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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-940

Filed: 3 April 2018

Mecklenburg County, No. 16 CVS 6368

QUANTUM MORTGAGE CORPORATION, Plaintiff,

v.

CANNON GHELANI AND SHOREROCK GROUP, LLC, Defendants.

Appeal by Plaintiff from orders entered 23 November 2016 by Judge Linwood O. Foust and 9 February 2017 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 February 2018.

Tatum Law Firm, PLLC, by Brian Steed Tatum, for plaintiff-appellant.

Altman Law, PLLC, by Adam Altman, for defendant-appellants.

HUNTER, JR., Robert N., Judge.

Quantum Mortgage Corporation (“Plaintiff”) appeals from orders dismissing portions of Plaintiff’s complaint, granting summary judgment in favor of Cannon Ghelani and ShoreRock Group, LLC (collectively “Defendants”), and awarding damages and attorney’s fees to Defendants. On appeal, Plaintiff argues the trial court improperly applied North Carolina law to dismiss its claims. Plaintiff further

contends the trial court erred by failing to require Defendants to elect between the remedies under the Loan Broker Act and the Unfair and Deceptive Trade Practices Act. We affirm.

I. Procedural and Factual Background

On 1 April 2016, Plaintiff filed a complaint, seeking damages for breach of contract. The complaint alleged the following narrative. Plaintiff is a corporation “organized and existing under the laws of the State of North Carolina, with its principal place of business in Mecklenburg County, North Carolina.” Cannon Ghelani resided in Mecklenburg County, North Carolina. On 15 November 2013, Plaintiff and Ghelani entered into “an Agreement” described as “an exclusive agency agreement[.]” Per the agreement, Plaintiff would assist Defendants in procuring a loan for a construction project in New Jersey. The agreement further stated:

QMC and, Mr. Cannon Ghelani, and SHOREROCK GROUPS, LLC hereby agree as follows:

- (a) To be bound by all applicable statutes, laws, and regulations of the State of North Carolina governing such transactions.
- (b) That this agreement is a complete expression of the intentions of the parties hereto and any prior, contemporaneous modifications whether written or oral, or any conflicting terms are thus null and void.
- (c) That they agree to submit themselves to the Jurisdiction of courts having venue in Mecklenburg County, North Carolina for the purposes of the resolution of any disputes or the conduct of any litigation arising out of or seeking to

enforce any of the provisions of this Agreement[.]

On 3 June 2016, Ghelani filed an answer, denying Plaintiff's allegations, asserting several affirmative defenses, and reserving the right to assert additional defenses. On 30 June 2016, Ghelani filed a motion to dismiss, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The trial court denied Ghelani's motion in an order entered 2 August 2016.

On 12 August 2016, Plaintiff amended its complaint, adding ShoreRock Group as a defendant. The amended complaint alleged ShoreRock "is a limited Liability company with its principal place of business in Mecklenburg County, North Carolina[.]" The amended complaint also asserted the parties "formed the contract at issue in this litigation in Mecklenburg County, North Carolina[.]"

On 11 October 2016, Defendants filed a motion for summary judgment. On 14 October 2016, Plaintiff filed its own motion for summary judgment.

On 27 October 2016, Defendants filed a verified answer, asserting various counterclaims and another motion to dismiss, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Defendants asserted, *inter alia*, Plaintiff's breach of contract claim was barred due to Plaintiff's failure to comply with N.C. Gen. Stat. § 66-106 *et seq.* (2017) ("the Loan Broker Act"). Defendants contended Plaintiff violated the Loan Broker Act, violated N.C. Gen. Stat. § 75-1.1 *et seq.* (2017) ("the Unfair and Deceptive Trade Practices Act"), and breached the parties' contract.

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In support of their motion, Defendants filed an affidavit from the State of North Carolina's Department of the Secretary of State. The affiant swore, *inter alia*:

5. That Quantum Mortgage Corporation is not now registered as a loan broker with the Department pursuant to the Loan Broker Act.

6. That from January, 1988 to the present, Quantum Mortgage Corporation was not registered with the Department pursuant to the Loan Broker Act.

7. That Quantum Mortgage Corporation has not filed with the Department two copies of the disclosure statement required by N.C.G.S. § 66-107.

8. That Quantum Mortgage Corporation has not filed with the Department either a copy of the bond required by N.C.G.S. § 66-108, or a copy of the formal notification by the depository that the trust account required by N.C.G.S. § 66-108 has been established.

On 2 November 2016, the trial court held a hearing on Plaintiffs' and Defendants' motions for summary judgment. In an order entered 23 November 2016, the court concluded the Loan Broker Act applied to the 15 November 2013 contract and Plaintiff failed to "fully comply" with several requirements of the Loan Broker Act. The court concluded, consequently, Defendants were entitled to void, and did so void, the contract. Accordingly, the court denied Plaintiffs' motion for summary judgment and granted Defendants' motion for summary judgment. Additionally, the court dismissed, with prejudice, Plaintiffs' remaining claims in its amended complaint.

On 28 December 2016, Plaintiff replied to Defendants' counterclaims and filed another motion to dismiss, pursuant to Rules 12(b)(6) and (b)(7) of the North Carolina Rules of Civil Procedure. One day later, Defendants filed a motion for summary judgment for their counterclaims. On 3 January 2017, Plaintiff filed another motion for summary judgment.

The court held a hearing on the parties' motions on 24 January 2017. In an order entered 9 February 2017, the court granted Defendants' motion for partial summary judgment in part and awarded damages to Defendants based on their counterclaims for violations of the Loan Broker Act and the Unfair and Deceptive Trade Practices Act. The court additionally awarded Defendants attorney's fees. On 31 March 2017, the parties stipulated to the dismissal of Defendants' remaining counterclaims. Plaintiff filed timely notice of appeal on 7 April 2017.

II. Standard of Review

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 523-24, 649 S.E.2d 382, 385 (2007)).

III. Analysis

Plaintiff contends the court committed the following errors: (1) granting summary judgment in favor of Defendants on Plaintiff's claims; and (2) granting summary judgment in favor of Defendants' on their counterclaims and awarding them damages and attorney's fees. We address the arguments in turn.

A. 23 November 2016 Summary Judgment Order

Plaintiff first contends the trial court improperly applied North Carolina law in its grant of Defendants' motion for summary judgment. Specifically, Plaintiff argues New Jersey law should apply because the contract involves a New Jersey borrower, real property, and construction contractors. Defendants disagree with Plaintiff's framing of the issue and argue the issue is "[w]hether Plaintiff is subject to the North Carolina Loan Broker Act[.]" (emphasis omitted) We agree with Defendants and affirm the trial court.

The Loan Broker Act explicitly states it "shall apply in all circumstances in which any party to the contract conducted any contractual activity (including but not limited to solicitation, discussion, negotiation, offer, acceptance, signing, or performance) in this State." N.C. Gen. Stat. § 66-112 (2017).

In support of their argument, Defendants cite *Printing Services of Greensboro, Inc. v. American Capital Group, Inc.*, 180 N.C. App. 70, 637 S.E.2d 230 (2006). In *Printing*, the trial court determined the Loan Broker Act applied to the case. *Id.* at 74, 637 S.E.2d at 232. Defendant-appellant argued the Loan Broker Act did not apply

because “the lease was performed and entered into in California, not North Carolina.” *Id.* at 77, 637 S.E.2d at 234. Our Court determined the Loan Broker Act applied, relying on the facts “the lease agreement was signed in North Carolina, and presumably the solicitation, discussion, and negotiation of the agreement occurred in this state[.]” *Id.* at 77, 637 S.E.2d at 234.

Here, the trial court agreed the Loan Broker Act applied and granted Defendants’ motion for summary judgment. In the order, the court concluded:

5. The North Carolina Loan Broker Act, N.C.G.S. § 66-106 to § 66-112, applies to the contract and to the parties.

6. The Plaintiff is a “loan broker” as that term is defined in the North Carolina Loan Broker Act (hereinafter, the “LBA”).

7. The Plaintiff is subject to the provisions of the LBA.

8. Plaintiff failed to fully comply with the requirements of the LBA by: (a) not providing the disclosure statement required by N.C.G.S. § 66-107 to Defendants, (b) not registering as a loan broker with the Department of the Secretary of State of North Carolina (hereinafter, the “Secretary of State”) pursuant to the LBA, (c) not filing with the Secretary of State two copies of the disclosure statement required by N.C.G.S. § 66-107, (d) not filing with the Secretary of State either a copy of the bond required by N.C.G.S. § 66-108, or a copy of the formal notification by the depository that the trust account required by N.C.G.S. § 66-108 has been established, and (e) collecting an advance fee from Defendant ShoreRock Group, LLC prior to the closing of the loan, which is prohibited by N.C.G.S. § 66-108(c).

9. Because Plaintiff failed to fully comply with the

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requirements of the LBA, Defendants were entitled to void the contract.

Plaintiff argues the court improperly applied North Carolina law because the land at issue is located in New Jersey, but does not present any argument in regard to the applicability, or lack thereof, of the Loan Broker Act. We conclude the Loan Broker's Act applies. As in *Printing*, the parties entered into the agreement in North Carolina. 180 N.C. App. at 77, 637 S.E.2d at 234. Furthermore, the record shows the parties solicited, discussed, and negotiated the agreement in this State. *Id.* at 77, 637 S.E.2d at 234. Regardless of any connections to New Jersey, the Loan Broker Act applies to the contract. Accordingly, the trial court did not err in granting Defendants' motion for summary judgment.

Plaintiff further contends the Loan Broker Act is an unreasonable burden on interstate commerce. However, Plaintiff did not present this argument at the summary judgment hearing. Thus, Plaintiff failed to preserve this issue for appellate review. N.C. R. App. P. 10 (a) (1) (2017).

B. 9 February 2017 Summary Judgment Order

Plaintiff next contends the court erred in granting summary judgment in favor of Defendants for their counterclaims and awarding Defendants damages and attorney's fees. Essentially, Plaintiff argues the court improperly awarded treble damages under the Unfair and Deceptive Trade Practices Act and attorney's fees under the Loan Broker Act.

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The Loan Broker Act “provides for the recovery of all fees paid to the broker for the failure to fully comply with the loan broker statutes[.]” *Printing*, 180 N.C. App. at 79, 637 S.E.2d at 235 (citation omitted), and states:

(a) If a loan broker uses any untrue or misleading statements in connection with a loan brokerage contract, fails to fully comply with the requirements of this Article, fails to comply with the terms of the contract or any obligation arising therefrom, or fails to make diligent effort to grant a loan to or procure a loan on behalf of the prospective borrower, then, upon written notice to the broker, the prospective borrower may void the contract, and shall be entitled to receive from the broker all sums paid to the broker, and recover any additional damages including attorney’s fees.

...

(c) The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

(d) The violation of any provisions of this Article shall constitute an unfair practice under G.S. 75-1.1.

N.C. Gen. Stat. § 66-111 (2017). The Loan Broker Act is one of the “many instances the Legislature has declared that a violation of certain statutes also constitutes a violation of G.S. 75-1.1, without any requirement of intentional wrongdoing.” *Marshall v. Miller*, 302 N.C. 539, 547-48, 276 S.E.2d 397, 402-03 (1981) (citations omitted).

Both N.C. Gen. Stat. § 75-16.1 (2017) of the Unfair and Deceptive Trade Practices Act and section 66-111 of the Loan Broker Act authorize an award of

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attorney's fees. Under section 66-111, the prospective borrower "shall be entitled to . . . recover any additional damages including attorney's fees[.]" for failure to comply with the Act. N.C. Gen. Stat. § 66-111(a). If the court awards fees pursuant to the Unfair and Deceptive Trade Practices Act, the trial court must find "[t]he party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit[.]" N.C. Gen. Stat. § 75-16.1 (1).

At the hearing, counsel and the court engaged in the following discussion regarding attorney's fees:¹

[PLAINTIFF'S COUNSEL]: Your Honor, my only concern is, if you look at 75-16.1, it addresses attorney[]s fees, and it states- says that you have to show that there was a willful engagement, an unwarranted refusal to resolve the matter, which I just argued that we did try to resolve the matter soon after we got the notice.

But I would just say that we need an opportunity to argue those issues since we did not argue those today. So I would disagree to any finding that- along the statutory lines, I think we'd have to have another hearing to address those issues, maybe more evidence submitted regarding those issues because they haven't been addressed today.

THE COURT: But 75-16.1 is applicable in cases that allege an unfair and deceptive trade practice specifically, but I guess your counterclaim did allege unfair and deceptive. But then I think that needs to be considered in conjunction with a violation of Chapter 66, which if a violation of that is found it constitutes an unfair and deceptive trade

¹ Defendants argue Plaintiff failed to preserve this argument for appellate review. However, Plaintiff presented the same argument to the trial court that it presents before our Court on appeal. Thus, the issue is preserved.

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practice.

[DEFENDANTS' COUNSEL]: Well, Your Honor, we don't even have to get to unfair trade practices because, in 66-111(a), it says we can recover additional damages including attorney[']s fees.

THE COURT: You're correct.

. . .

[PLAINTIFF'S COUNSEL]: Your Honor, it's my understanding- I can get case law for this. I don't have it here today, but it's my understanding you can't double-dip. You can't- it's one or the other.

THE COURT: One or the other what?

[PLAINTIFF'S COUNSEL]: You can't get attorney[']s fees and argue that there was an unfair and deceptive trade practice to get treble damages and then turn right around and get damages under the Loan Broker Act. I think that would be double-dipping there.

THE COURT: I don't disagree that that would be- I mean it- that's not what I'm suggesting. The Loan Broker Act provides for the recovery of all sums paid to the broker plus additional damages, including attorney[']s fees. Also provides that a violation of that is an unfair and deceptive trade practice. So I don't think you can recover twice attorney[']s fees, but you're- there's an entitlement to attorney[']s fees.

[PLAINTIFF'S COUNSEL]: But I think the high bar that is set in Chapter 75 as to what you have to show to get those fees should apply since the General Assembly intentionally referenced the Unfair and Deceptive Trade Practice[s] Act.

THE COURT: But they also, in Chapter 66, said that the

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prospective borrower shall be entitled to receive from the broker all sums paid to the broker and recover any additional damages, including attorney[]s fees. There's a mandatory provision in Chapter 66 for the recovery of attorney's fees if the violation is found.

So to that extent, I'm assuming, just from the way that this proceeding has gone, that there would have to be a hearing on the reasonableness of attorney[]s fees

In its order, the court found and concluded:

(1) that there is no genuine issue of material fact as to Plaintiff's liability to Defendants/Counterclaimants (hereinafter "Defendants") as to Defendants' counterclaims for violation of the Loan Broker Act and violation of the Unfair and Deceptive Trade Practices Act and (2) that there is no genuine issue of material fact as to Defendants' damages which resulted from Plaintiff's violations of the Loan Broker Act and the Unfair and Deceptive Trade Practices Act which are \$15,600.00 and that those damages are trebled to \$46,800.00 pursuant to N.C.G.S. § 66-111(d).

The trial court did not err in awarding attorney's fees under the Loan Broker Act and damages under the Unfair and Deceptive Trade Practices Act. Although Plaintiff argues the remedies under both acts are "inconsistent with each other, and not cumulative[,] " the Loan Broker Act explicitly states the remedies therein are "in addition to" any other remedies allowed for by law. N.C. Gen. Stat. § 66-111(c). The trial court properly awarded attorney's fees under N.C. Gen. Stat. § 66-111 and damages under the Unfair and Deceptive Trade Practices Act, which are "in addition to" the remedies under the Loan Broker Act. Because the court did not award attorney's fees pursuant to N.C. Gen. Stat. § 75-16.1(1), it was not required to make

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any specified findings. Accordingly, the court did not err in its award of damages, award of attorney's fees, or grant of Defendants' motion for summary judgment.

IV. Conclusion

For the reasons stated above, we affirm the trial court's orders.

AFFIRMED.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).