

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

SHAMROCK HOMES,

APPEAL CASE NO: 01-AP-7

County Case No: 00-1602-CC

Appellant,

v.

MICHAEL PARKER d/b/a
PARKER FLOORS,

Appellee.

Decision filed

Appeal from the County Court
for Lake County
Honorable Donna F. Miller

Derek A. Schroth, Esquire
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FACTS

The facts of the instant case center around a contract dispute between a general contractor Appellant, and a subcontractor, Appellee, involving the installation of a wood floor. In February 1998, Appellant, Shamrock Homes, and Appellee, Parker Floors, entered into a contract wherein Parker Floors agreed to install a wood floor in a residential home being constructed by Shamrock

Homes. The floor was completed, and the home buyers, Mr. and Mrs. Young, moved into the home in April of 1998. Within six months of the Young's moving into their new home, they began to notice waves in the wood flooring. Over the next few months, the Youngs watched the condition of the floor worsen as it expanded to the point of causing the furring strips to pop off the foundation. The Youngs contacted Shamrock about the serious problems with the floor, whereupon Shamrock notified Parker Floors. Parker Floors, however, refused to assume any responsibility for the flooring problems and additionally refused to correct the problems. Pursuant to the Homebuilder's Warranty with the Youngs, Shamrock was therefore obliged to pay for the repairs to the floor. During the actual repair process, Shamrock learned that Parker Floors had improperly installed the floor by failing to lay a sufficient moisture barrier under the floor boards and additionally by failing to properly space the wooden strips, the screeds, which are placed under and support the surface floor boards. As a result of these errors, the entire floor had to be replaced.

Despite repeated requests by Shamrock, Parker Floors continued to deny responsibility for the flooring problems. Shamrock therefore filed suit against Parker Floors raising claims of breach of contract and breach of implied warranty. Shamrock's action was brought up for trial on August 20, 2001. At the close of the evidence, the trial court granted a directed verdict in favor of Parker Floors finding that Shamrock could not recover because the installation of the floor was not absolutely below industry standards and additionally because Shamrock was aware of the materials Parker Floors intended to use in the installation. It is upon this ruling which Shamrock now appeals.

ISSUES

In the instant appeal, Appellant, Shamrock Homes, brings three main arguments before this Court which will be considered in turn: (1) that the trial court ignored the common law elements of breach of contract and breach of implied warranty claims by requiring Shamrock to additionally prove that the installation was below industry standards; 2) that the trial court erred in granting a directed verdict where the evidence and all reasonable inferences established a claim for breach of contract and breach of implied warranty; and (3) that the trial court erred in concluding Shamrock was barred from recovery because it knew or should have known that Parker Floors failed to use the proper materials when installing the wood floor.

I. Trial Court Erred in Concluding that Shamrock Could Not Prevail on Its Breach of Contract and Breach of Implied Warranty Claims unless It Proved That Parker Floors Violated Industry Standards

A review of the underlying record demonstrates that the trial court's central focus in the trial was whether or not Parker Floors had violated industry standards in its installation of the wood floor. Ultimately, the trial court determined that Shamrock had not shown that the method of installation was indeed below industry standards. In requiring Shamrock to prove such, however, the trial court improperly imposed an additional standard of proof not required by the common law to prove either a breach of contract or a breach of implied warranty claim.

Caselaw clearly dictates that in order to set forth a claim for breach of contract, a plaintiff must demonstrate (1) the existence of a contract; (2) a material breach of that contract; and (3) damages suffered by the plaintiff as a result of the breach. See Abbott Laboratories, Inc. v. General Electric Capital, 765 So. 2d 737, 740 (Fla. 5th DCA 2000). As for a claim for breach of implied warranty, a plaintiff must show (1) that the defendant was hired to perform a service or

deliver a product; (2) that such service or product delivered by the defendant was not reasonably suited for the purpose it was intended or that such service was not performed in a good and workmanlike manner; (3) that the defendant's failure to perform the service in a good and workmanlike manner or the defendant's failure to deliver a product reasonably suited for the purpose it was intended caused the damage; and (4) that the plaintiff suffered damage as a result of the defendant's failure. See Lochrane Eng'g, Inc. v. Willingham Realgrowth Inv. Fund, Ltd., 552 So. 2d 228, 232 (Fla. 5th DCA 1989); Lonnie D. Adams Bldg. Contractor, Inc. v. O'Connor, 714 So. 2d 1178, 1179 (Fla. 2d DCA 1998). The violation of industry standards is clearly not an element in either of these two claims. Furthermore, it is generally accepted in Florida that non-compliance with industry standards does not constitute conclusive proof of wrong doing. See Jackson v. H.L. Bouton Co., Inc., 630 So. 2d 1173, 1175 (Fla. 1st DCA 1994); Dean Witter Reynolds, Inc. v. Hammock, 489 So. 2d 761, 767 (Fla. 1st DCA 1986); Solitron Devices, Inc. v. Veeco Instruments, Inc., 492 So. 2d 1357, 1358 (Fla. 4th DCA 1986) (finding, in a claim for breach of warranty of fitness for a particular purpose, that testimony concerning lack of set industry standards had no effect one way or the other as far as proving whether level of performance was acceptable); Orlando Executive Park, Inc. v. P.D.R., 402 So. 2d 442, 448 (Fla. 5th DCA 1981).

In consideration of the foregoing, it is this Court's finding that the trial court did commit error in requiring Shamrock to prove a violation of industry standards to succeed on its breach of contract and breach of implied warranty claims.

II. Trial Court Erred in Granting Directed Verdict Where Evidence and All Reasonable Inferences Showed that Shamrock Established a Claim for Breach of Contract and Breach of Implied Warranty

As an initial matter, it is the opinion of this Court that the Appellee's Motion for Directed Verdict should technically have been raised as a motion for involuntary dismissal as this was a non-jury trial. See Tillman v. Baskin, 260 So. 2d 509 (Fla. 1972). In that the same rules of law apply to both, however, this Court will overlook what constituted a procedural error.

Upon the review of a trial court's order on a motion for directed verdict, an appellate court "is required to evaluate the testimony in the light most favorable to the plaintiff and every reasonable inference deduced from the evidence must be indulged in plaintiff's favor."

American Motors Corp. v. Ellis, 403 So. 2d 459, 467 (Fla. 5th DCA 1981). If any evidence exists to sustain a potential verdict in the non-moving party's favor, a directed verdict is inappropriate. Townsend v. Ward, 429 So. 2d 404, 407 (Fla. 1st DCA 1983).

Applying this standard to the instant facts, this Court finds that the trial court's granting Appellee's Motion for Directed Verdict was in error. A contract existed between Appellant, Shamrock Homes, Inc., and Appellee, Parker Floors, in which Appellee agreed to install a wood floor in a home Appellant was constructing. Inherent within that agreement was the condition that the floor would be installed properly and that the resulting product would be satisfactory. According to testimony presented by a hardwood flooring consultant and the residential contractor for Shamrock, however, the installation was not done properly in that the moisture barrier beneath the floor was insufficient and in that the underlying wooden support strips were not spaced properly. The resulting floor buckled extensively from excess moisture and had to be completely replaced at Appellant's expense. Considering this evidence in the light most

favorable to Appellant, it is clear that Appellant sufficiently established its claims for breach of contract and breach of implied warranty. It is further apparent that Appellant presented sufficient evidence to survive a motion for directed verdict even applying the trial court's incorrect "violation of industry standards" test.

Based on the foregoing, this Court finds the trial court's decision was erroneous.

III. The Trial Court Erred in Concluding That Shamrock Was Barred from Recovery Based on Its Knowledge of the Improper Materials Used in the Installation

In the trial court's Order denying Appellant's Motion for Rehearing, the court stated that "[e]vidence was presented that the plaintiff bought the materials for the defendant to use, so Plaintiff knew or should have known, as contractor, that Defendant was using screeds and one (1) layer of tar paper." In finding such, however, the trial court improperly shifted the burden of properly installing the wood floor from the Appellee, which had contracted to do the work, to the Appellant. Appellee was supposedly skilled at installing wood floors and was hired by Appellant on that basis. The finding of the trial court ignores this fact, however, and instead would seem to require the contractor to be specialized in each area for which a subcontractor is hired. It would additionally allow no recourse for the contractor where a subcontractor performs unsatisfactorily. Appellant, here, in no way held itself out to be an expert on installing wood floors and should not, having received an inferior product, be left without a remedy simply because it knew of the materials being used by Appellee. The trial court's ultimate decision was therefore in error.

Conclusion

Having found the trial court's reasoning and final determination to be erroneous, the Order granting Appellee's Motion for Directed Verdict is reversed, and this cause shall be remanded for a new trial consistent with the findings herein.

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