

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002083-MR

JUBILEE MOBILE HOMES

APPELLANT

v.

APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 98-CI-00313

JEFFERY MAY AND JOY MAY

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

McANULTY, JUDGE: This is a contract and warranty dispute against a mobile home dealer, Jubilee Mobile Homes, for recovery for alleged defects in a mobile home purchased by Jeffery and Joy May. The trial court granted summary judgment in favor of the Mays and further ordered Jubilee to pay in damages the value of the replacement of the mobile home -- \$29,000 with interest at the rate of 12% -- and court costs. Because we conclude that genuine issues of material fact exist that preclude summary judgment and the trial court's award of damages was in

contravention of the parties' sales contract, we vacate and remand.

On October 15, 1997, the Mays entered into a contract with Jubilee for the purchase of a 1997 mobile home manufactured by Mid-America. At the time, Jubilee was a mobile home dealer owned by Gayle Carter; however, it has since dissolved. The mobile home had a manufacturer's warranty.

Key provisions of the two-page contract between the Mays and Jubilee are as follows (capital letters and bold type in original contract):

10. EXCLUSION OF WARRANTIES. I UNDERSTAND THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED ARE EXCLUDED BY YOU FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE GOODS SOLD. I UNDERSTAND THAT YOU MAKE NO WARRANTIES WHATSOEVER REGARDING THE UNIT OR ANY APPLIANCE OR COMPONENT CONTAINED THEREIN, EXCEPT THAT AS MAY BE REQUIRED UNDER APPLICABLE STATE LAW.

11. MANUFACTURERS WARRANTIES. I UNDERSTAND THAT THERE MAY BE WRITTEN WARRANTIES COVERING THE UNIT PURCHASED, OR ANY APPLIANCE(S) OR COMPONENT(S), WHICH HAVE BEEN PROVIDED BY THE MANUFACTURER OF THE UNIT OR MANUFACTURER OF THE APPLIANCE(S) OR COMPONENTS. YOU WILL GIVE ME COPIES OF ANY AND ALL WRITTEN WARRANTIES SUPPLIED BY THE MANUFACTURERS. DELIVERY BY YOU TO ME OF THE WARRANTY BY THE MANUFACTURER OF THE UNIT PURCHASED, OR ANY APPLIANCE(S) OR COMPONENT(S) DOES NOT MEAN YOU ADOPT THE WARRANTY(S) OF SUCH MANUFACTURER(S). I ACKNOWLEDGE THAT THESE EXPRESS WARRANTIES MADE BY THE MANUFACTURER(S) HAVE NOT BEEN MADE BY YOU EVEN IF THEY SAY YOU MADE THEM

OR SAY YOU MADE SOME OTHER EXPRESS WARRANTY. YOU ARE NOT AN AGENT OF THE MANUFACTURER(S) FOR WARRANTY PURPOSES EVEN IF YOU COMPLETE, OR ATTEMPT TO COMPLETE REPAIRS FOR THE MANUFACTURER(S).

12. LIMITATION OF DAMAGES. IF THE MANUFACTURER(S)' WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT AND SUCH WARRANTY FAILS BECAUSE OF ATTEMPT AT REPAIR ARE NOT COMPLETED WITHIN A REASONABLE TIME OR THE MANUFACTURER(S) HAS (HAVE) GONE OUT OF BUSINESS, I AGREE, THAT IF I AM ENTITLED TO ANY DAMAGES AT ALL AGAINST YOU, MY DAMAGES ARE LIMITED TO THE LESSER OF EITHER THE COST OF NEEDED REPAIRS OR REDUCTION IN THE MARKET VALUE OF THE UNIT CAUSED BY THE LACK OF REPAIRS. IN ANY CASE, YOU WILL NOT BE REQUIRED TO PAY ME ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. I ALSO AGREE THAT ONCE I HAVE ACCEPTED THE UNIT, EVEN THOUGH THE MANUFACTURER(S)' WARRANTY DOES NOT ACCOMPLISH IT'S [SIC] PURPOSE, THAT I CANNOT RETURN THE UNIT TO YOU AND SEEK A REFUND FOR ANY REASON.

After the Mays purchased their Mid-America mobile home, Mid-America filed for protection under the Bankruptcy Act. At some point after the purchase, Joy May notified Jubilee of some problems with their mobile home. Lisa Burton, an employee of Jubilee at that time, faxed a notice of the problems to Mid-America but heard nothing from them in response. After Mid-America failed to respond, Jubilee sent someone out to perform repairs on the Mays' mobile home.

A little over one year after they purchased the mobile home, the Mays filed a complaint against Jubilee Mobile Homes in which they alleged the following claims: (1) Jubilee failed to

deliver and set up the mobile home in a workmanlike manner, thereby breaking the warranties of merchantability and suitability for particular purpose; (2) upon receipt of the mobile home, the Mays discovered defects which caused it to be unfit for the purposes intended; (3) the Mays timely notified Jubilee of the defects but Jubilee failed and refused to make repairs; (4) the defects were substantial and caused the mobile home to be dangerous and unfit for occupation; and (5) the defects were so many and so serious as to make repair impossible and the mobile home nonmerchantable entitling the Mays to a refund of their purchase price, including sales/usage tax.

The Mays filed a number of unauthenticated lists and reports that purport to detail the problems found with the mobile home as a result of some type of inspection. Eventually, the Mays filed a motion for summary judgment on the grounds that Jubilee was liable to the Mays under Kentucky's Uniform Commercial Code, KRS Chapter 355; Kentucky's Consumer Protection Statutes pertaining to mobile home sales, KRS 367.710 through KRS 367.775; and Title 15, Chapter 50 of the United States Code (no particular section specified other than Section 2301, the definitions section).

In further support of their motion, the Mays argued that they have shown by these statutes and the sales contract that Jubilee agreed to be responsible for the manufacturer's

warranty if the manufacturer went out of business. The Mays contended that since the manufacturer did go out of business, then Jubilee should be held to the provisions of the sales contract.

The trial court granted the Mays' motion for summary judgment. In its order granting summary judgment, the trial court made the following findings: (1) under the sales contract, Jubilee provided a warranty to the Mays in the event the manufacturer went out of business; (2) if the manufacturer went out of business, Jubilee "was responsible for the damages which should have been those of the manufacturer[;]" (3) the manufacturer filed for bankruptcy protection in January of 1998 and subsequently stopped doing business; and (4) the parties "stipulated that the mobile home was defective, and although the Plaintiffs gave timely notice of the defects, Defendant failed to made [sic] necessary repairs to the mobile home."

The trial court held that Jubilee was liable to the Mays under the provisions of the Kentucky Uniform Commercial Code and Paragraph 12 of the sales contract. Specifically, the trial court reasoned as follows:

Under KRS 355.1-201(9), the Plaintiffs meet the definition of a buyer, and under KRS 355.2-104(1) Defendant meets the definition of a seller of consumer goods. The contract entered into between Plaintiffs and Defendant stated that if the manufacturer's warranty failed due to the manufacturer

going out of business then the dealer was responsible for repair or replacement and that damages would be the cost of repair or the reduction in the market value caused by the lack of repairs.

Based on its findings and conclusions, the trial court ordered that the Mays shall recover from Jubilee "the value of the replacement of the mobile home, being the sum of \$29,000.00, with interest thereon at the rate of 12%, and court costs incurred." Jubilee filed a notice of appeal.

In this appeal, Jubilee argues that the Mays were not entitled to summary judgment as a matter of law. In support, it first contends that the trial court's judgment does not correctly reflect the material terms of the contract. Second, Jubilee asserts that the trial court did not follow either common law or Kentucky's Consumer Protection Statutes pertaining to mobile home sales. Third, Jubilee argues that there was insufficient evidence of the defects, of notice to Jubilee and of sufficient opportunity to cure the defects. Finally, Jubilee contends that the trial court's judgment was inconsistent in that the court referred to the limitation of damages clause in the parties' contract yet awarded damages in the amount of the replacement cost of the mobile home in contravention of that limitations clause.

The Mays failed to file a brief in this appeal.

The standard of review of a trial court's granting of summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is proper when it appears that it would be impossible for the adverse party to produce evidence at trial warranting a judgment in its favor. See James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Insurance Co., 814 S.W.2d 273, 276 (Ky. 1991).

Once a party files a properly supported summary judgment motion, the nonmoving party cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial. See Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 482 (Ky. 1991). In considering a motion for summary judgment, the court must view all the facts and inferences drawn therefrom in the light most favorable to the party opposing the motion, and all doubts are to be resolved in his or her favor. See id. at 480.

Because summary judgment addresses only legal questions and the existence of disputed issues of material fact, this Court need not defer to the trial court's decision and will review the issue de novo. See Scifres, 916 S.W.2d at 781; Lewis v. B & R Corp., 56 S.W.3d 432, 436 (Ky. App. 2001). Moreover,

this case involves a sales contract, and the interpretation of a contract is a question of law. See First Commonwealth Bank of Prestonsburg v. West, 55 S.W.3d 829, 835 (Ky. App. 2000).

Having reviewed the sparse record in this case and Jubilee's arguments, we conclude the trial court's issuance of summary judgment in favor of the Mays was improper. It was improper because the Mays' motion for summary judgment was not properly supported. The Mays' are not entitled to damages simply because they allege that Jubilee sold them a mobile home with defects. They still must prove their claim. In addition, the trial court's finding that the parties stipulated that the mobile home was defective and that the Mays gave timely notice of the defects yet Jubilee failed to make the necessary repairs was clearly erroneous. This finding was clearly erroneous because there was no such stipulation by Jubilee.

The factual issues notwithstanding, we further conclude that the terms of the governing sales contract were not ambiguous, and the trial court's interpretation of the contract was incorrect as a matter of law. We vacate the trial court's judgment and remand for further proceedings. Upon remand, assuming the Mays prove the defects with the mobile home and establish the other conditions precedent to any recovery against Jubilee, then their damages are limited as set out in the sales contract to the lesser of either the cost of needed repairs or

the reduction in market value of the unit caused by lack of repairs.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Michael J. Curtis
Curtis Legal Services, Inc.
Ashland, Kentucky

NO BRIEF FILED ON BEHALF OF
APPELLEES