

Moot Court Problem

Gerry Cohn is a licensed general contractor in Florida and Georgia. He owns a contracting business, General Contractor Solutions, Inc., (“General Contractor”). General Contractor is incorporated in Delaware, but its headquarters are in Atlanta, Georgia. General Contractor actively engages in business throughout Florida and Georgia.

The City of Sawgrass Hills is a city located within Sawgrass Hills County, Florida.

In October of 2017, an affluent homeowner, Homer Owens, hired General Contractor to complete a massive upscale renovation of Mr. Owens’ \$4 million dollar home. The home is in the City of Sawgrass Hills, Florida. The renovation included work on Mr. Owens’ Olympic-sized swimming pool. General Contractor hired a Florida swimming pool subcontractor, Swimming Pool Experts, LLC, (“Subcontractor”) to complete the swimming pool renovation. General Contractor verbally agreed to pay Subcontractor \$400,000.00 to complete the swimming pool renovation. General Contractor paid Subcontractor a \$100,000.00 deposit. Subcontractor’s primary qualifying agent was Eugene Dupree, who is a certified swimming pool contractor. After General Contractor paid Subcontractor the deposit, Mr. Dupree, applied for the necessary permits from the City of Sawgrass Hills.

After Eugene Dupree applied for the permits, but before the City issued the permits, he turned the renovation over to Subcontractor’s Vice President, Victor Garcia. Then, Eugene Dupree moved to England where he resided for one year before returning to Florida. Subcontractor did not replace Eugene Dupree as its qualifying agent after he moved to England. Eugene Dupree remained listed as the qualifying agent and the point of contact for the renovation permits. There were problems with the permit application. The City of Sawgrass Hills attempted to notify Subcontractor of the issues, but the City’s correspondence to Eugene Dupree went to Eugene Dupree’s Florida address as listed on the permit application. As the Subcontractor did not correct the issues with the permit application, the City of Sawgrass Hills denied the permit.

In February of 2018, Subcontractor commenced work on the pool renovation without the proper permits. Soon thereafter, Subcontractor stopped showing up at the job site and stopped communicating with General Contractor, this coincided with the unexpected death of Subcontractor’s Vice President, Victor Garcia. Unfortunately, the remaining Subcontractor employees did not know how to contact Eugene Dupree. Furthermore, none of Subcontractor’s employees had experience with the City of Sawgrass Hills permitting process or requirements.

Due to Subcontractor’s failure to complete the renovation, General Contractor hired another subcontractor, Aquatic Contracting Performance, LLC (“Aquatic”) to complete the renovation. Aquatic agreed to perform the renovation for \$500,000.00, an additional \$100,000.00 more than the verbally agreed upon price between Subcontractor and General Contractor. Furthermore, Aquatic had to restart the permitting process, which slowed down the renovation for an additional six weeks. Finally, Aquatic completed the renovation in April of 2019. General Contractor paid Aquatic the full \$500,000.00 for the swimming pool renovation. General Contractor lost \$200,000.00 due to the lost \$100,000.00 deposit paid to Subcontractor and the additional \$100,000.00 paid to Aquatic to complete the renovation. Furthermore, General

Contractor hired an attorney to handle client negotiations with Homer Owens after Subcontractor abandoned the swimming pool renovation. This legal representation cost General Contractor an additional \$15,000.00 in legal bills.

In June of 2019, General Contractor filed suit against Subcontractor and Eugene Dupree, in his individual capacity, in the Circuit Court for the Twenty-First Judicial Circuit, in Sawgrass Hills County, Florida. General Contractor's claims included counts for conversion, civil theft, and violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

Defendants retained the same attorney and entered into a written Joint Defense Agreement, allowing the defense attorney to jointly represent Subcontractor and Eugene Dupree. Defendants filed a Motion to Dismiss the Complaint with Prejudice, arguing that the independent tort rule barred the three tort claims based on the existence of a contract between Subcontractor and General Contractor. In addition, Eugene Dupree argued that Plaintiff's attempt to create a private civil cause of action against a qualifying agent was barred by Murthy v. N. Sinha Corp. Finally, the Defendants argued that Plaintiff did not have standing to sue Defendants under FDUTPA because Plaintiff is not a consumer or, if the court considered Plaintiff to be a consumer, that Plaintiff did not represent consumers at large as required by FDUTPA.

After a hearing on Defendants' Motion to Dismiss the Complaint with Prejudice, the trial court dismissed all three counts with prejudice as to both Defendants but stated Plaintiff was not barred from asserting new causes of action against Defendants. There is no transcript from the hearing as counsel for Defendants did not hire a court reporter.

In December of 2019, Plaintiff appealed the trial court's Order Granting the Defendants' Motion to Dismiss the Complaint with Prejudice to Florida's Sixth District Court of Appeal. The Florida Sixth District Court of Appeal affirmed the trial court in part and reversed the trial court in part. The Sixth District Court of Appeal ruled that the trial court erred by dismissing the FDUTPA claims with prejudice instead of allowing Plaintiff to file an amended complaint. The Sixth District Court of Appeal affirmed the trial court's ruling dismissing the conversion and civil theft claims with prejudice as both claims are barred by the independent tort rule.

Judge Adam Carlisle filed a dissenting opinion. In his dissenting opinion, Judge Carlisle argued the Florida Supreme Court abolished the independent tort doctrine in 2013 when it abolished the economic loss rule in the Tiara case. He argued that the trial court erred in dismissing all three claims with prejudice.

The Sixth District Court of Appeal's certified two questions to the Florida Supreme Court. The Florida Supreme Court agreed to hear arguments on both questions. The Florida Supreme Court ordered the Parties to file initial briefs on the substantive merits and the Florida Supreme Court agreed to hear oral arguments.