

NORTH CAROLINA COURT OF APPEALS

TAMMY L. BYBEE,)
Plaintiff-Appellant)

v.)

From (Currituck Co.)
File No. 15-CVS-386

ISLAND HAVEN, INC.,)
QUALITY HOMES OF CURRITUCK,)
LLC and JUSTIN MATTHEW OLD,)
Defendants-Appellees.)

PLAINTIFF-APPELLANT'S REPLY BRIEF

CLERK COURT OF APPEALS
OF NORTH CAROLINA

2017 NOV -1 A 11:57

FILED

Haven, their business relationship to each other, and their relationship to the Plaintiff in this case.

IV. APPELLANT'S UNFAIR AND DECEPTIVE TRADE PRACTICES CLAIM WAS IMPROPERLY DISMISSED BY THE COURT.

Defendant-Appellants argue that if plaintiff failed to state a claim in their cause of action based upon Fraud, then Plaintiff's claim for Unfair and Deceptive Trade Practices would fail. In Hardy v. Toler, 288 N.C. 303,309, 218 S.E.2d 342, 346 (1975) the Court stated that while "[p]roof of fraud would necessarily constitute a violation of the prohibition against unfair and deceptive acts; however, the converse is not always true." "The declared purpose of the Act "to maintain ethical standards of dealings does not imply that the failure to maintain such standards must rise to the level of fraud, or that unethical and unfair trade practices must constitute fraudulent trade practices." Rosenthal v. Perkins, 42 N.C.App. 449, 257 S.E.2d 63,65(1979). In Rosenthal the Court reversed the trial Court's dismissal of the Plaintiff's Unfair and Deceptive Trade Practice Claim. Rosenthal Id. at p 67. Since the Plaintiff-Appellant incorporated all of her allegations of Fraud into her claim for Unfair and Deceptive Trade Practices, and Plaintiff stated "fraud and other acts and omissions of Defendants set forth herein" (R p 12,par.31,32) her claim for Unfair and

Deceptive Trade Practices may be judged upon those allegations without the finding of an allegation of Fraud.

However, the Plaintiff-Appellant has alleged Fraud with particularity as required by the Brickell case cited in Appellant's brief at page 17. "While the facts constituting the fraud must be alleged with particularity, there is no requirement that any certain language be used." Carver v. Roberts, 78 N.C. 511, 337 S.E.2d 126,128(1985). "It is sufficient if, upon a liberal construction of the whole pleading, the charge of fraud might be supported by proof of the alleged constitutive facts." Carver v. Roberts citing Brooks, supra at p. 128.

Defendants-Appellees contend that Plaintiff did not properly allege Unfair and Deceptive Trade Practices. Plaintiff incorporated all of her allegations from paragraphs 1 through 30 of her complaint and stated that "[t]he fraud and other acts and omissions of Defendants set forth herein constitute unfair and deceptive trade practices and entitle Plaintiff to recover treble her actual damages pursuant to N.C.G.S.§75-16 and to recover her attorney fees pursuant to N.C.G.S.§75-16.1." (R p 12, par.31,32).

The Plaintiff alleged that the Defendants were a property developer and a builder and that the defendants were engaged in a joint enterprise or joint venture for the purpose of

developing residential building lots and constructing and selling dwellings in a residential Development. Plaintiff further alleged that the fraudulent and negligence acts and omissions of the defendants caused settling of her home, cracking, and other distress to the inside and outside of her home. Plaintiff alleged that these acts caused injury to the Plaintiff in excess of \$10,000 and she specifically described her special damages in her complaint. (R p 9par.14,15).

These allegations sufficiently allege all of the elements of (1)unfair and deceptive trade practices, (2)affecting commerce, and (3)that they proximately caused injury to the Plaintiff. The Plaintiff's allegations constitute sufficient Notice to the Defendants that a cause of action for Unfair and Deceptive Trade Practices was alleged against them by the Plaintiff. (R pp 8-13).

V. APPELLANT'S PUNITIVE DAMAGES CLAIM WAS IMPROPERLY DISMISSED BY THE COURT.

The Defendants-Appellees contend that Plaintiff's claim for Punitive damages was properly dismissed because the Unfair and Deceptive Trade Practices Claim and Fraud were properly dismissed. In conclusion, the Plaintiff-Appellant contends that none of her claims were properly dismissed and that her Punitive Damages Claim should not have been dismissed. The Plaintiff properly alleged all claims for relief.