

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAROLD HARPER,	§	No. 179, 2003
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
KATRINA RUSSELL and	§	in and for New Castle County
RENAISSANCE MORTGAGE,	§	C.A. No. 00C-04-110
	§	
Defendants Below,	§	
Appellees.	§	
	§	

Submitted: September 16, 2003

Decided: November 10, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 10th day of November, 2003, upon consideration of the briefs of the parties, it appears to the Court that:

1) This is an appeal from an order of the Superior Court granting summary judgment to appellees, Katrina Russell and Renaissance Mortgage, in an action

claiming violations of the Prohibited Trade Practices Act¹ and other statutory and common law torts.

2) In 1999, Harold Harper and his wife, Lillie Mae Harper,² sought financing in order to pay taxes. Since their house was the Harpers' only major asset, they consulted with Russell, a mortgage broker and proprietor of Renaissance, to discuss their situation. Russell told the Harpers that they could obtain a mortgage loan with EquiCredit Corporation, a Delaware mortgage lender, as long as a portion of the loan proceeds would be spent on home improvements.

3) Russell also told the Harpers that they could not obtain the loan unless they used one of EquiCredit's approved contractors. Russell then referred the Harpers to two home improvement companies that EquiCredit had approved before. One of those companies was Home Remodelers, owned by John Giliberti.

4) Giliberti was going to charge \$13,000 for the same home improvements that another contractor, located by the Harpers' daughter, offered to complete for only \$4,500. Nonetheless, Russell allegedly insisted that the Harpers use Giliberti for the work.

¹Del. Code Ann. tit. 6, ch. 25.

²After Lillie Mae Harper passed away, in October 2000, both she and her daughter were removed as plaintiffs.

5) The Harpers executed a \$41,000 mortgage with EquiCredit and a \$13,000 home improvement contract with Giliberti. Russell charged the Harpers a \$2,800 mortgage broker's fee for her services. At closing, \$6,500 was paid to Giliberti. The remaining \$6,500 was held in escrow, pending completion of the work.

6) The parties agree that Giliberti did not fulfill his contractual obligations to the Harpers. Despite the fact that the work was not properly completed, and without the Harpers' authorization, EquiCredit released to Giliberti the \$6,500 it was holding in escrow.

7) The Harpers filed suit against Home Remodelers, Giliberti, Russell, Renaissance and EquiCredit, alleging violations of Delaware's Prohibited Trade Practices Act, breach of contract, common law fraud and/or negligent misrepresentation, and violations of the Federal Consumer Credit Cost Disclosure Laws.³ Neither Giliberti nor Home Remodelers was licensed or registered to do business in Delaware, and, after several unsuccessful attempts at service, they were severed from the case.

8) EquiCredit moved for summary judgment as to the Delaware statutory and common law fraud counts. The Superior Court granted EquiCredit's motion and, *sua sponte*, granted summary judgment to Russell and Renaissance on those counts, as well.

³15 U.S.C.A. §1631 *et seq.*

9) We review the Superior Court's grant of summary judgment *de novo*.⁴ A trial judge may grant summary judgment when, viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact in dispute.⁵

10) The complaint alleges, in relevant part, that: (i) Russell represented that Giliberti was a licensed contractor, approved by EquiCredit; (ii) Russell told Harper he had to hire an approved contractor to obtain the loan; (iii) Harper was induced to enter into a remodeling contract with Giliberti on the basis of those representations; and (iv) Harper was damaged by Giliberti's failure to perform his contract. The Superior Court found record support for the alleged misrepresentations, but held that they were not material because, "[t]here is no connection between Giliberti's license, or lack thereof, and his alleged theft."⁶

11) A fact is "material" if a reasonable person would "attach importance to [it] ... in determining his choice of action in the transaction in question...."⁷ Generally, materiality is an issue of fact to be determined by the jury.⁸

⁴ *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002).

⁵ *Ibid.*

⁶ *Harper v. Russell*, Del. Super., C.A. No. 00C-04-110, Babiarz, J., at 3 (Oct. 9, 2002).

⁷ Restatement (Second) of Torts §538 (2)(1977).

⁸ See: *Pacific Ins. Co. v. Higgins*, 1992 WL 212601 (Del.Ch.).

12) It is true, as the trial court suggested, that being licensed does not guarantee competent work. But Harper alleges that he would not have entered into the contract with Giliberti had he known that Giliberti was unlicensed. We cannot say, as a matter of law, that no reasonable person would attach importance to a contractor's status as licensed or unlicensed in deciding whether to do business with the contractor. As a result, this issue must be determined by a jury.

NOW, THEREFORE, IT IS ORDERED that the decision of the Superior Court granting summary judgment to Katrina Russell and Renaissance Mortgage is REVERSED, and this matter is REMANDED for further action. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice