

# COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

## Kennitra M. Foote v. Monica J. Tate

No. 01-06-00956-CV · No. 01-06-00956-CV · Decided January 31, 2008

### SUMMARY

The First District Court of Appeals of Texas affirmed a trial court judgment awarding Monica J. Tate \$30,000 for breach of contract and \$9,000 in attorney's fees. The court held that Kennitra M. Foote's signed writing constituted an offer that Tate accepted through her conduct, and that Tate's forbearance from selling the property supplied consideration. The court also held that Foote's challenge to the sufficiency of the evidence supporting fraud was moot because the judgment denied all other claims and rested on breach of contract.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals for the First District of Texas                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Sam Nuchia; Justice Hanks; Justice Higley                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Texas                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | January 31, 2008                                                                                                                                                                                                                                                                                                           |
| DOCKET                | 01-06-00956-CV                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Foote appealed after a bench trial in which the trial court awarded Tate \$30,000 for breach of contract and \$9,000 in attorney's fees.                                                                                                                                                                                   |
| STANDARD OF REVIEW    | In a bench trial without findings of fact and conclusions of law, the appellate court implies all facts necessary to support the judgment that are supported by the evidence. The evidence is reviewed in the light most favorable to the fact-finder's decision, with every reasonable inference indulged in its support. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                                                  |
| PARTIES               | Kennitra M. Foote v. Monica J. Tate                                                                                                                                                                                                                                                                                        |

### TOPICS

- contract interpretation
- contract formation
- consideration
- appellate procedure
- standard of review

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether legally sufficient evidence established a valid contract between Foote and Tate when Foote signed the writing but Tate did not.
2. Whether legally sufficient evidence established consideration for Foote's promise to pay Tate.
3. Whether legally sufficient evidence supported Tate's fraud claim.

## HOLDINGS

1. Because the writing did not specify a required method of acceptance, Tate could accept by any reasonable means, and the evidence legally sufficiently established acceptance when Tate accepted Foote's payment of the July mortgage.
2. Legally sufficient evidence established consideration because Tate agreed to forbear exercising her right to sell the house after June 8, 2004.
3. The challenge to Tate's fraud claim was moot because the judgment awarded recovery only on breach of contract and denied all other claims.

## FACTUAL BACKGROUND

Van Richard Watkins, Jr. owned a house but was unable to make the mortgage payments. Watkins and Tate entered into a written agreement under which Tate would purchase the home, while Watkins retained a limited period to repurchase it in exchange for paying Tate \$12,000 plus expenses and the mortgage payments. After Watkins failed to pay, Foote signed a writing promising to pay Tate \$32,285.58, including a July 2004 mortgage payment, but Foote paid only the mortgage payment.

## PROCEDURAL HISTORY

Watkins and Tate entered into a written agreement concerning Tate's purchase of Watkins's home and Watkins's right to repurchase it. After Watkins failed to pay the required amount, Foote signed a writing agreeing to pay Tate \$32,285.58, including the July mortgage payment. Foote paid the July mortgage payment but made no further payments. After a bench trial, the trial court entered judgment for Tate on breach of contract and denied her other claims. Foote challenged the judgment on legal-sufficiency grounds, and the Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- BMC Software Belg., N.V. v. Marchand, 83 S.W.3d 789, 795 (Tex. 2002)
- City of Keller v. Wilson, 168 S.W.3d 802, 822 (Tex. 2005)

- Cantu v. Cent. Educ. Agency, 884 S.W.2d 565, 567 (Tex. App.—Austin 1994, no writ)
- Vass v. Fisher, 405 S.W.2d 866, 867 (Tex. Civ. App.—Houston 1966, no writ)

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