

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Legacy Place Apartment Homes, LLC. v. PGA Gateway, Ltd.

65 So. 3d 644 (Fla. Dist. Ct. App. 2011) · Decided July 27, 2011

SUMMARY

The court reversed a final judgment on a breach of contract claim involving construction of RCA Boulevard under a post-closing agreement. It held that failure to meet a contractual deadline could constitute a material breach where time was of the essence, remanded for findings on waiver, and ruled that the appellant was entitled to a share of a utility connection fee credit.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner; Polen; Levine
JURISDICTION	Florida
DECIDED	July 27, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellate review of a final judgment in favor of appellee on a breach-of-contract claim.
STANDARD OF REVIEW	De novo review of the trial court's interpretation of the post-closing agreement.
PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion; precedential within the court's jurisdiction.
PARTIES	Legacy Place Apartment Homes, LLC. v. PGA Gateway, Ltd.

TOPICS

[material breach](#)[waiver of breach](#)[contract interpretation](#)[construction law](#)[commercial litigation](#)

PRACTICE AREAS

[contract law](#)[construction law](#)[real estate law](#)[commercial litigation](#)

QUESTIONS PRESENTED

1. Whether failure to complete construction by a deadline made time of the essence constituted a material breach that generally precluded reliance on substantial performance.

2. Whether the record supported PGA Gateway's substantial-compliance claim and whether Legacy Place may have waived its right to enforce the contractual time provision.
3. Whether the post-closing agreement entitled Legacy Place to share in the Seacoast connection-fee credit as an impact-fee credit.

HOLDINGS

1. Because time was of the essence, PGA Gateway's failure to complete construction of RCA Boulevard by the contractual deadline constituted a material breach, and the record did not support its substantial-compliance claim. The doctrine of substantial performance is generally unavailable where a party has materially breached the agreement.
2. A time-of-the-essence provision may be waived. Because the trial court did not consider the waiver arguments, the case had to be remanded for specific findings of fact and conclusions of law regarding whether Legacy Place waived its right to demand compliance with the time provision.
3. The connection-fee credit received from the utility company was an impact-fee credit under the unambiguous post-closing agreement, and Legacy Place was entitled to share in that credit. Any judgment in favor of PGA Gateway had to be reduced by \$141,797.15.

KEY QUOTATIONS

“Because time was “of the essence” in the post-closing agreement, appellee’s failure to complete construction of RCA Boulevard by the deadline in the contract constituted a material breach.” (644)

“The agreement is unambiguous, and the plain language of the agreement states that the parties “shall share all impact fee credits for the Shared Cost Work.”” (645)

FACTUAL BACKGROUND

The parties entered into a post-closing agreement concerning construction of RCA Boulevard and the sharing of impact-fee credits for shared-cost work. The agreement made time of the essence, but PGA Gateway did not complete construction by the contractual deadline. A utility company issued a Seacoast connection-fee credit, and the trial court determined that Legacy Place was not entitled to share in that credit.

PROCEDURAL HISTORY

The trial court entered final judgment in favor of PGA Gateway on its breach-of-contract claim and found that Legacy Place was not entitled to a Seacoast connection-fee credit. The Fourth District reversed and remanded for factual findings and legal conclusions concerning waiver of the contractual time provision, and directed that any judgment for PGA Gateway be reduced by the amount of the credit owed to Legacy Place.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make specific findings of fact and conclusions of law concerning whether Legacy Place waived its right to demand compliance with the time provision. The trial court may rely on the existing trial record or take additional evidence in its discretion. Any judgment in favor of PGA Gateway must be reduced by \$141,797.15.

CASES CITED

- Sublime, Inc. v. Boardman's Inc., 849 So. 2d 470, 471 (Fla. 4th DCA 2003)
- Nat'l Constructors, Inc. v. Ellenberg, 681 So. 2d 791, 793 (Fla. 3d DCA 1996)
- Horovitz v. Levine, 755 So. 2d 687 (Fla. 4th DCA 1999)
- Detroit Diesel Corp. v. Atl. Mut. Ins. Co., 18 So. 3d 618, 620 (Fla. 4th DCA 2009)
- Lazzaro v. Miller & Solomon Gen. Contractors, Inc., 48 So. 3d 974, 975 (Fla. 4th DCA 2010)
- Save Our Septic Sys. Comm., Inc. v. Sarasota Cnty., 957 So. 2d 671 (Fla. 2d DCA 2007)
- City of Zephyrhills v. Wood, 831 So. 2d 223, 224 (Fla. 2d DCA 2002)

OPINION

PER CURIAM.

PER CURIAM. We reverse the final judgment in favor of appellee on its breach of contract claim. First, we find that the record does not support appellee's claims of substantial compliance. Because time was "of the essence" in the post-closing agreement, appellee's failure to complete construction of RCA Boulevard by the deadline in the contract constituted a material breach.

Sublime, Inc. v. Boardman's Inc., 849 So.2d 470, 471 (Fla. 4th DCA 2003). The doctrine of substantial performance is generally unavailable where a party has materially breached the terms of the agreement. Nat'l Constructors, Inc. v. Ellenberg, 681 So.2d 791, 793 (Fla. 3d DCA 1996). A time is of the essence provision may nevertheless be waived. Horovitz v. Levine, 755 So.2d 687 (Fla.

4th DCA 1999). Because the trial court did not consider appellee's waiver arguments, we remand for the trial court to make specific findings of fact and conclusions of law regarding whether appellant waived its right to demand compliance with the time provision.

The trial court may rely on the record established at trial or may take additional evidence at its discretion. We also reverse the trial court's finding that appellant was not entitled to the Seacoast connection fee credit.

We review de novo the trial court's interpretation of the post-closing agreement. See Detroit Diesel Corp. v. Atl. Mut. Ins. Co., 18 So.3d 618, 620 (Fla. 4th DCA 2009). The agreement is unambiguous, and the plain language of the agreement states that the parties "shall share all impact fee credits for the Shared Cost Work." See Lazzaro v. Miller & Solomon Gen.

Contractors, Inc., 48 So.3d 974, 975 (Fla. 4th DCA 2010) (holding that unambiguous contract language “must be afforded its plain meaning”). A connection fee is generally considered to be a type of impact fee charged by utility companies for initiating new service. See, e.g., *Save Our Septic Sys. Comm., Inc. v. Sarasota Cnty.*, 957 So.2d 671 (Fla. 2d DCA 2007); *City of Zephyrhills v. Wood*, 831 So.2d 223, 224 (Fla.

2d DCA 2002). Thus, we conclude that the *645connection fee credit received from the utility company was an “impact fee credit,” and appellant was entitled to a share of that credit. On remand, any judgment in favor of appellee must be reduced by \$141,797.15, the amount of the credit to which appellant was entitled under the post-closing agreement. Reversed and remanded.

WARNER, POLEN and LEVINE, JJ., concur.