

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUELLEN WILLIAMS,	§
	§
Plaintiff Below-	§ No. 342, 2006
Appellant,	§
	§
v.	§ Court Below—Court of Chancery
	§ of the State of Delaware,
WHITE OAK BUILDERS,	§ in and for New Castle County
	§ C.A. No. 17556
Respondent Below-	§
Appellee.	§

Submitted: September 27, 2006

Decided: November 22, 2006

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

ORDER

This 22nd day of November 2006, upon consideration of the appellant's opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) Plaintiff Luellen Williams filed this appeal from the Court of Chancery's opinion, dated June 6, 2006, which entered judgment in favor of the defendants below, White Oak, Inc., White Oak Builders, Inc., and Capano Builders, Inc. Williams' notice of appeal names White Oak Builders, Inc. as the only appellee against whom her appeal is taken. Her opening brief, however, purports to raise claims with respect to all three defendants below. Even if this Court assumes without deciding that Williams properly perfected her appeal as to

all three defendants,¹ we find it manifest on the face of Williams' opening brief that the judgment of the Court of Chancery must be affirmed.

(2) The trial record fairly supports the following version of events: Williams signed a sales agreement to purchase a new, end unit townhouse in New Castle in September 1996. During the final walkthrough of the property on November 26, 1996, Williams noticed water in the backyard of the property. Williams did not notice any water inside the house. At settlement the following day, Williams brought up the issue of the water in the backyard. The builder's agent made a handwritten notation stating, "[w]ater problem in basement to be resolved." Williams began complaining to Capano Builders and to New Castle County of a water problem in her basement as early as 1997. The defendants and their agents made numerous attempts to resolve the problem but were unable to do so to Williams' satisfaction.

(3) Ultimately, Williams filed suit in 1999 seeking specific performance of White Oak's alleged covenant to fix a water problem in the basement of her townhouse. Alternatively, Williams sought rescission of the sales agreement she entered into for her townhouse with Capano Builders. As late as 2002, discovery

¹ The three defendants below are part of a family of companies, all three of which Frank J. Capano is president. All three defendants were represented by the same counsel at trial, who continues to represent White Oak Builders, Inc. in this appeal.

in the case was ongoing. After sitting idle for over a year, the case finally was called to trial in 2004.

(4) At trial, Williams' expert testified that he conducted a visual inspection of Williams' property in 1999. He did not perform any destructive or invasive testing. He concluded that the source of the water in Williams' basement was an elevated water table and, probably, a spring. He also testified that the water likely was there when the original excavation of the foundation took place in 1996.

(5) Defendants' expert, on the other hand, testified that it was necessary to conduct more than a visual inspection of the property in order to determine the source of the water. Defendants' expert also testified as a fact witness because he had drafted the subdivision plan for the townhouse project and had been present during the week of construction of Williams' building. He, as well as several other defense witnesses, testified that the hole dug for the foundation had been open for two weeks before the walls were built and that the hole had remained dry, except for the collection of some rain water. The Vice Chancellor found defendants' witnesses credible and concluded, as a matter of fact, that the defendants were unaware of any water problem affecting Williams' townhouse through the time they backfilled the foundation hole. Moreover, the trial court concluded that Williams had failed to prove that the problem as it existed at the time of trial in

2005, or even at the time of her expert's visual inspection of the property in 1999, had existed at the time of closing in 1996. Determining the credibility of witnesses is a matter for the fact-finder.² We find the Court of Chancery's factual findings supported by the record.

(6) Because Williams had failed to prove the existence of a serious water problem in her basement prior to the closing date, the Court of Chancery necessarily concluded that Williams could not prove that the defendants had knowledge of such a problem, which they intentionally or negligently misrepresented to Williams. The Court of Chancery, therefore, concluded that Williams' claim for rescission of the sales agreement based on intentional or negligent misrepresentation failed as a matter of law.³ Similarly, the trial court concluded that Williams' claim for rescission of the agreement based on mutual mistake of fact, i.e., the parties' mutual mistake as to the magnitude of the flow of water into her basement, failed because Williams had not proven that the problem existed at the time the parties entered their agreement in September 1996; thus, there was no mistake of fact.⁴ We find sufficient evidence in the record to support the Court of Chancery's finding that Williams had not proven the existence of a water problem in 1996. In light of this finding, there is no legal error in the Court

² *Barks v. Herzberg*, 206 A.2d 507, 509 (Del. 1965).

³ *See Kronenberg v. Katz*, 872 A.2d 568, 585 n.25 (Del. Ch. 2004).

⁴ Restatement (Second) of Contracts, § 151 (1981).

of Chancery's conclusion that Williams was not entitled to rescission based on any the theories she put forth.

(7) Furthermore, we find no legal error in the Court of Chancery's conclusion that Williams had failed to establish a claim for specific performance because she presented no evidence that money damages would provide an inadequate or incomplete remedy.⁵

(8) After careful consideration of appellant's opening brief and the appellee's motion to affirm, we find it manifest that the judgment should be affirmed on the basis of the Court of Chancery's well-reasoned post-trial opinion dated June 6, 2006. To the extent the issues on appeal are factual, we find sufficient evidence in the record to support the Court of Chancery's findings, and we find no error in the trial court's legal rulings.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ *Equitable Trust Co. v. Gallagher*, 102 A.2d 538, 546-47 (Del. 1954).