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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-303

Filed 6 February 2024

Mecklenburg County, No. 19 CVS 001663

RIDGLEY PHILLIPS, Plaintiff,

v.

EXTRA SPACE MANAGEMENT, INC., Defendant.

Appeal by Plaintiff from judgment entered 29 October 2021 and order entered 6 December 2022, both by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 15 November 2023.

Devore, Acton & Stafford, P.A., by Joseph R. Pellington, for Plaintiff-Appellant.

Wilson Elser Moskowitz Edelman & Dicker, LLP, by Jeremy A. Stephenson, for Defendant-Appellee.

GRIFFIN, Judge.

Plaintiff Ridgley Phillips appeals from the trial court's judgment granting Defendant's motion for directed verdict and the trial court's order denying Plaintiff's motion for new trial. We find no error.

I. Factual and Procedural Background

In or around 2000, Plaintiff rented a storage unit at Carolina Climate Control

Storage. In 2012, Plaintiff acquired an additional unit in her mother's name. In 2015, Defendant purchased Carolina Climate Control. On 28 March 2018, Plaintiff went to Defendant to move her mother's unit into her name and to acquire a third unit. Plaintiff then executed a lease with Defendant for the additional unit ("Agreement"). In July 2018, when Plaintiff's husband visited the facility, he noticed many of their belongings, previously stored in their units, were missing. Plaintiff notified Defendant and the police.

On 14 February 2019, Plaintiff filed a complaint against Defendant alleging claims for: breach of contract; fraudulent inducement and fraudulent misrepresentation; breach of the implied covenant of good faith and fair dealing; unfair and deceptive trade practice; negligent misrepresentation; civil conspiracy; and gross negligence. On 18 March 2019, Defendant filed an answer.

On 26 July 2021, the matter came on for trial in Mecklenburg County Superior Court. At the close of Plaintiff's evidence, Defendant moved for directed verdict. The trial court granted Defendant's motion in part and denied Defendant's motion in part. At the close of all evidence, Defendant and Plaintiff both moved for directed verdict. Plaintiff's motion was denied and Defendant's motion was denied pending the jury verdict.

On 30 July 2021, the jury returned a verdict. Following the verdict, the trial court again considered Defendant's motion for directed verdict and granted the motion on all of Plaintiff's remaining claims. Plaintiff then moved for judgment

notwithstanding the verdict which was denied.

On 25 October 2021, Plaintiff filed a motion for new trial. On 29 October 2021, the trial court entered its judgment. On or about 2 November 2021, Plaintiff filed an amended motion for new trial. On 6 December 2022, the trial court entered an order denying Plaintiff's motion for new trial.

On 4 January 2023, Plaintiff timely filed notice of appeal.

II. Analysis

Plaintiff contends the trial court erred in granting Defendant's motion for directed verdict and in denying Plaintiff's motion for new trial.

A. Motion for Directed Verdict

Plaintiff contends the trial court erred in granting Defendant's motion for directed verdict on her claims for: fraudulent inducement and fraudulent misrepresentation; gross negligence; unfair and deceptive trade practice; negligent misrepresentation; and breach of contract and breach of the implied covenant of good faith and fair dealing.

Directed verdict is only proper where "it appears, as a matter of law, that a recovery cannot be had by the plaintiff upon any view of the facts which the evidence reasonably tends to establish." *Scarborough v. Dillard's, Inc.*, 363 N.C. 715, 720, 693 S.E.2d 640, 643 (2009) (citation omitted); *see also Boone Ford, Inc. v. IME Scheduler, Inc.*, 262 N.C. App. 169, 174, 822 S.E.2d 95, 99 (2018). A motion for directed verdict "should be denied if there is more than a scintilla of evidence to support all the

elements of [the] plaintiff's prima facie case." *McDonnell v. Tradewind Airlines, Inc.*, 194 N.C. App. 674, 677, 670 S.E.2d 302, 305 (2009) (internal marks and citation omitted).

Where the trial court's ruling on a motion for directed verdict is at issue on appeal, we review the ruling de novo to determine "whether the evidence, taken in the light most favorable to the non-moving party, [was] sufficient as a matter of law to be submitted to the jury." *Simmons v. Wiles*, 271 N.C. App. 665, 668, 845 S.E.2d 112, 115 (2020) (citation omitted).

At the outset, we recognize the trial court, upon a motion by Defendant at the close of Plaintiff's evidence, granted directed verdict in part, effectively dismissing: Plaintiff's claim for fraudulent inducement and fraudulent misrepresentation; Plaintiff's claim for gross negligence; any unfair and deceptive trade practice claims other than the contentions pertaining to the execution of the lease; and any breach of contract claims other than the contention of whether a written lease existed between Plaintiff and Defendant. Defendant renewed its motion at the close of all evidence which the trial court denied without prejudice, pending the jury's verdict as to whether Plaintiff and Defendant entered into written rental agreements. Upon the jury verdict, answering "Yes" to the question of whether Plaintiff and Defendant entered into a written lease agreement, the trial court again considered and granted Defendant's motion for directed verdict as to Plaintiff's remaining claims for: unfair and deceptive trade practice; negligent misrepresentation; and breach of contract and

breach of the implied covenant of good faith.

1. Fraudulent inducement and fraudulent misrepresentation

Plaintiff contends the trial court erred in granting Defendant's motion for directed verdict on her claim for fraudulent inducement and fraudulent misrepresentation.

To state a claim for fraud, a plaintiff must plead the defendant (1) made a false representation, (2) reasonably calculated to deceive, (3) with the intent to deceive, (4) which did in fact deceive, and (5) resulted in damage to the plaintiff. *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 385 N.C. 250, 264, 891 S.E.2d 100, 112 (2023) (internal marks and citation omitted); *see also Media Network, Inc. v. Long Haymes Carr, Inc.*, 197 N.C. App. 433, 453, 678 S.E.2d 671, 684 (2009). Additionally, Rule 9(b) of our Rules of Civil Procedure requires the circumstances, of which the plaintiff contends constitute fraud, to be stated with particularity. N.C. Gen. Stat. § 1A-1, Rule 9(b) (2021). Specifically, as to claims for fraudulent inducement and misrepresentation, the plaintiff must make allegations of the "time, place and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations." *Terry v. Terry*, 302 N.C. 77, 85, 273 S.E.2d 674, 678 (1981).

Here, in her claim for fraudulent inducement and fraudulent misrepresentation, Plaintiff alleged Defendant's agents represented Defendant would provide reasonable surveillance and security at the storage unit facility, a

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statement Defendant knew or should have known was false and/or a statement Defendant made with reckless disregard as to its truth. Further, Plaintiff alleged Defendant made the representations with the intent to induce Plaintiff to enter into the Agreement, Plaintiff did rely on such representations in entering into the Agreement, and Plaintiff suffered damages due to her reliance on Defendant's representations.

At the close of Plaintiff's evidence at trial, Defendant moved for directed verdict on, among other things, Plaintiff's claim for fraudulent inducement and fraudulent misrepresentation. The trial court stated Plaintiff's claim for fraudulent misrepresentation would not have survived a Rule 12 motion to dismiss, had one been made, as she failed to plead the claim with specificity per Rule 9. Nonetheless, the court offered Plaintiff the opportunity to make an argument as to how the evidence offered was sufficient to bring the claim into compliance with Rule 9. Plaintiff conceded the evidence offered, concerning any representations about security and surveillance made in Defendant's promotional YouTube video, was not specific enough to survive the motion as to Plaintiff being fraudulently induced to enter the Agreement.

However, Plaintiff argued she offered evidence of fraudulent misrepresentation as Defendant made knowingly false representations on 9 April 2018, of their being cameras inside the lights in the building which housed Plaintiff's unit. Further, Plaintiff argued the representation caused her to move additional

belongings into the unit. Despite Plaintiff's argument at trial, the record in no way indicates Plaintiff offered evidence tending to show Defendant intentionally made false representations as to the presence of lights and surveillance in and around the unit with the intent to deceive Plaintiff.

Because Plaintiff failed to provide sufficient evidence to support her claim, the trial court did not err in granting Defendant's motion for directed verdict on her claim for fraudulent inducement and fraudulent misrepresentation.

2. Gross negligence

Plaintiff contends the trial court erred in granting Defendant's motion for directed verdict on her claim for gross negligence.

To succeed on a claim for gross negligence, a plaintiff is required to introduce evidence tending to show not only duty, breach, causation, and damages, but also that the defendant's conduct was "willful, wanton, or done with reckless indifference." *Archie v. Durham Pub. Schs. Bd. of Educ.*, 283 N.C. App. 472, 478, 874 S.E.2d 616, 622 (2022) (citation omitted); *see also Toomer v. Garrett*, 155 N.C. App. 462, 482, 574 S.E.2d 76, 92 (2002) (citation omitted).

Plaintiff alleged in her complaint Defendant breached its duty to Plaintiff when Defendant's agents:

acted—or failed to act—in furtherance of the wrongful actions of the Thief, including without limitation: providing passcodes, identifying which storage units might contain high-value items, identifying where surveillance cameras did (and did not) operate, identifying other gaps in security,

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failing to alert authorities to the actions of the Thief, hindering the police investigation, and otherwise.

However, at trial, Plaintiff failed to introduce sufficient evidence to support her claim.

Plaintiff specifically testified:

Q: Do you believe that employees of Extra Space aided the thief by providing pass codes to the thief?

A: That thought has run through my mind.

Q: Okay. Do you believe that employees of Extra Space identified for the thief which units had high dollar contents?

A: That thought has [gone] through my mind.

Q: Okay. And those other things listed that you just read, those are thoughts that you had in your mind; is that correct?

A: Correct.

Q: Do you have any proof at all of any of those things about Extra Space corroborating or assisting the thief in those ways?

A: I don't think there's any way to prove that, but I don't need to.

Additionally, Plaintiff failed to present any evidence which tended to show Defendant directly caused Plaintiff's damages as Plaintiff's allegations were solely based on speculation that, had Defendant acted in some other way, her property would not have been stolen. Thus, Plaintiff not only failed to show evidence as to causation, but Plaintiff also failed to present evidence of any willful or wanton conduct on behalf of Defendant.

As such, the trial court did not err in granting Defendant's motion for directed verdict on Plaintiff's claim for gross negligence.

3. *Unfair and deceptive trade practice and negligent misrepresentation*

Plaintiff contends the trial court erred in granting Defendant's motion for directed verdict on her claims for unfair and deceptive trade practice and negligent misrepresentation.

At the close of Plaintiff's evidence at trial, Defendant moved for directed verdict on, among other things, Plaintiff's claims for unfair and deceptive trade practice and negligent misrepresentation. As to Plaintiff's claim for unfair and deceptive trade practice, the trial court granted Defendant's motion in part, dismissing any issue other than those concerning the execution of the Agreement.

To succeed on a claim for unfair and deceptive trade practice, the plaintiff is required to prove the defendant (1) committed an unfair or deceptive act, (2) in or affecting commerce, (3) which resulted in injury to the plaintiff. *See Griffith v. Glen Wood Co.*, 184 N.C. App. 206, 217, 646 S.E.2d 550, 558 (2007). "A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Bartlett Milling Co., L.P. v. Walnut Grove Auction & Realty Co.*, 192 N.C. App. 74, 82, 665 S.E.2d 478, 486 (2008).

Plaintiff's complaint alleged a claim for unfair and deceptive trade practice which mirrored her claims for fraud and negligence. Just as the court found Plaintiff

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failed to introduce sufficient evidence to support those claims, the court also found Plaintiff failed to introduce sufficient evidence to support any portion of her unfair and deceptive trade practice claim which related to anything other than the issue of whether the Agreement constituted a valid written lease.

Because Plaintiff failed to introduce sufficient evidence to support her claims for fraud and gross negligence, the trial court did not err in dismissing the portions of her unfair and deceptive trade practice claim which mirrored and were based on the same evidence as those claims.

While the court did not initially grant Defendant's motion for directed verdict on Plaintiff's claim for unfair and deceptive trade practice pertaining to the issue of whether the Agreement constituted a valid written lease, at the close of all evidence, the court elected to send that issue to the jury. The jury returned a verdict—"Yes"—noting the Agreement was a valid written contract.

The Agreement itself stated, in relevant part:

OPERATOR EXERCISES NEITHER CARE, CUSTODY,
NOR CONTROL OVER CUSTOMER'S STORED
PROPERTY AND ALL PROPERTY STORED WITHIN
THE SPACE OR AT THE FACILITY BY CUSTOMER
SHALL BE STORED AT CUSTOMER'S SOLE RISK.

The Agreement further noted the operator is not liable for any damages, the video recordings are not monitored, and "Operator's Agents ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES and shall not be relied upon by Customer. The entire agreement and understanding of the parties hereto are embodied in this

writing and NO OTHER WARRANTIES are given.”

By virtue of the Agreement, what remained of Plaintiff’s claims for unfair and deceptive trade practice and Plaintiff’s claim for negligent misrepresentation were defeated. Both claims were based on allegations directly disclaimed by the language in the Agreement—Defendant’s alleged failure to provide security and Defendant’s alleged misrepresentations concerning the level of surveillance and security provided at the facility.

Because Plaintiff’s claims for unfair and deceptive trade practice and negligent misrepresentation were both invalidated by the terms of the Agreement, the trial court did not err in granting directed verdict on those claims.

4. Breach of contract

Plaintiff contends the trial court erred in granting Defendant’s motion for directed verdict on her claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

To succeed on a claim for breach of contract, a plaintiff must prove a valid contract existed and the defendant breached the terms of that contract. *McLamb v. T.P. Inc.*, 173 N.C. App. 586, 588, 619 S.E.2d 577, 580 (2005) (internal marks and citation omitted). A valid contract requires “offer, acceptance, consideration, and mutuality of assent to the contract’s essential terms.” *Se. Caissons, LLC v. Choate Constr. Co.*, 247 N.C. App. 104, 110, 784 S.E.2d 650, 654 (2016) (citation omitted). Moreover, “there must be a meeting of the minds of the contracting parties upon all

essential terms and conditions of the contract.” *Id.* at 112, 784 S.E.2d at 655–56 (internal marks and citation omitted).

To succeed on a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must prove the defendant “took action which injure[d] the right of the other to receive the benefits of the agreement, thus depriv[ing] the other of the fruits of [the] bargain.” *McDonald v. Bank of N.Y. Mellon Trust Co.*, 259 N.C. App. 582, 586–87, 816 S.E.2d 861, 864 (2018) (internal marks and citations omitted). A plaintiff cannot prove the defendant breached the implied covenant of good faith and fair dealing without proving the defendant breached the underlying contract. *See Suntrust Bank v. Bryant/Sutphin Props., LLC*, 222 N.C. App. 821, 833, 732 S.E.2d 594, 603 (2012).

Plaintiff’s breach of contract claim was based upon Defendant’s alleged failure to provide reasonable surveillance and security as described “in the Agreements and otherwise.”

Plaintiff argued Defendant breached both the Agreement and other oral agreements including an enforceable verbal contract. Plaintiff testified the verbal contract was: “to provide me two storage units with walls, and I would give [Defendant] my credit card number and they would be safe and secure and the cameras would be monitored.” The trial court stated that while Plaintiff and Defendant may have had an understanding, Plaintiff failed to introduce evidence which tended to show there was a meeting of the minds as to each element of the

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purported verbal agreement. Thus, at the close of Plaintiff's evidence at trial, the trial court granted Defendant's motion for directed verdict on Plaintiff's claim for breach of contract, in part, dismissing any breach of contract claim concerning anything other than the Agreement and its validity as a written lease agreement.

We hold the trial court did not err here as Plaintiff failed to provide any evidence of the specific terms or essential elements included within the purported verbal agreement and therefore failed to introduce evidence tending to show there was a breach of that agreement.

At the close of all evidence and upon receiving the jury verdict, the trial court dismissed Plaintiff's remaining claims for breach of contract. Because those claims concerned Defendant's alleged failure to provide reasonable surveillance and security as described in the Agreement, we again hold the trial court did not err in dismissing the claims as the Agreement itself directly contradicted and disclaimed them.

As to Plaintiff's claim for breach of the implied covenant of good faith and fair dealing, Plaintiff alleged Defendant made misrepresentations about its services and security measures to induce Plaintiff to enter into agreements with Defendant and to make payments for services Defendant did not intend to provide. Further, Plaintiff alleged Defendant promised to provide reasonable surveillance and security but failed to do so; Defendant failed to provide personnel sufficient to monitor the facility; Defendant enacted policies intended to prevent or discourage discovery of the thefts or other criminal activity at the facility; and Defendant took affirmative action to

hinder police investigation into the theft.

This claim parallels Plaintiff's other claims, including her claims for fraud, negligence, and unfair and deceptive trade practice. Because we hold Defendant failed to offer sufficient evidence to support those claims, we must also hold Defendant offered insufficient evidence to support a claim for breach of the implied covenant of good faith and fair dealing where the claims contained the same allegations and were based on the same evidence.

Thus, the trial court did not err in granting Defendant's motion for directed verdict on Plaintiff's claim for breach of contract and breach of the implied covenant of good faith and fair dealing.

B. Motion for New Trial

Plaintiff contends the trial court erred in denying her motion for new trial as the court should have submitted all of Plaintiff's claims to the jury because there was sufficient evidence to support the elements of Plaintiff's claims and the jury was deprived of the ability to render a complete verdict, thereby depriving Plaintiff of her right to have the factual issues of the case decided by the jury.

Where a plaintiff's motion for new trial involves a question of law, we review the trial court's ruling on the motion de novo. *Kinsey v. Spann*, 139 N.C. App. 370, 372, 533 S.E.2d 487, 490 (2000) (citation omitted). Otherwise, "a motion for new trial is addressed to the sound discretion of the trial court, and its ruling will not be disturbed absent a manifest abuse of that discretion." *Id.*

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Moreover, we recognize the trial court is afforded “wide discretion in presenting the issues to the jury and no abuse of discretion will be found where the issues are sufficiently comprehensive to resolve all factual controversies and to enable the court to render judgment fully determining the cause.” *Simmons*, 271 N.C. App. at 671, 845 S.E.2d at 117 (internal marks and citations omitted).

As noted above, Plaintiff’s failure to provide sufficient evidence to support her claims in addition to the jury’s verdict affirming the validity of the Agreement, required dismissal of Plaintiff’s claims. Not only this, but the trial court’s presentation of the issue of whether a written contract existed between the parties was sufficiently comprehensive to resolve the remaining factual controversies.

As such, the trial court did not err in denying Plaintiff’s motion for new trial.

III. Conclusion

For the aforementioned reasons, the trial court did not err in granting Defendant’s motion for directed verdict nor did it err in denying Plaintiff’s motion for new trial.

NO ERROR.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).