

SUPREME COURT OF OKLAHOMA

GREEN MEADOW REALTY CO. v. GILLOCK

Green Meadow Realty, 2018 OK 42 (Okla. 2018) · No. 115159 · Decided May 15, 2018

SUMMARY

The Oklahoma Supreme Court held that summary judgment was improper in a dispute over a real estate commission and an addendum limiting the period for an excluded sale. The court concluded that conflicting evidence regarding the parties' oral agreement and alleged fraud in the inducement could allow reasonable minds to reach different conclusions. It vacated the Court of Civil Appeals' opinion and reversed the trial court's summary judgment in its entirety.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Reif, J.; Combs, C.J.; Gurich, V.C.J.; Winchester, J.; Edmondson, J.; Colbert, J.; Wyrick, J.; Darby, J.
JURISDICTION	Oklahoma
DECIDED	May 15, 2018
DOCKET	115159
DISPOSITION	reversed
PROCEDURAL POSTURE	Owners sought certiorari review of the Oklahoma Court of Civil Appeals' decision affirming summary judgment for Realtor on its commission claim and affirming summary judgment on two counterclaims while reversing on a tortious-interference counterclaim.
STANDARD OF REVIEW	Summary judgment is improper if, under the evidence, reasonable minds could reach different conclusions from the facts. On review, all inferences in the evidence must be viewed in the light most favorable to the party opposing summary judgment.
PRECEDENTIAL VALUE	Oklahoma Supreme Court opinion; the text states that it had not yet been released for publication and was subject to revision or withdrawal at the time of issuance.
PARTIES	Roger P. Gillock, Mary Gillock v. Green Meadow Realty Co., d/b/a and/or a/k/a Keller Williams Realty, and/or Keller Williams Green Meadow

TOPICS

fraudulent inducement

summary judgment

contract interpretation

contracts

appellate procedure

PRACTICE AREAS

contract law

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QUESTIONS PRESENTED

1. Whether summary judgment was proper on Green Meadow Realty's claim for a real-estate commission when the owners presented evidence that the realtor's agent orally agreed to a complete exclusion, materially altered the agreement in the written addendum, and misrepresented that the addendum reflected the requested exclusion.
2. Whether the same disputed facts and inferences required reversal of summary judgment on the owners' counterclaims for breach of contract, fraud, and tortious interference.

HOLDINGS

1. Summary judgment was improper because the evidence permitted reasonable minds to differ about the parties' agreement, the realtor's agent's representations, and whether the owners were fraudulently induced to sign the addendum.
2. The owners' failure to read the addendum was not dispositive as a matter of law; it was one circumstance to be considered with the parties' other communications and conduct in determining whether fraud in the inducement occurred.
3. Summary judgment on all of the owners' counterclaims was also improper because the same disputed facts and inferences supporting the fraud-in-the-inducement defense were relevant to resolving those claims.

KEY QUOTATIONS

“Where one party falsely represents to another party that the writing includes the oral agreement, and the other party is thereby induced to sign the writing without reading it, that is a sufficient trick, artifice and fraud to support a claim of fraud in the inducement.” (§6)

“Ultimately, the communications and conduct of the parties with respect to the addendum must be judged in the totality of the circumstances surrounding its creation.” (§7)

FACTUAL BACKGROUND

Green Meadow Realty sought a commission after the sale of listed property to buyers whom Roger and Mary Gillock believed were excluded from the listing agreement. The parties signed an addendum stating that a sale to those buyers was reserved until June 5, 2014, with a 3% listing commission, but the sale occurred outside that period. The Gillocks asserted that they requested a complete exclusion, signed the addendum without reading it after the realtor's agent represented that it set forth their exclusion, and did not knowingly agree to the time limitation.

PROCEDURAL HISTORY

Green Meadow Realty sued Roger and Mary Gillock to recover a real-estate commission. The district court granted Realtor summary judgment on the commission claim and Owners' counterclaims. The Court of Civil Appeals affirmed the commission ruling and the rulings on two counterclaims but reversed as to the tortious-interference claim. The Oklahoma Supreme Court granted certiorari, vacated the Court of Civil Appeals' opinion, and reversed the trial court's summary judgment in toto.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The trial court's summary judgment was reversed in toto, and the Court of Civil Appeals' opinion was vacated. The matter was left for further proceedings consistent with the opinion.

CASES CITED

- Boren v. Kirk, 1994 OK 94, 878 P.2d 1059
- Silk v. Phillips Petroleum Co., 1988 OK 93, 760 P.2d 174
- Miller v. Troy Laundry Machinery Co., 1936 OK 513, 62 P.2d 975

OPINION

PER CURIAM.

GREEN MEADOW REALTY CO. v. GILLOCK Skip to Main Content Accessibility Statement Help Contact Us e-payments Careers Home Courts Decisions Programs News Legal Research Court Records Quick Links OSCN Found Document:GREEN MEADOW REALTY CO. v. GILLOCK Previous Case Top Of Index This Point in Index Citationize Next Case Print Only GREEN MEADOW REALTY CO. v. GILLOCK2018 OK 42Case Number: 115159Decided: 05/15/2018THE SUPREME COURT OF THE STATE OF OKLAHOMA Cite as: 2018 OK 42, __ P.3d __ NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION.

UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL. GREEN MEADOW REALTY CO., d/b/a and/or a/k/a KELLER WILLIAMS REALTY, and/or KELLER WILLIAMS GREEN MEADOW, an Oklahoma Corporation, Plaintiff/Appellee, v. ROGER P. GILLOCK, an individual, and MARY GILLOCK, an individual, Defendants/Appellants. CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS, DIVISION I, ON APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY HONORABLE ALETIA HAYNES TIMMONS, TRIAL JUDGE ¶10 Realtor sued to recover a commission on a sale to certain buyers that Owners believed were excluded from the listing agreement.

Realtor relied on an addendum to the listing agreement that limited the period of time in which an excluded sale could occur as well as the fact that the sale closed outside the time period. Owners claimed they insisted on a complete exclusion and did not knowingly agree to a time limit for the excluded sale, despite having signed the addendum. Owners asserted that they signed the addendum without reading it based on Realtor's representation that it set forth "your exclusion."

The trial court concluded Owners were bound by the addendum, having had the opportunity to read it and not doing so. The trial court granted summary judgment to Realtor. The Court of Civil Appeals affirmed the summary judgment awarding Realtor the commission, but reversed for further proceedings on a counter claim by Owners. Owners sought certiorari review.

Realtor did not. CERTIORARI PREVIOUSLY GRANTED; OPINION OF THE COURT OF CIVIL APPEALS VACATED; TRIAL COURT'S SUMMARY JUDGMENT REVERSED IN TOTO. Shawn D. Fulkerson, Jennifer A. Bruner, and Carolie E. Rozell, FULKERSON & FULKERSON, P.C., Oklahoma City, Oklahoma, for Plaintiff/Appellee, Terry M. McKeever and Eric J. Cavett, FOSHEE & YAFFE LAW FIRM, Oklahoma City, Oklahoma, for Defendant/Appellant.

REIF, J.: ¶1 This case concerns a dispute between Green Meadow Realty Co. (Realtor) and Roger and Mary Gillock (Owners) over Realtor's right to a commission. The trial court and Court of Civil Appeals resolved this dispute in favor of Realtor on the basis of the summary judgment record presented by the parties. Both courts found Owners were bound by an addendum to the listing agreement, even though it contained different terms than Realtor allegedly agreed to.

The dispositive issue on certiorari review is whether summary judgment was proper under the record presented. We hold summary judgment was not proper. ¶2 Summary judgment is improper if under the evidence, reasonable minds could reach different conclusions from the facts. *Boren v. Kirk*, 1994 OK 94, ¶5, 878 P.2d 1059, 1061 (citation omitted).

On review, all inferences in the evidence must be taken in a light most favorable to the party opposing the motion. *Id.* ¶3 The controversy over the commission stemmed from a sale of the listed property to certain buyers that Owners believed were excluded from the listing agreement. It is undisputed that an addendum to the listing agreement provided that a sale to the buyers in question would be "reserved until June 5, 2014 (6/5/14) with a 3% listing commission."

It is also undisputed that the sale to the "reserved" buyers occurred outside this time period. Furthermore, Owners admitted they signed the addendum. ¶4 Owners nonetheless maintain that they did not knowingly agree to the "reservation." Owners assert they asked for a complete exclusion and that they signed the addendum without reading it based on statements by Realtor's agent.

According to Owners, Realtor's agent said "she would do it (i.e., the requested exclusion)" and told them the addendum set forth "your exclusion." ¶5 In determining whether reasonable minds could differ over the actions and intent of the parties, two further facts are of consequence.

First, the subject and terms of excluding a sale to the buyers in question were proposed by Owners, not by Realtor or its agent. According to Owners, Realtor's agent agreed to their requested exclusion and did not indicate that the agent "can't give you the exclusion for the whole time."

Second, Realtor's agent prepared the addendum and when she presented it to Owners affirmatively represented that it reflected "your exclusion." ¶6 Viewing this evidentiary material in a light most favorable to Owners reveals that reasonable minds could conclude that Realtor's agent (1) orally agreed to Owners' request and terms for the exclusion, (2) undertook to draft an addendum to reflect the oral agreement, (3) intentionally deviated from the oral agreement by substituting terms that were never discussed, (4) did not disclose this deviation and (5) affirmatively misrepresented that the addendum reflected the exclusion proposed by Owners.

Where one party falsely represents to another party that the writing includes the oral agreement, and the other party is thereby induced to sign the writing without reading it, that is a sufficient trick, artifice and fraud to support a claim of fraud in the inducement. *Silk v. Phillips Petroleum Co.*, 1988 OK 93, ¶ 25, 760 P.2d 174, 178, citing *Miller v. Troy Laundry Machinery Co.*, 1936 OK 513, ¶11, 62 P.2d 975, 978.

The misrepresentation that the written contract contains the parties' prior oral agreement must be "expressly made" and be "contemporaneous with the signing of the instruments." *Id.* If proven, such fraud will provide a defense to Realtor's claim for a commission as well as support a counterclaim for damages. ¶7 The trial court and Court of Civil Appeals regarded Owners' failure to read the addendum when presented with it to be dispositive.

While this is certainly important, it is just one of many facts to be considered and weighed by the trier of the fact. Ultimately, the communications and conduct of the parties with respect to the addendum must be judged in the totality of the circumstances surrounding its creation. ¶8 In *Boren v. Kirk*, 1994 OK 94, 878 P.2d 1059, a client contended that she instructed the lawyer she hired to be the sole lawyer to work on her case, while the lawyer maintained he received no such instruction.

This Court held this controversy precluded summary judgment on client's breach of contract claim. The conflicting positions and evidentiary materials of the parties in the case at hand pose a comparable controversy that would preclude summary judgment on Realtor's claim for a commission. ¶9 In addition to resolving Realtor's claim for a commission, the trial court also granted Realtor summary judgment on Owners' counterclaims.

Owners alleged Realtor (1) breached the parties' contract, (2) committed fraud, and (3) tortiously interfered with the "excluded" sale by filing a false mechanics lien against the property. The Court of Civil Appeals affirmed the summary judgment on Owners' first two counterclaims but reversed as to the tortious interference claim. ¶10 On certiorari review, we reverse the summary judgment in toto.

The same facts and inferences that support Owners' fraud in the inducement defense are relevant to resolving all of the counterclaims as well. CERTIORARI PREVIOUSLY GRANTED; OPINION OF THE COURT OF CIVIL APPEALS VACATED; TRIAL COURT'S GRANT OF SUMMARY JUDGMENT REVERSED IN TOTO. COMBS, C.J., GURICH, V.C.J., WINCHESTER, EDMONDSON, COLBERT, REIF, WYRICK, and, DARBY, JJ., concur.

KAUGER, J., not participating. Citationizer© Summary of Documents Citing This Document Cite Name Level None Found. Citationizer: Table of Authority Cite Name Level Oklahoma Supreme Court Cases CiteNameLevel 1988 OK 93, 760 P.2d 174, 59 OBJ 1688, Silk v. Phillips Petroleum Co.Discussed 1994 OK 94, 878 P.2d 1059, 65 OBJ 2505, Boren v. KirkDiscussed at Length 1936 OK 513, 62 P.2d 975, 178 Okla. 313, MILLER v. TROY LAUNDRY MACH.

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