



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 19, 2019

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Re: *Jeffery Watts, et al. vs. 350 Church Street LLC, et al.*
Case No. CL-2016-8202

Dear Counsel:

This cause came to be heard during a two-day bench trial for return of deposits paid for property and construction of a home on 348 Church Street in Vienna, Virginia, commencing October 1, 2019. Plaintiffs' suit was brought under two theories of recovery: (i) Violations of the Virginia Consumer Protection Act ("VCPA"); and (ii) Unjust Enrichment. At this time, the Court also heard Defendants' Counterclaim for Breach of Contract. At the start of trial, the Court took Plaintiff's motion to strike Defendant's attorney's fees under advisement for failure to plead fees in the Counterclaim. At the conclusion of all of the evidence and after each party's closing, Plaintiffs renewed their motion to strike attorney's fees, which the Court granted because it held, Defendants produced no evidence during the trial of attorney's fees. After closing arguments, the Court took the case under advisement and requested the parties submit post-trial memoranda in support of their positions.

OPINION LETTER

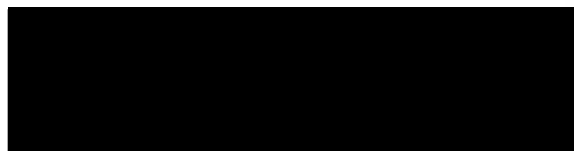
On November 1, 2019, the Court heard Defendants' motion to nonsuit their Counterclaim. The Court granted Defendants' motion to nonsuit their counterclaim, but reiterated that the Defendants motion to strike attorney's fees was granted before nonsuit was requested on October 2, 2019.

After considering all of the evidence and the post-trial memoranda submitted by the parties, the Court finds that there was no fraud or false misrepresentations supported by the record. Specifically, in order to prove fraud under the VCPA, one must show (1) a false misrepresentation, (2) reliance, and (3) loss suffered as a result of that reliance. Here, the Court finds that fraud was not supported by the record, as the Plaintiffs had ample opportunity to review the plans, the knowledge and experience to understand the proposed plans, yet continuously choose to proceed with the construction. Moreover, the square footage of the house located at 348 Church Street was larger than the house at 307 Mashie, and the customization changes requested by the Plaintiffs were accounted for in the construction plans.

Furthermore, regarding Plaintiffs' theory of unjust enrichment, the Court finds that the liquidated damages clause provided in the contract was valid and thus Defendants were entitled to keep the deposits retained, as no unjust enrichment occurred. A liquated damage provision is valid if the actual damages contemplated at the time of the agreement are uncertain and difficult to determine. Here, the Court finds that at the time of the agreement and through the phases of building the custom home, the damages were uncertain and difficult to determine. Thus, the liquated damages provision and the retention of the deposit, did not constitute unjust enrichment on the part of Defendants.

Therefore, this Court finds in favor of the Defendants for all claims provided in the Plaintiffs Complaint. The Court directs the parties to provide an order to Law Clerk 13, on or before November 21, 2019.

Very truly yours,



Grace Burke Carroll
Judge, Circuit Court of
Fairfax County 19th Judicial
Circuit of Virginia