

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The Supreme Court of Georgia held that a later escrow agreement modified, rather than superseded, the parties' original purchase contract because it was neither inconsistent with nor comprehensive of the original agreement.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

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## 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)