

Case Brief



CITATION: Fraser v. Mayberry, No. 66469-7-1 (Wash: Court of Appeals, 1st Div., 2012)

FACTS: As of October 2008, Erica Fraser had real estate property in Seattle, which was a rental house where she planned to live. Due to her history of mental illness and drug and alcohol addiction, she had lost everything else but this house to foreclosure. Hence, she was renovating the property in Seattle when a fire occurred and damaged it on October 6, 2008. Despite this fact, she did not initially plan to sell the house, but her attorney told her that Dirk Mayberry was interested in purchasing this property. Because of her financial troubles, Fraser responded to calls of Mayberry since she had nowhere to live and her insurance company refused to compensate fire damages. After the initial contact with Mayberry, they had several meetings to discuss the sale. On April 2, 2009, Fraser and Mayberry who acted on behalf of his company signed a purchase and sale agreement relating to which Fraser later filed a lawsuit to rescind the agreement and prove violations of the Consumer Protection Act and the distressed property act. The reason for the lawsuit was ambiguity of the contract and breach of contractual provisions by Mayberry. Besides, they concluded the agreement in a Mexican restaurant after Fraser had several alcoholic beverages and could not clearly recollect provisions of the deal. The agreement itself was full of crossed-out lines and handwritten interlineations some of which were not clear and even incomprehensible. When signing the agreement, Fraser also signed a statutory warranty deed to the property under consideration. The purchase price indicated in the

agreement was \$150,000 and Mayberry had to provide Fraser with \$2,000 in earnest money, but he gave her a check in the amount of only \$1,000. Mayberry also had to pay Fraser a down payment and the 1st mortgage, but he did not do that. Under the signed agreement, the closing date was on April 30, 2009 and the parties had to use a closing agent that they would agree on. Fraser also claimed that Mayberry introduced some additional changes after they had signed the agreement. Besides the check for \$1,000, Mayberry paid no other payments and did not record a deed of trust in favor of Fraser as they had agreed. Based on the above breach of contractual provisions by Mayberry, Fraser filed a suit a few weeks after the agreement conclusion, but before the indicated closing date. She alleged violations of the distressed property act, chapter 61.34 RCW, and the CPA and sought to acknowledge the contract void.

PROCEDURAL HISTORY: Fraser filed a suit and a bench trial on the case lasted for two days in October of 2010. The trial court came to a decision that the agreement was unenforceable and that Mayberry had to pay Fraser \$39,653 in attorney fees and costs for violating the CPA. The court determined that the agreement was ambiguous because of numerous crossed-out lines and handwritten interlineations that were hardly readable in some cases. Besides, the court determined that Mayberry violated the CPA even though Mayberry did not agree that evidence presented in the court proved this violation, yet he failed to assign error to any of the court findings of the fact. Mayberry's behavior was deemed deceptive in line with the CPA because the court found out that he had no intention of complying with his promises. He acted on behalf of the corporation he owned, but he did not have enough money on his accounts to follow the deal through as promised. Besides, he knew about Fraser's financial distress and substance abuse problems. Nevertheless, he bought her alcohol and tried to deceive her to his personal benefit. The trial court

found that Mayberry was eligible for both personal and corporate liability since he acted on behalf of the corporation, but used his personal accounts to issue the check in the amount of \$1,000 to Fraser. As a corporate officer, he was fully aware that his actions were deceptive, yet he denied that. The court also established that Mayberry's actions impacted the public interest and resulted in injury to property or business. The court took into account when taking a decision that Mayberry failed to pay \$2,000 of earnest money, had no intention of waiting till the indicated closing date, had no intention of paying the agreed mortgage, paid no agreed down payment, and could not provide in court an addendum that, according to Mayberry, would clarify ambiguous provisions of the agreement. In turn, Fraser recollected provisions of the addendum that were contrary to the ones recollected by Mayberry. Mayberry could not disprove any of the court's findings and claimed that the agreement looked ambiguous because of the lack of the lost addendum. He found it later and submitted it in his motion for reconsideration, but the court denied this motion. Mayberry filed a suit to the court of appeals as he considered the agreement to be enforceable and not ambiguous.

ISSUE: Under the contract law, is the real estate purchase and sale agreement unenforceable if the seller acts in a bad faith and the contract is ambiguous?

HOLDING: The judgment of the trial court is affirmed.

REASONING: The court of appeals limited its review to establishing whether evidence presented in the trial court was substantial and supported its findings of fact, as well as whether the findings supported the

trial court's conclusions of law. The court of appeals determined that the evidence was substantial since it was sufficient and convincing to persuade any fair-minded person. Mayberry failed to assign error to any finding of fact determined by the trial court. The trial court was also right in concluding that the agreement was ambiguous because of the abundance of handwritten interlineations and crossed-out items. Mayberry's conduct under the CPA was deceptive as the court proved that he had no intention of fulfilling his promises and contractual obligations. Mayberry appeals on the basis of a supposed court error in acknowledging Fraser to be lacking the capacity of entering into the contract because of intoxication and substance abuse problems, but in fact the trial court did not make any conclusion about Fraser's capacity. The court concluded that the agreement was ambiguous and unenforceable based on the presented document and conflicting testimonies of Fraser and Mayberry. Based on that, the trial court decided that there was no meeting of the minds required to make the contract enforceable. Fraser was found compliant with provisions of RAP 18.1 and the court found that Mayberry not only violated the CPA, but was also personally liable in addition to corporate liability of the company "Dirk M. Mayberry Inc." he owned. The court of appeals therefore affirmed decision of the trial court.

THOUGHTS: When I first read the case, I thought that Mayberry was a deceptive man trying to benefit from distraught conditions of others and the court was absolutely right in its decision to acknowledge the contract unenforceable and impose both personal and corporate liability on Mayberry. He could have bought the property he wanted so much in a legal way if he were an honest man. Instead, he bought alcohol for a person with substance abuse problems, which he was fully aware of, and drafted an agreement where many provisions were handwritten and unreadable. He did that in an attempt to avoid fulfilling his contractual obligations and paying promised payments to Fraser. If Fraser had failed to file a lawsuit,

Mayberry would have received real estate property virtually for nothing and continue his deceptive and fraudulent business. Withal, the trial court's decision was legally justified, which is proved by affirmation of the court of appeals.

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