

SUPREME COURT OF GEORGIA

Wallace v. Bock, 279 Ga. 744

620 S.E.2d 820 (2005) · No. S05G1101 · Decided October 11, 2005

SUMMARY

The Supreme Court of Georgia held that a later escrow agreement modified, rather than superseded, the parties' original purchase contract because it was neither inconsistent with nor comprehensive of the original agreement. The court further held that the six-year limitations period for the breach-of-contract claim began when the modified contractual obligation was breached, after the escrow funds were released without completion of the required work. The judgment was reversed in part, while the Court of Appeals' ruling concerning the escrow-agreement claim was left unaffected.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	October 11, 2005
DOCKET	S05G1101
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted the appellants' petition for a writ of certiorari to review the Court of Appeals' affirmance of summary judgment for the defendants, focusing on the Court of Appeals' application of the contractual merger doctrine and the timeliness of the breach-of-contract claim.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, and the court considers whether the record shows no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. The accrual and timeliness issues were determined under the applicable statute of limitations for breach of a construction contract.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Georgia
PARTIES	John Wallace, Patricia Ann Wallace v. Bock Homes, associated entities

TOPICS

breach of contract

contract interpretation

construction law

appellate procedure

standard of review

PRACTICE AREAS

contracts

real estate

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether a subsequent escrow agreement merged into and extinguished the parties' original purchase agreement merely because both agreements concerned completion of construction of the house.
2. Whether the escrow agreement was an inconsistent and complete substituted contract, or instead a modification of the original purchase agreement.
3. Whether the six-year limitation period for the breach-of-construction-contract claim began at the October 3 closing or when Bock Homes allegedly received final payment without completing the required work.

HOLDINGS

1. A subsequent written agreement between the same parties does not supersede and discharge an earlier contract merely because the agreements concern similar subject matter. Contractual merger requires that the later agreement be both inconsistent with the earlier agreement and completely cover the same subject matter.
2. The breach-of-construction-contract claim was timely because the escrow agreement modified the original contract by extending Bock Homes' time to complete the house and receive the balance of the consideration until October 14, 1994, or thereafter when the escrow funds were released without completion.
3. The Court of Appeals' Division 1 ruling concerning the breach-of-escrow-agreement claim was unaffected by the decision.

KEY QUOTATIONS

“An existing contract is superseded and discharged whenever the parties subsequently enter upon a valid and inconsistent agreement completely covering the subject-matter embraced by the original contract” (822)

“The escrow agreement is not a substituted contract which relieved Bock Homes of its responsibility to finish the house. It was simply a modification of the original contract” (823)

“Appellants could not bring suit on the purchase contract until it was breached, and Bock Homes was given until October 14 to comply with its contractual obligations.” (824)

FACTUAL BACKGROUND

John and Patricia Ann Wallace contracted to purchase a new house from Bock Homes. Because construction was incomplete, the closing was postponed twice; at the October 3, 1994 closing, the parties executed an escrow agreement requiring \$10,000 to remain in escrow until October 14, when Bock Homes was required to tender a clear final inspection. The work was not completed by October 14, and the escrow funds were later released

without the Wallaces' knowledge or consent. The Wallaces sued more than six years after closing but less than six years after the escrow funds were released.

PROCEDURAL HISTORY

The trial court granted summary judgment to Bock Homes and the other defendants on claims for breach of the purchase agreement, breach of the escrow agreement, and fraud. The Court of Appeals affirmed, holding that the purchase-agreement claim merged into the escrow-agreement claim and that the escrow claim failed as a matter of law. The Supreme Court granted certiorari, disapproved the Court of Appeals' merger analysis, held that the purchase-contract claim was timely, and reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment was reversed; the opinion does not state additional specific remand instructions.

CASES CITED

- Wallace v. Bock, 271 Ga.App. 833, 611 S.E.2d 62 (2005)
- Health Service Centers v. Boddy, 257 Ga. 378, 380(2), 359 S.E.2d 659 (1987)
- Holmes v. Worthey, 159 Ga.App. 262, 267, 282 S.E.2d 919 (1981)
- Albany Fed. S. & L. Assn. v. Henderson, 198 Ga. 116, 143(6), 31 S.E.2d 20 (1944)
- Hennessy v. Woodruff, 210 Ga. 742, 744(1), 82 S.E.2d 859 (1954)
- Arnold v. Arnold, 227 Ga.App. 152, 154(1), 489 S.E.2d 65 (1997)
- Thomas v. Garrett, 265 Ga. 395, 396(1), 456 S.E.2d 573 (1995)
- U-Haul Co. of W. Ga. v. Abreu & Robeson, Inc., 247 Ga. 565, 566, 277 S.E.2d 497 (1981)
- Dolanson Co. v. C & S Nat. Bank, 242 Ga. 681, 682(1)(a), 251 S.E.2d 274 (1978)
- Hickey v. Bowden, 248 Ga.App. 647, 648(1), 548 S.E.2d 347 (2001)
- Feinour v. Ricker Co., 255 Ga.App. 651, 653(1), 566 S.E.2d 396 (2002)
- Colormatch Exteriors v. Hickey, 275 Ga. 249, 251(2), 252(2), 569 S.E.2d 495 (2002)
- Scully v. 1st Magnolia Homes, 279 Ga. 336, 338(1), 614 S.E.2d 43 (2005)

OPINION

CARLEY, J.

620 S.E.2d 820 (2005) 279 Ga. 744 WALLACE et al. v. BOCK et al. No. S05G1101. Supreme Court of Georgia. October 11, 2005. *821 Wayne Stephen Tartline, Douglas J. Davis, Belli, Weil, Grozbean & Davis, LLP, Atlanta, Kyle G.A. Wallace, Harrison, for Appellants. Ted Marcus, Atlanta, for Appellees. CARLEY, Justice.

On July 29, 1994, John and Patricia Ann Wallace (Appellants) entered into a contract to buy a new house from Bock Homes. The closing was postponed twice because the house was not complete. At the rescheduled closing on October 3, Appellants noted that work still remained to be done.

The closing attorney prepared an escrow agreement which provided that \$10,000 would be held until October 14, 1994, by which time the escrow agent "must be tendered" a "clear final inspection." All parties signed the agreement, and the sale of the property closed on October 3. Work on the house was not finished by October 14.

However, Appellants later learned that the escrow funds were released to Bock Homes without their *822 knowledge or consent. They demanded completion of the work, but it was never finished. Six years and a day after the closing, Appellants brought suit against Bock Homes and associated entities, alleging breach of the purchase agreement, breach of the escrow agreement, and fraud.

The trial court granted summary judgment in favor of Bock Homes and the other defendants and, on appeal, the Court of Appeals affirmed. *Wallace v. Bock*, 271 Ga.App. 833, 611 S.E.2d 62 (2005). With regard to the escrow agreement, the Court of Appeals agreed with the trial court's conclusion that "Bock Homes had nothing left to perform as to that agreement after it placed into escrow the initial funds that were the subject of the agreement, and thus could not breach it as a matter of law.

[Cit.]" (Emphasis omitted.) *Wallace v. Bock*, supra at 835(1), 611 S.E.2d 62. As for Appellants' claim for breach of the original purchase agreement, the Court of Appeals held that, where the parties execute two successive agreements embodying completed negotiations "on the same subject," the doctrine of merger applies, and the second agreement supercedes the first.

[Cits.] Here, the purchase agreement specified that only Bock Homes's obligation to complete the house would survive the closing precisely the subject of the separate escrow agreement executed there. Thus [Appellants'] claim for breach of the purchase agreement based on Bock Homes's failure to complete its work merges into their claim under the escrow agreement.

[Cit.] As explained in Division 1, [Appellants'] claim under the escrow agreement fails as a matter of law. As a result, their merged action under the purchase agreement must also fail. *Wallace v. Bock*, supra at 836(2), 611 S.E.2d 62. This Court granted Appellants' petition for a writ of certiorari, in order to address the Court of Appeals' reliance on the doctrine of contractual merger in Division 2 of its opinion.

1. "The rational basis for the merger rule is that where parties enter into a final contract all prior negotiations, understandings, and agreements "on the same subject" are merged into the final contract, and are accordingly extinguished.' [Cits.]" (Emphasis omitted.) *Health Service Centers v. Boddy*, 257 Ga. 378, 380(2), 359 S.E.2d 659 (1987) (quoting *Holmes v. Worthey*, 159 Ga.App.

262, 267, 282 S.E.2d 919 (1981)). Although that is the general rationale, the merger doctrine has application in a variety of contexts. For example, insofar as antecedent oral negotiations, understandings and agreements are concerned, the principle of merger is effectuated by the parol evidence rule. "Having reduced their contract to writing, all prior oral negotiations and agreements pertaining to the same subject-matter are merged into the writing and superseded by the writing.

[Cit.]" *Albany Fed. S. & L. Assn. v. Henderson*, 198 Ga. 116, 143(6), 31 S.E.2d 20 (1944). See also OCGA § 13-2-2(1). This case, however, concerns the connection between the original sales contract and the subsequent escrow agreement, which are two separate and distinct written contracts entered into by the same parties, but at different times.

In that context, applicability of the principle of contractual merger requires a showing of more than a similarity of subject matter. "An existing contract is superseded and discharged whenever the parties subsequently enter upon a valid and inconsistent agreement completely covering the subject-matter embraced by the original contract...." [Cit.] (Emphasis supplied.)

Hennessy v. Woodruff, 210 Ga. 742, 744(1), 82 S.E.2d 859 (1954). See also *Arnold v. Arnold*, 227 Ga.App. 152, 154(1), 489 S.E.2d 65 (1997). Such a "substituted contract discharges the original duty and [a] breach of the substituted contract by the obligor does not give the obligee a right to enforce the original duty." Restatement, Second, Contracts, § 279(2), p. 375 (1981).

Thus, the principle of merger would extinguish Appellants' right to enforce Bock Homes' contractual obligations under the initial purchase agreement only if the subsequent escrow agreement was both inconsistent with that earlier contract and completely covered the same subject matter. *823 As the Court of Appeals noted, the subject matter of the purchase agreement included Bock Homes' obligation to complete the construction, as well as to convey title to the real property.

See *Holmes v. Worthey*, *supra* (contractual obligation to build a house is not merged into or extinguished by a subsequent deed conveying title to the real property). The escrow agreement does not cover the entirety of the subject matter addressed in the purchase contract, since it deals only with the construction of the house and not the conveyance of title to the property.

Moreover, the escrow agreement is not inconsistent with the purchase agreement in that regard. To the contrary, the escrow agreement reaffirmed the underlying obligation to complete the house in accordance with the purchase contract, and merely set forth an alternative procedure by which Bock Homes was to be paid the balance of the contemplated payment for its satisfaction of that obligation.

Thus, the escrow agreement is not a substituted contract which relieved Bock Homes of its responsibility to finish the house. It was simply a modification of the original contract, whereby

Bock Homes would no longer be entitled to full payment at the closing on October 3, but would, instead, be authorized to receive it by October 14 if the house was completed by that date.

See *Thomas v. Garrett*, 265 Ga. 395, 396(1), 456 S.E.2d 573 (1995) (holding that the "modification of a contract may be accomplished by a subsequent mutual agreement of all the parties thereto"). Therefore, the Court of Appeals erred in relying on the merger doctrine to hold that Appellants' claim for breach of the purchase agreement was merged into and extinguished by the subsequent escrow agreement.

2. The Court of Appeals relied upon the merger doctrine, but the trial court granted summary judgment on the ground that Appellants' claim for breach of the purchase contract was time-barred. It held that the closing was conditioned upon issuance of a certificate of occupancy.

Therefore, the house was substantially completed as of October 3, 1994.... Because the present action was filed more than six years after substantial completion, [Appellants'] claim for breach of the sales contract is barred. Bock Homes urges that, if the Court of Appeals erred in relying on the merger doctrine, the grant of summary judgment was correct for the reason given by the trial court. "[W]hen the question is raised as to whether an action is barred by a statute of limitations, the true test to determine when the cause of action accrued is to ascertain the time when the plaintiff could first have maintained his action to a successful result."

U-Haul Co. of W. Ga. v. Abreu & Robeson, Inc., 247 Ga. 565, 566, 277 S.E.2d 497 (1981). On a contract claim, the statute of limitations begins to run at the time of its alleged breach. *Dolanson Co. v. C & S Nat. Bank*, 242 Ga. 681, 682(1)(a), 251 S.E.2d 274 (1978). A suit alleging breach of a construction contract must "be brought within six years after the same become[s] due and payable."

OCGA § 9-3-24. See also *Hickey v. Bowden*, 248 Ga.App. 647, 648(1), 548 S.E.2d 347 (2001). Thus, Appellants were required to bring suit within six years of the date that Bock Homes' contractual obligation to construct the house in accordance with the purchase agreement became "due and payable."

As the trial court recognized, there is authority for holding that this period of limitations begins "to run on the date of substantial completion, i.e., the date that the certificate of occupancy is issued. [Cits.]" *Feinour v. Ricker Co.*, 255 Ga.App. 651, 653(1), 566 S.E.2d 396 (2002). That proposition is certainly applicable in a case where the date of issuance of the certificate of occupancy coincides with the date that the contractor's obligation under the construction contract became "due and payable."

See *Colormatch Exteriors v. Hickey*, 275 Ga. 249, 251(2), 569 S.E.2d 495 (2002). However, it is only the "general rule" and, as such, is not invariably applicable in all circumstances. *Scully v. 1st Magnolia Homes*, 279 Ga. 336, 338(1), 614 S.E.2d 43 (2005).

Accordingly, if Bock Homes' contractual obligation to construct the house became "due and payable" only after the certificate of occupancy was issued, then the latter date controls as to the commencement *824 of the six-year statute of limitations on Appellants' claim that the purchase contract was breached. See *Scully v. 1st Magnolia Homes*, supra; *Colormatch Exteriors v. Hickey*, supra.

Assuming that, pursuant to the original terms, the contract otherwise would have become "due and payable" at the closing on October 3, 1994, "[v]arious circumstances may delay the sale of property by a developer and cause a corresponding delay in the accrual of... claims...." *Colormatch Exteriors v. Hickey*, supra at 252(2), 569 S.E.2d 495.

As discussed in Division 1, the contract to purchase the house was modified by the escrow agreement, so that Bock Homes' obligation to complete the dwelling and, consequently, its right to receive the balance of the contemplated consideration was extended until October 14.

The escrow agreement expressly provided that, in the event the requirement that Bock Homes tender a "clear final inspection" by October 14 was not met, the escrow agent was authorized to "[d]estroy all closing documents whereupon there will be no further obligation, duty or liability upon [the parties] in regard to this transaction."

Therefore, notwithstanding the closing on October 3, the contract, as modified, did not become "due and payable," and the six-year statute of limitations did not begin to run, on that date. Appellants could not bring suit on the purchase contract until it was breached, and Bock Homes was given until October 14 to comply with its contractual obligations.

Thus, the alleged breach of the purchase contract did not occur until Bock Homes received final payment at some point after October 3 without providing Appellants the consideration they bargained for. It is undisputed that the escrow agent released the escrow funds less than six years before suit was filed against Bock Homes on the construction contract.

Thus, Appellants brought suit less than six years after Bock Homes' alleged breach of the contract. Consequently, the action was commenced timely within the period of limitation prescribed by OCGA § 9-3-24, and the trial court erred in holding otherwise. See *Scully v. 1st Magnolia Homes*, supra; *Colormatch Exteriors v. Hickey*, supra. 3. Division 2 of the Court of Appeals' opinion is disapproved, but Division 1, regarding the claim for breach of the escrow agreement, is unaffected by today's decision.

Judgment reversed. All the Justices concur.