

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-644
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

SHOWCASE CONSTRUCTION CO.

Plaintiff-Appellee,

v.

Cumberland County

No. 13 CVS 6848

PROPERTIES OF SOUTHERN WAKE,

LLC, and TIMOTHY D. POWELL,

Defendants-Appellants.

Appeal by Defendants from order entered 5 March 2014 by Judge Mary Ann Tally in Superior Court, Cumberland County. Heard in the Court of Appeals 20 October 2014.

Lewis, Deese, Nance, Briggs & Hardin, by James R. Nance, Jr., for Plaintiff-Appellee.

Boxley, Bolton, Garber & Haywood, L.L.P., by Ronald H. Garber, for Defendants-Appellants.

McGEE, Chief Judge.

Properties of Southern Wake, LLC ("Southern Wake") and Timothy D. Powell ("Mr. Powell") (together "Defendants") appeal from the trial court's order denying their motion for a change of venue. Defendants fail to establish that the trial court

abused its discretion in denying their motion. The trial court's order is affirmed.

I. Background

Showcase Construction Co. ("Plaintiff") is a North Carolina corporation with its principal place of business in Cumberland County. Southern Wake is a residential property developer with its principal place of business in Wake County, and Mr. Powell is a member-manager of Southern Wake. Plaintiff planned to build a new house ("the house") in Fleming Fields, a subdivision that Southern Wake was developing in Wake County ("Fleming Fields").

According to Plaintiff's complaint, Plaintiff submitted plans to Fleming Fields Homeowners Association on 7 March 2012, which reportedly were approved three days later. Plaintiff also alleged that it resubmitted those plans, with minor changes, two other times in March 2012, and that those changes were approved both times. Plaintiff purchased a lot in Fleming Fields on 12 April 2012 and began construction shortly thereafter.

Plaintiff further alleges in its complaint that, sometime after construction began, Mr. Powell contacted Plaintiff and informed Plaintiff that the house plans had not been properly approved and demanded that construction cease. Mr. Powell also allegedly contacted Plaintiff's lender and informed it that

Plaintiff was building the house without approval, and Plaintiff's lender immediately cut off funds for construction of the house. Mr. Powell next allegedly informed Plaintiff that the plans for the house would be approved and that Plaintiff "would not have any other problems" if Plaintiff paid Mr. Powell \$5,000.00. Plaintiff reportedly paid Mr. Powell the \$5,000.00 under protest and subsequently brought the present action in Cumberland County Superior Court against Defendants for unfair and deceptive trade practices and related claims. Defendants filed a motion, dated 10 February 2014, requesting, in part, that the trial court transfer the case to Wake County, pursuant to N.C. Gen. Stat. § 1-83(2). The trial court denied Defendants' motion by order entered 5 March 2014. Defendants appeal.

II. Analysis

Pursuant to N.C. Gen. Stat. § 1-83(2) (2013), a trial court may change the venue of a trial "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change." However, whether or not the trial court transfers venue for this purpose "is a matter firmly within the discretion of the trial court and [the trial court's decision] will not be overturned unless the court manifestly abused that discretion."

ITS Leasing, Inc. v. Ram Dog Enters., LLC, 206 N.C. App. 572, 576, 696 S.E.2d 880, 883 (2010) (citations omitted).

In the present case, Defendants contend that the trial court should have transferred venue from Cumberland County to Wake County because "[a]ll persons, corporations, and LLCs in this case are located and do business in Wake County, with the one exception of [] [P]laintiff which chose to travel to Wake County to transact business." Conversely, Plaintiff asserts that

Plaintiff's principal place of business is in Cumberland County, [and] [] Plaintiff intends to use witnesses to prove the allegations . . . who will be from Cumberland County. [] Plaintiff will need to prove damages. Such proof can only come from its suppliers and workers, all from Cumberland County. [] Plaintiff will need to prove the actions of [] Defendant Powell interfered with Plaintiff's lending bank. That proof will need to come from bank representatives and Plaintiff's officers in Cumberland County. [] Plaintiff's officers, comptroller and other witnesses will come from Cumberland County. The [e]ffect of the interference with the construction will need to come from those doing the construction. They will be from Cumberland County.

Defendants have not provided this Court with any arguments to counter these assertions by Plaintiff. Thus, we are simply presented with a scenario where Wake County appears to be a more convenient forum for Defendants and Cumberland County a more

convenient forum for Plaintiff. Defendants fail to otherwise demonstrate that the trial court's discretionary ruling denying their motion to change venue denied them a fair trial, or that the ends of justice demanded a change of venue. As such, the trial court's order denying Defendants' motion to change venue is affirmed.

Affirmed.

Judges STEPHENS and DIETZ concur.

Report per Rule 30(e).