

SUPREME COURT OF OKLAHOMA

GREEN MEADOW REALTY CO. v. GILLOCK

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

OPINION

GREEN MEADOW REALTY CO. v. GILLOCK

2018 OK 42

PER CURIAM.

GREEN MEADOW REALTY CO. v. GILLOCK

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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. Kirk* Discussed at Length 1936 OK 513, 62 P.2d 975, 178 Okla. 313, *MILLER v. TROY LAUNDRY MACH. CO.* Discussed oscn EMAIL: webmaster@oscn.net Oklahoma Judicial Center 2100 N Lincoln Blvd. Oklahoma City, OK 73105 courts Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals District Courts decisions New Decisions Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals programs The Sovereignty Symposium Alternative Dispute Resolution Early Settlement Mediation Children's Court Improvement Program (CIP) Judicial Nominating Commission Certified Courtroom Interpreters Certified Shorthand Reporters Accessibility ADA Contact Us Careers Accessibility ADA

