaintiffs and Defendant presented evidence. In support of his breach of contract and UDTP claims, Plaintiff testified, *inter alia*, that: the title he received to the 1982 mobile home was not in Defendant's name; he did not sign the title or submit it to the Department of Motor Vehicles out of fear that his "purchase" from Defendant was not legitimate; he stopped making payments on the mobile homes after Defendant told him that a problem with their septic tanks would prevent Defendant from selling them to Plaintiff, and that Defendant had agreed to refund at least some portion of the purchase price because of this problem; and Defendant agreed to refund him at least part of the money paid for the mobile homes, refunded about \$1700,

but then stopped making refund payments. Defendant contradicted this evidence in part, testifying that he owed Plaintiff nothing in refund and the open title to the 1982 mobile home had been legitimate. At trial,² Defendant did not dispute the existence of a contract to sell Plaintiff the mobile homes. Defendant did not dispute Plaintiff's testimony that Defendant refused to sell him the mobile homes because of the septic tank problems; in fact, Defendant did not testify about the alleged septic tank issues at all. We note that, due in large part to Plaintiff's limited English skills, his testimony was often unclear or contradictory. At the conclusion of the trial, the court stated it was dismissing all of Plaintiffs' claims, and, by order entered 16 April 2010, dismissed Plaintiffs' complaint. From that order, Plaintiffs appeal. We vacate and remand.

Discussion

In a trial without a jury, it is the duty of the trial judge to resolve all issues raised by the pleadings and the evidence by making findings of fact and drawing therefrom conclusions of law upon which to base a final order or judgment. When all issues are not so resolved by the trial court, this Court has no option other than to vacate the order and remand the cause to the trial

²In support of a motion for summary judgment dated 31 December 2009, Defendant submitted an affidavit stating that no contract had ever existed between himself and Plaintiffs. The court denied the motion just before conducting the bench trial.

court for completion.

Id. at 477, 420 S.E.2d at 681 (internal citations omitted).

"The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Lake Mary Ltd. P'ship v. Johnston*, 145 N.C. App. 525, 536, 551 S.E.2d 546, 554 (quotation marks and citation omitted), *disc. review denied*, 354 N.C. 363, 557 S.E.2d 538-39 (2001). Unfair and deceptive trade practices actions are authorized by N.C. Gen. Stat. § 75-1.1 *et.seq.* (2009).

To prevail on a claim of unfair and deceptive trade practices a plaintiff must show: (1) defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that plaintiff was injured thereby. The plaintiff must also establish it suffered actual injury as a proximate result of defendants' misrepresentations or unfair conduct. Once the plaintiff has presented evidence in support of each of these elements, the question whether defendants committed the alleged acts is a question of fact for the jury; the court must then determine as a matter of law whether the proven facts constitute an unfair or deceptive trade practice.

First Atl. Mgmt. Corp. v. Dunlea Realty Co., 131 N.C. App. 242, 252-53, 507 S.E.2d 56, 63 (1998) (internal citations, brackets, and quotation marks omitted). Further,

[c]auses of action for unfair or deceptive practices are distinct from breach of

contract actions. An action for unfair or deceptive practices is a creation of statute, and is therefore *sui generis*, so the cause of action exists independently, regardless of whether a contract was breached. Thus, even if [a defendant] does not breach its contract, [it] nevertheless must employ good business practices which are neither unfair nor deceptive.

Defeat the Beat, Inc. v. Underwriters at Lloyd's London, 194 N.C. App. 108, 116, 669 S.E.2d 48, 53 (2008) (internal citations omitted).

Here, the trial court's 16 April 2010 order contains 12 findings of fact and four conclusions of law. The court found, *inter alia*, that: the purchase price for both mobile homes was \$20,700; Defendant gave Plaintiff title to the 1982 mobile home after receiving full payment for it; and Plaintiff failed to pay the entire purchase price for the 1991 mobile home. The court also made two conclusions of law which were denominated as findings of fact 11 and 12: that Defendant performed all of his duties under the contract and that his motion to dismiss at the close of Plaintiffs' evidence should have been granted. This final finding appears to be in reference to Defendant's motion to dismiss all claims by Plaintiff Labra, which the court granted in open court with the consent of Plaintiffs' counsel. No other motion was made at the close of Plaintiffs' evidence.

However, the trial court made no findings of fact about Plaintiff's allegation and testimony that he stopped making payments to Defendant only after Defendant told him that septic problems prevented him from selling the mobile homes to Plaintiff. This testimony, if found credible by the trial court, would explain why Plaintiff stopped making payments.

More problematic are the court's conclusions of law and its comments in open court. At the close of the trial, the court stated, "[D]efendant's motion to dismiss the claims of [P]laintiffs at the close of all of the evidence is allowed." However, as noted above, other than the motion to dismiss Plaintiff Labra's claims which the court had previously granted with Plaintiffs' consent, Defendant made no motion to dismiss. Rather, Defendant asked that judgment be entered in his favor. This evident confusion became "worst confounded" in the court's conclusions of law:

1. That the Court has jurisdiction of the parties and the subject matter.
2. That [] Defendant performed all duties imposed by the contract with [] Plaintiff [Caravantes].
3. That [] Plaintiffs' complaint fails to state a claim upon which relief can be granted.

4. That [] Plaintiffs' complaint should be dismissed.

Conclusion two purports to resolve Plaintiff's breach of contract claim, but as noted *supra*, this conclusion is not proper where the trial court failed to resolve the factual question of Defendant's alleged statements to Plaintiff that Defendant could not sell the mobile homes because of septic problems. See *Small*, 107 N.C. App. at 477, 420 S.E.2d at 681. In addition, conclusion two conflicts with conclusions three and four, with the former purporting to resolve the breach of contract claim and the latter two purporting to dismiss it. Further, as noted above, the trial court having conducted a bench trial and heard evidence, it could not then dismiss Plaintiffs' complaint for failing "to state a claim upon which relief can be granted." This language states the test for a trial court considering a defendant's motion to dismiss pursuant to Rule 12(b)(6). N.C. Gen Stat. § 1A-1, Rule 12(b)(6) (2011). Such motions are based on an allegation that the complaint is legally insufficient and, thus, Rule 12(b)(6) motions are resolved solely on the pleadings. *Barbour v. Little*, 37 N.C. App. 686, 692, 247 S.E.2d 252, 255-56, *cert. denied*, 295 N.C. 733, 248 S.E.2d 862 (1978).

Finally, the order contains no findings of fact or

conclusions of law regarding Plaintiff's UDTP claim. Any conclusions reached by the court as to the breach of contract claim did not resolve the UDTP claim. *See Defeat the Beat, Inc.*, 194 N.C. App. at 116, 669 S.E.2d at 53. As previously discussed, Plaintiff presented evidence that Defendant made various statements about septic problems, their effect on Defendant's ability to complete the sale of the mobile homes, and Defendant's willingness to refund payments already made. Plaintiff having "presented evidence in support of [the] elements [of UDTP], the question whether [D]efendant[] committed the alleged acts [wa]s a question [of fact.]" *First Atl. Mgmt. Corp.*, 131 N.C. App. at 252, 507 S.E.2d at 63. The court erred in failing to make findings resolving this question of fact. *Small*, 107 N.C. App. at 477, 420 S.E.2d at 681. Once the court makes the appropriate findings of fact, it will then determine as a matter of law whether any acts committed by Defendant constituted unfair and deceptive trade practices. *First Atl. Mgmt. Corp.*, 131 N.C. App. at 252-53, 507 S.E.2d at 63.

In sum, we vacate and remand for entry of the findings of fact and conclusions of law necessary to resolve Plaintiff's breach of contract and UDTP claims and enter judgment accordingly.

VACATED AND REMANDED.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).