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NO. COA10-103

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

CLAUDE CRUMPLER and wife,
CAROL CRUMPLER,
Plaintiffs,

v.

New Hanover County
Nos. 06 CVS 4983
08 CVS 2043

AVENIR DEVELOPMENT, L.L.P.,
CADETO CONSTRUCTION SERVICES,
INC. d/b/a CADETO, INC.,
CADETO, INC., CHRISTOPHER G.
YERKES, and AVENIR
CONSTRUCTION, INC.,
Defendants.

Appeal by plaintiffs from orders entered 21 May 2009 and 12 June 2009 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 31 August 2010.

Culbreth Law Firm, LLP, by Stephen E. Culbreth, for plaintiffs-appellants.

No brief filed on behalf of defendants-appellees.

HUNTER, Robert C., Judge.

Plaintiffs Claude and Carol Crumpler appeal from the trial court's orders granting summary judgment in favor of defendants Avenir Development, L.L.P., Avenir Construction, Inc., Cadeto Construction Services, Inc., doing business as Cadeto, Inc., and Avenir Construction's president, Christopher G. Yerkes (collectively, "defendants"). As plaintiffs fail to challenge the

specific grounds provided by the trial court for granting summary judgment, plaintiffs cannot demonstrate error on appeal. Accordingly, we affirm the trial court's entry of summary judgment.

Facts

On 14 October 2004, plaintiffs entered into an agreement with Avenir Development for the purchase of a lot and construction of a home in the Avenir subdivision in Wilmington, North Carolina, with a closing date of 10 March 2005. Avenir Development contracted with Avenir Construction to build plaintiffs house. Avenir Construction then entered into an oral agreement with Cadeto for the permitting and construction of the house.

Prior to closing, plaintiffs complained to Avenir Development about several construction defects in the house. On 16 May 2005, after extensive negotiations, plaintiffs and Avenir Development entered into a settlement agreement, in which, in exchange for Avenir Development making certain repairs and providing a credit toward the purchase price of the house, plaintiffs released their claims against Avenir Development concerning "those items and issues currently in dispute" Closing occurred on 16 May 2005, but plaintiffs were unable to take possession of the house until 8 June 2005.

On 22 November 2006, plaintiffs filed a complaint against Avenir Development and Cadeto, asserting claims for breach of the purchase and construction agreement, construction defects, delay damages, breach of the implied warranty of habitability and workmanlike construction, and unfair and deceptive trade practices.

Avenir Development and Cadeto filed answers, generally denying plaintiffs' claims, asserting several defenses, and moving to dismiss the complaint for failure to state a claim for relief. On 8 May 2008, plaintiffs filed a complaint against Avenir Construction and its president, Mr. Yerkes, asserting substantially identical claims to those brought against Avenir Development and Cadeto. Avenir Construction and Mr. Yerkes filed an answer generally denying plaintiffs' claims, asserting numerous defenses, and moving to dismiss the second complaint for failure to state a claim for relief. The trial court denied defendants' motion to dismiss on 5 November 2008. Motions for summary judgment were filed by Avenir Development and Cadeto on 27 June 2008 and by Avenir Construction and Mr. Yerkes on 6 May 2009. The trial court granted Avenir Development's and Cadeto's motion for summary judgment on 21 May 2009 and granted Avenir Construction's and Mr. Yerkes' motion on 12 June 2009. Plaintiffs timely appealed both of the trial court's summary judgment orders to this Court.

Discussion

The outcome of this appeal is dictated by plaintiffs' failure to address on appeal the bases for the trial court's rulings on defendants' motions for summary judgment. At their summary judgment hearing, which was held on 19 May 2009, Avenir Development and Cadeto argued that they were entitled to judgment as a matter of law based on the 16 May 2005 settlement agreement between plaintiffs and Avenir Development, as it "dispense[d] with all of [plaintiffs'] claims" Although the trial court's 21 May

2009 order does not specify that the court granted summary judgment in favor of Avenir Development and Cadeto based on the settlement agreement, the transcript from the hearing indicates that the court granted the motion on this basis. On appeal, however, plaintiffs do not argue that the settlement agreement is unenforceable or that it does not encompass all of their claims. See *Hardin v. KCS Int'l, Inc.*, ___ N.C. App. ___, ___, 682 S.E.2d 726, 741 (2009) (concluding trial court properly granted defendants' motion to enforce settlement agreement where plaintiff failed to establish agreement was unenforceable and instead "pursued the claims that had been released in the settlement agreement"). Instead, plaintiffs simply contend that summary judgment is improper in this case as triable issues of fact exist with respect to the claims underlying the agreement. By not addressing the basis of the trial court's ruling, plaintiffs have failed to establish their entitlement to the relief requested on appeal. See, e.g., *Moyle v. Y & Y Hyup Shin, Corp.*, 118 Haw. 385, 396, 191 P.3d 1062, 1073 (2008) (explaining that where alternative grounds given by trial court for contested ruling are unaddressed by appellant, appellant fails to demonstrate existence of error); *People v. Chapo*, 283 Mich. App. 360, 367, 770 N.W.2d 68, 74 (2009) ("Defendant's failure to challenge the other two bases of the trial court's decision constitutes a waiver that precludes appellate relief."); *Jones v. City of Dallas*, 310 S.W.3d 523, 530 (Tex. App. 2010) ("By failing to respond to all possible grounds for the trial court's ruling, [appellant] has waived those issues and the trial court order must

be affirmed."). Consequently, we affirm the trial court's order granting summary judgment in favor of Avenir Development and Cadeto.

With respect to Avenir Construction and Mr. Yerkes, they argued at their summary judgment hearing that since the trial court had granted summary judgment in favor of Avenir Development and Cadeto two days earlier, and plaintiffs' claims against the two sets of defendants are substantively identical, they were entitled to summary judgment under the theory of collateral estoppel. Although the transcript from the hearing indicates that the trial court explicitly ruled in favor of Avenir Construction and Mr. Yerkes on this ground, plaintiffs fail to even raise the issue of collateral estoppel on appeal. Accordingly, the trial court's order granting summary judgment in favor of Avenir Construction and Mr. Yerkes must be affirmed. In upholding the trial court's summary judgment orders, we emphasize that we do not hold that the trial court properly granted summary judgment on the grounds reflected in the record, only that plaintiffs have failed to challenge these grounds on appeal, thus precluding appellate relief.

Affirmed.

Judges Robert N. HUNTER, Jr. and LEWIS concur.

Report per Rule 30(e).