

SUPREME COURT OF NORTH DAKOTA

Barrett v. Gilbertson

2013 ND 35 (N.D. 2013) · No. 20120279 · Decided February 26, 2013

SUMMARY

The North Dakota Supreme Court affirmed dismissal of the Barretts' breach-of-contract claims against a residential construction contractor. The Court held the evidence supported findings that the contractor complied with the parties' agreement regarding the basement and laundry room, that any related claims were resolved by a pre-closing settlement, and that the contractor was excused from repairing alleged defects because the Barretts did not provide access. The Court also upheld denial of attorney's fees because the contractor's dismissed defamation counterclaim was not frivolous.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Dale V. Sandstrom; Carol Ronning Kapsner; Mary Muehlen Maring; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 26, 2013
DOCKET	20120279
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment after a court trial dismissing the plaintiffs' breach-of-contract claims arising from construction of their house and denying both parties' motions for attorney's fees.
STANDARD OF REVIEW	Whether a party breached a contract is a finding of fact reviewed for clear error. Contract interpretation and ambiguity are questions of law reviewed independently when the parties' intent can be determined from the contract. Whether a claim is frivolous and the amount and reasonableness of attorney's fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published and precedential North Dakota Supreme Court opinion
PARTIES	Terence Barrett, Rachel Barrett v. Harry Gilbertson, d.b.a. Harry Gilbertson Construction

TOPICS

breach of contract

construction defects

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contract interpretation

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence established that Gilbertson breached the construction contract by failing to construct the below-grade space according to the blueprints.
2. Whether the evidence established that Gilbertson breached the contract by constructing a laundry room smaller than the dimensions shown in the blueprints.
3. Whether the parties' pre-closing settlement extinguished claims concerning the dimensions of the below-grade space and laundry room.
4. Whether the Barretts established a breach of the contractual warranty concerning construction defects when they did not allow Gilbertson an opportunity to make repairs.
5. Whether the district court abused its discretion by denying the Barretts attorney's fees incurred in defending against Gilbertson's counterclaim.

HOLDINGS

1. The Barretts failed to establish that Gilbertson breached the construction contract concerning the below-grade space or laundry-room dimensions because the evidence supported the district court's findings that the construction conformed to the parties' contractual understandings.
2. The parties' Final Settlement Offer and subsequent closing disposed of any claims that the basement and laundry-room construction did not conform to the contract.
3. The Barretts did not establish a breach of the contractual warranty because the evidence did not substantiate the alleged defects and, in any event, Gilbertson's repair obligation was excused when the Barretts prevented him from performing by refusing to provide access and an opportunity to make repairs.
4. The district court did not abuse its discretion by denying the Barretts' request for attorney's fees because the counterclaim was not frivolous under N.D.C.C. § 28-26-01(2).

KEY QUOTATIONS

“A settlement takes on the character of a contract between the parties and is final and conclusive.” (¶ 15)

“When one party prevents the other party’s performance of a term of a contract, it excuses the nonperformance and provides a defense in a suit for breach by the nonperformance.” (¶ 21)

FACTUAL BACKGROUND

The parties entered into a contract for Gilbertson to construct and sell the Barretts a house, with construction to conform substantially to the plans and specifications. The Barretts later complained about the dimensions of the

below-grade storage area, the laundry room, and various construction discrepancies. Before closing, the parties signed a document called a Final Settlement Offer that reduced the purchase price and addressed the known construction concerns, including the below-grade space and laundry area. After closing, the Barretts reported alleged defects but refused to allow Gilbertson access to make repairs despite his repeated offers to do so.

PROCEDURAL HISTORY

The Barretts sued Gilbertson for breach of contract, alleging that the house did not conform to the plans and specifications and that Gilbertson failed to repair construction defects under the contract warranty. After a court trial, the district court dismissed the claims with prejudice, finding no breach, finding that the parties' pre-closing settlement extinguished the basement and laundry-room claims, and finding that the Barretts did not give Gilbertson an opportunity to repair alleged defects. The district court also denied the Barretts' request for attorney's fees concerning Gilbertson's dismissed counterclaim for defamation and emotional distress. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- WFND, LLC v. Fargo Marc, LLC, 2007 ND 67, ¶ 13, 730 N.W.2d 841
- Cavendish Farms, Inc. v. Mathiason Farms, Inc., 2010 ND 236, ¶ 20, 792 N.W.2d 500
- Langer v. Bartholomay, 2008 ND 40, ¶¶ 12, 14, 745 N.W.2d 649
- Delzer v. United Bank of Bismarck, 459 N.W.2d 752, 755 (N.D. 1990)
- Felco, Inc. v. Doug's North Hill Bottle Shop, Inc., 1998 ND 111, ¶¶ 18-19, 579 N.W.2d 576
- Kuperus v. Willson, 2006 ND 12, ¶ 10, 709 N.W.2d 726
- Vandal v. Peavey Co., 523 N.W.2d 266, 268 (N.D. 1994)
- Barnes v. St. Joseph's Hosp., 1999 ND 204, ¶ 16, 601 N.W.2d 587
- Wolt v. Wolt, 2011 ND 170, ¶¶ 25-26, 803 N.W.2d 534
- Deacon's Development, LLP v. Lamb, 2006 ND 172, ¶ 12, 719 N.W.2d 379
- State v. Morin, 2012 ND 75, ¶ 16, 815 N.W.2d 229
- Sandberg v. American Family Ins. Co., 2006 ND 198, ¶¶ 19-21, 722 N.W.2d 359