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Case Law
HICKS et al. v. SUMTER BANK & TRUST COMPANY.
-- September 09, 2004--

Sumter Bank & Trust Company ("the Bank") sued Danny and Valerie Hicks for amounts allegedly owed on three promissory notes. The Hickses answered, claiming that fraud barred the Bank from recovering under the notes. They also alleged a counterclaim for fraud and misrepresentation. The Bank moved for summary judgment on its claims and on the Hickses' counterclaim.

The Facts: Real estate developer Danny Hicks obtained financing from the Bank for a development project in Crisp County. When Danny completed the project, he contacted the Bank to discuss financing opportunities for another Crisp County development. At that point, Ben Dupree, a vice president with the Bank, recommended that Danny purchase a piece of property in Sumter County that the Bank had acquired through foreclosure. According to Danny, Dupree told him that the Sumter County property "*was ready for development*" and showed him a subdivided plat of the property that had been prepared for the Bank.

Danny inspected the property with Dupree and saw that it had been partially developed. The plat, however, had not been recorded, and Danny and Dupree determined that the plat and the size of certain lots needed to be revised to comply with new Sumter County guidelines. Dupree agreed to hire Earl Dunmon, a surveyor/engineer, to conduct a soil study on the property and revise the plat.

Danny subsequently met with Dupree and Dunmon. Dunmon reported to Danny and Dupree that the "soils were adequate" and that the Sumter County Environmental Officer had assured him "that everything was ready to record a revised plat and that the development could begin."

Based on his discussions with Dupree, Danny decided to buy the Sumter County property from the Bank and signed a sales contract on April 30, 2001. The contract provided that Danny would "be permitted to enter upon the Property to inspect the Property, to make surveys, and for any other reasonable purpose" prior to closing. Danny closed on the property on May 23, 2001. That same day, Danny gave the Bank a Commercial Deed to Secure Debt and Security Agreement securing his payment for the property.

In connection with the Sumter County property's purchase and development, Danny and Valerie Hicks executed two promissory notes to the Bank on December 6, 2001. Those notes, referred to as Notes 15 and 16, were partially secured by the property. On February 25, 2002, Danny provided a third promissory note to the Bank relating to the purchase of a boat. Although it is not clear from the documents in the record, the Bank alleges in its complaint that this note, referred to as Note 10, was also partially secured by the Sumter County property.

After closing on the property, Danny discovered "a number of problems" with his proposed residential development project. In November 2001, the Sumter County inspector, the chairman of the Sumter County Planning Commission, and Earl Dunmon signed and authorized the recorded revised plat as being in compliance with all applicable regulations and codes. At some point during the next month, however, Danny learned from Dunmon that a required soil erosion plan had not been completed for the property and, consequently, that the plat

had been erroneously recorded. Furthermore, in the spring of 2002, Danny applied to Sumter County for permits to place 37 septic systems on the property. The Sumter County Environmental Officer responded that the planned development was not "legal" and that Danny could not place homes or septic systems on the land. Finally, in August 2002, a new soil analysis revealed that approximately one-half of the property "was not usable and could not be developed."

On December 9, 2002, the Bank informed the Hickses that they were in default on Notes 10, 15, and 16. It filed suit ten days later, seeking payment. The Hickses answered, asserting that the Bank had engaged in fraud, precluding recovery under the notes. They also alleged a separate counterclaim for fraud and misrepresentation. Specifically, they claimed that the Bank fraudulently induced them to enter the promissory notes by failing to disclose material information regarding the Sumter County property and by concealing defects that rendered the property unsuitable for development.

The Bank moved for summary judgment on its claims and the Hickses' counterclaim, asserting that it had established a prima facie case for recovery on the promissory notes and that the record contained no evidence of fraud. The trial court agreed. We find no error.

The Hickses' fraud allegations revolve around Dupree's statements that the property was ready for development and Dunmon's assurances that the property had "adequate" soil and, under the revised plat, complied with all applicable rules and regulations. To establish fraud or misrepresentation, the Hickses must show misrepresentation by the bank and an intention to induce them to act in reliance of that misrepresentation, reliance, and damages. The Hicks were not able to prove any of these.

Reliance is an essential element of both fraud and negligent misrepresentation, and that reliance must be justified. Furthermore, "where the representation consists of general commendations or mere expressions of opinion, the party to whom it is made is not justified in relying upon it and assuming it to be true; he is bound to make inquiry and examination for himself so as to ascertain the truth."

Dupree's statements that the property was ready for development and could support a residential project were "expressions of opinion, general commendations, and sales puffing." Danny, a real estate developer, had an obligation to inquire about the property's developmental status himself. And although the sales contract gave him the right to enter and inspect the property prior to the May 23, 2001 closing, he did not independently investigate whether it could be developed for residential purposes. Moreover, the record shows that Danny knew before purchasing the property that the land plat needed to be revised to comply with county regulations.

Danny was not justified in relying on Dupree's assertions that the property was "ready for development" or could be developed in a certain way. Accordingly, such statements cannot support a counterclaim for fraud or misrepresentation or a fraud defense to the promissory notes.

Dunmon's statements. We similarly question whether Danny was entitled to forego any independent investigation of the property's potential based on assurances from Dunmon, who, according to Danny, was hired by the Bank. More fundamentally, however, none of Dunmon's allegedly false statements can be imputed to the Bank because Dunmon is an independent contractor and not an employee of the bank.

Also, the record contains no evidence that the Bank knew Dunmon had falsely represented the condition of the property, its compliance with regulations, or its soil adequacy. On appeal, the Hickses note that, when Danny informed the Bank in the spring of 2002 about problems facing the development, the Bank offered to pay for a revised plat and hire a new soil expert. Citing these facts, they argue that the Bank knew that the property could not be developed and that Dunmon had misrepresented its status. This remedial action, however, took place in the spring of 2002, well after Danny purchased the property and the Hickses signed the promissory notes. Thus,

it does not demonstrate that the Bank used false information to induce the property sale or execution of the promissory notes.

Given Dunmon's status as an independent contractor, as well as the Bank's lack of knowledge regarding the truth of his statements, the Bank cannot be held liable for any alleged fraud or negligence committed by Dunmon. Accordingly, to the extent the Hickses' fraud and misrepresentation allegations rest on these statements, the trial court properly granted summary judgment to the Bank.

Judgment affirmed.