

COURT OF APPEALS OF NORTH CAROLINA

Lake Colony Construction, Inc. v. Boyd, 212 N.C. App. 300

711 S.E.2d 742 (2011) · No. COA10-959 · Decided June 7, 2011

SUMMARY

The North Carolina Court of Appeals held that a written agreement between Lake Colony Construction, Inc. and Lake Colony Partners, LLC established a joint venture for constructing and selling a house. Because the agreement provided for profit sharing and gave each party some authority to direct the other's conduct, the court upheld the trial court's determination that the construction company's labor and materials were supplied in pursuit of the joint venture. The court affirmed the resulting subordination of the construction company's claims to the deeds of trust.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Geer, Judge; Stephens, Judge; McCullough, Judge
JURISDICTION	North Carolina
DECIDED	June 7, 2011
DOCKET	COA10-959
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lake Colony Construction appealed from a superior court judgment and permanent injunction determining that its contract with Lake Colony Partners created a joint venture and that its rights were subordinate to specified deeds of trust.
STANDARD OF REVIEW	Findings of fact in a declaratory judgment action are reviewed for support by competent evidence and, if so supported, are conclusive on appeal. Conclusions of law and contract interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published North Carolina Court of Appeals opinion
PARTIES	Lake Colony Construction, Inc. v. William Richard Boyd, Jr., Marcia J. Ringle, Macon Bank, Inc., Lake Colony Partners, LLC, Peter A. Paul, Big Ridge Partners, LLC

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QUESTIONS PRESENTED

1. Whether the parties' written contract established a joint venture.
2. Whether the trial court erred in finding that labor and materials supplied by Lake Colony Construction were furnished in pursuit of the joint venture.
3. Whether Lake Colony Construction preserved for appellate review the issue of whether it could enforce a statutory lien against the property even if it was a member of a joint venture.
4. Whether the trial court properly determined Lake Colony Construction's rights to the property-sale proceeds as subordinate to the specified deeds of trust.

HOLDINGS

1. The contract established a joint venture because it expressly identified the relationship as a joint venture, provided for joint sharing of profits, and gave each party the right in some measure to direct the other's conduct.
2. The use of the phrase joint venture, together with the contract's mutual-control provisions, necessarily implied the parties' intent to adopt a principal-agent relationship.
3. The issue whether a joint-venture member could enforce a laborers' and materialmen's lien despite the joint venture was not preserved because Lake Colony Construction did not raise it in the trial court or specifically argue it on appeal.

KEY QUOTATIONS

"A joint venture "is a business association like a partnership but narrower in scope and purpose." (746)

"Thus, the essential elements of a joint venture are (1) an agreement to engage in a single business venture with the joint sharing of profits, (2) with each party to the joint venture having a right in some measure to direct the conduct of the other "through a necessary fiduciary relationship." (746-747)

"These provisions—subjecting each party to the control of the other regarding selection of and changes to the house plans, selection of the lot, and determination of the sales price for the house—are sufficient to establish that the parties had the right, in some measure, to direct each other's conduct." (748)

FACTUAL BACKGROUND

Lake Colony Construction and Lake Colony Partners entered into a written agreement expressly describing their relationship as a joint venture to construct and sell a house. Lake Colony Partners was to acquire the lot and arrange financing, while Lake Colony Construction was to serve as general contractor and provide construction labor and services. The contract provided for joint decisions concerning the lot, house plans, and asking price, as

well as staged payments and an equal division of remaining proceeds. After Lake Colony Construction filed a laborers' and materialmen's lien, foreclosure proceedings began, prompting the declaratory judgment action concerning whether the lien had priority over three deeds of trust.

PROCEDURAL HISTORY

Lake Colony Construction filed a statutory lien claim and later brought an action to enforce the lien against Lot 30. During the pending lien action, foreclosure proceedings were initiated, and Lake Colony Construction filed a declaratory judgment action seeking a determination of the parties' interests and lien priorities. After a bench trial based principally on the parties' written contract and stipulations, the trial court found a joint venture, treated Lake Colony Construction as a judgment creditor subordinate to the deeds of trust, and entered a permanent injunction. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Lynn v. Lynn*, ___ N.C. App. ___, 689 S.E.2d 198, 204 (2010)
- *Cross v. Capital Transaction Group, Inc.*, 191 N.C. App. 115, 117, 661 S.E.2d 778, 780 (2008)
- *Davison v. Duke University*, 282 N.C. 676, 712, 194 S.E.2d 761, 783 (1973)
- *Pike v. Wachovia Bank & Trust Co.*, 274 N.C. 1, 8-9, 161 S.E.2d 453, 460 (1968)
- *In re Simpson*, 222 F. Supp. 904, 909 (M.D.N.C. 1963)
- *Jones v. Shoji*, 110 N.C. App. 48, 51, 428 S.E.2d 865, 867 (1993)
- *Edwards v. Bank*, 39 N.C. App. 261, 275, 250 S.E.2d 651, 661 (1979)
- *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 562, 359 S.E.2d 792, 799 (1987)
- *Southeastern Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 327, 572 S.E.2d 200, 204-05 (2002)
- *Slaughter v. Slaughter*, 93 N.C. App. 717, 720-21, 379 S.E.2d 98, 100-01 (1989)
- *Lane v. Scarborough*, 284 N.C. 407, 410-11, 200 S.E.2d 622, 624-25 (1973)
- *Wise v. Harrington Grove Community Association*, 357 N.C. 396, 406, 584 S.E.2d 731, 739 (2003)
- *Bodine v. Harris Village Property Owners Association*, ___ N.C. App. ___, 699 S.E.2d 129 (2010)
- *Bryant v. Thalhimer Bros., Inc.*, 113 N.C. App. 1, 14, 437 S.E.2d 519, 527 (1993)
- *Fowler v. Johnson*, 18 N.C. App. 707, 711, 198 S.E.2d 4, 7 (1973)