

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Philip E. Blake and James M. Cole v. G.M. Munce and Blake and Cole, P.A.

426 So. 2d 1175 (Fla. Dist. Ct. App. 1983) · No. No. 81-1609 · Decided February 9, 1983

SUMMARY

The Florida Fifth District Court of Appeal reviewed a judgment awarding damages to G.M. Munce arising from his employment with Blake and Cole, P.A. The court held that the individual appellants were not personally liable for breach of the employment contract because there was insufficient evidence of mutual assent, but that Cole could be liable for fraudulent misrepresentation. It reversed the judgment against Blake on the misrepresentation claim and otherwise affirmed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Frank D. Upchurch, Jr.; Orfinger, C.J.; Dauksch, J.
JURISDICTION	Florida
DECIDED	February 9, 1983
DOCKET	No. 81-1609
DISPOSITION	other
PROCEDURAL POSTURE	Blake and Cole appealed a final judgment for damages after the trial court denied their motions for directed verdict on breach-of-contract and fraudulent-misrepresentation counts. Blake and Cole, P.A., did not appeal.
STANDARD OF REVIEW	Review of the denial of motions for directed verdict; the court considered whether evidence supported submission of the claims to the jury.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the applicable Florida appellate system unless subsequently limited or overruled.
PARTIES	Philip E. Blake, James M. Cole v. G.M. Munce, Blake and Cole, P.A.

TOPICS

mutual assent

breach of contract

fraud

damages

appellate procedure

PRACTICE AREAS

Contract law

Tort law

Employment law

Appellate procedure

Damages

QUESTIONS PRESENTED

1. Whether sufficient evidence established that Blake and Cole, individually, were parties to Munce's employment contract.
2. Whether sufficient evidence supported Munce's fraudulent-misrepresentation claim against Cole.
3. Whether sufficient evidence supported Munce's fraudulent-misrepresentation claim against Blake when Blake made no alleged misrepresentation.
4. Whether punitive damages could be sustained against Blake on the misrepresentation count.

HOLDINGS

1. The individual defendants could not be held liable on the employment contract because the evidence did not establish mutual or reciprocal assent by either Blake or Cole to personally guarantee the contract terms.
2. The evidence was sufficient to submit Munce's fraudulent-misrepresentation claim against Cole to the jury and to support recovery against him.
3. The trial court should have directed a verdict for Blake on the fraudulent-misrepresentation count because the uncontradicted evidence showed that Blake made no misrepresentations to Munce; the punitive-damages award against Blake therefore also had to be stricken.

KEY QUOTATIONS

"In order for a contract to exist between Munce and Cole, there must have been mutual or reciprocal assent."
(426 So. 2d at 1176)

"The essential elements of a fraudulent representation are: (1) a false statement concerning a specific material fact; (2) the defendant's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) injury to the plaintiff acting in reliance on the representation." (426 So. 2d at 1177)

FACTUAL BACKGROUND

Munce worked for Blake and Cole, P.A., from September 1979 until his termination on March 28, 1980. Munce and Cole negotiated an oral employment arrangement, but Munce received his paychecks from the professional association and acknowledged that it was his employer. Munce alleged that Cole represented that Cole and Blake each earned \$50,000 annually, inducing him to remain with the firm; the firm later failed to pay some wages and reimbursable expenses.

PROCEDURAL HISTORY

Munce sued Blake, Cole, and Blake and Cole, P.A., asserting breach of contract, quantum meruit, and fraudulent misrepresentation arising from his employment and termination. After trial, the jury found for Munce on the

contract and misrepresentation counts and awarded compensatory and punitive damages. Blake and Cole appealed the denial of their directed-verdict motions; the appellate court affirmed as to Cole's liability for fraudulent misrepresentation, reversed as to the individual contract liability of Blake and Cole and Blake's misrepresentation liability, and struck the punitive damages award against Blake.

DISPOSITION

other

CASES CITED

- Goff v. Indian Lake Estates, Inc., 178 So. 2d 910 (Fla. 2d DCA 1965)
- Mann v. Thompson, 100 So. 2d 634 (Fla. 1st DCA 1958)
- Teare v. Local Union No. 295, 98 So. 2d 79 (Fla. 1957)
- Amazon v. Davidson, 390 So. 2d 383 (Fla. 5th DCA 1980)
- Charter Air Center, Inc. v. Miller, 348 So. 2d 614 (Fla. 2d DCA 1977)
- Bower v. Selecman, 52 So. 2d 680 (Fla. 1951)
- Wheeler v. Baars, 33 Fla. 696, 15 So. 584 (1894)
- Bobby Jones Garden Apartments, Inc. v. Suleski, 391 F.2d 172 (5th Cir. 1968)
- American Motorcycle Institute v. Mitchell, 380 So. 2d 452 (Fla. 5th DCA 1980)

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