

Cite as 2023 Ark. App. 346

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CV-21-247

JKC CELLARS, LLC; OLD FORT  
FURNITURE, LLC; GROWFRESH, LLC;  
KRIJO INVESTMENTS, LLC; AND  
DECANTER FAMILY REVOCABLE TRUST  
APPELLANTS

V.

FORT CHAFFEE REDEVELOPMENT  
AUTHORITY

APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT SMITH  
DISTRICT  
[NO. 66FCV-20-353]

HONORABLE GUNNER DELAY, JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

This is an appeal of the Sebastian County Circuit Court’s order granting summary judgment to the appellee, Fort Chaffee Redevelopment Authority (“FCRA”). Appellants JKC Cellars, LLC; Old Fort Furniture, LLC; KRIJO Investments, LLC; and DeCanter Family Revocable Trust argue the circuit court erred in finding there were no genuine issues of material fact and granting summary judgment in favor of FCRA on appellants’ claim for deceit related to the sale of real property. We affirm.

*I. Procedural History*

For clarity, we provide a short overview of the parties and claims in this suit since both have changed since the outset. When this action was initially filed in April 2020, the plaintiffs were

Christina and John Coats, in their capacities as members of JKC Cellars, LLC; Tina and Randy DeCanter, in their capacities as members of Old Fort Furniture, LLC; Paul Van Lare, in his capacity as a member of GrowFresh, LLC; Kraig Koren, in his capacity as a member of Premier Heating and Air, LLC; KRIJO Investments, LLC; and DeCanter Family Revocable Trust. Keith Munro was a separate plaintiff on behalf of a class of similarly situated taxpayers, and various persons and entities were named as interested parties.<sup>1</sup> The defendants were FCRA; Ghan & Cooper Commercial Properties, LLC; and John Does 1–10.

The original complaint sought a declaratory judgment and asserted claims for estoppel, reliance, unclean hands, misrepresentation, breach of contract and implied covenant of good faith and fair dealing, violation of the Arkansas Trust Code, and illegal exaction. The plaintiffs amended the complaint in June 2020, listing the same parties and only asserting claims of misrepresentation and inverse condemnation against FCRA.

In October 2020, JKC Cellars, LLC; Old Fort Furniture, LLC; and GrowFresh, LLC, were substituted as plaintiffs in place of the members originally named in the action. Kraig Koren, in his official capacity as a member of Premier Heating and Air, LLC, and his claims were dismissed with prejudice. The interested parties and Ghan & Cooper were also dismissed with prejudice. In November 2020, Keith Munro, individually and on behalf of a class of similarly situated taxpayers,

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<sup>1</sup>Blake Properties, LLC; Beam Properties, LLC; CBC Construction and Development, LLC; Steven Dawson and Roberta Dawson; JS Jones Enterprises, LLC; Fort Smith Streetcar Restoration Association, Inc.; Phillip Taylor and Janice Taylor; and Bone Construction Company, Inc., were joined as interested parties under Ark. Code Ann. § 16-111-111 (Supp. 2021) as the record owners of real property located within the boundaries of the land-use change that is the subject of this matter.

was dismissed. The circuit court also granted FCRA's motion to dismiss the inverse-condemnation claim with prejudice, and GrowFresh, LLC, dismissed its claims with prejudice.

At this point, the remaining plaintiffs were JKC Cellars, LLC; Old Fort Furniture, LLC; KRIJO Investments, LLC; and DeCanter Family Revocable Trust. FCRA and John Does 1–10 were the remaining defendants.

On March 16, 2021, the circuit court granted summary judgment to FCRA on the misrepresentation claim. On March 19, the circuit court dismissed John Does 1–10 with prejudice. Appellants filed a timely notice of appeal on April 14, appealing both the March 16 and March 19 orders.

On April 16, the circuit court clarified its prior order dismissing the claims of GrowFresh, LLC, and ordered that not only were the claims dismissed, but GrowFresh itself was dismissed with prejudice. Appellants filed an amended notice of appeal adding the April 16 order as an order appealed from. To the extent any claims in the April 2020 complaint remained, appellants abandoned them in their notice of appeal.

## II. *Facts*

Following the 1997 closure of Fort Chaffee military installation by the federal government, and pursuant to Arkansas Code Annotated § 22-7-301,<sup>2</sup> the State of Arkansas accepted legislative jurisdiction over the Fort Chaffee property. FCRA, an Arkansas Public Trust, was formed and tasked with oversight of the closure and redevelopment of Fort Chaffee Military Base surplus properties for

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<sup>2</sup>(Supp. 1999).

the public interest and to serve a public purpose.<sup>3</sup> FCRA “is the entity endowed with the authority to manage, own, and operate the land to its maximum benefit. The Trust is empowered to accomplish these objectives by adopting rules, regulations, and restrictive covenants, including land use regulations and restrictions.”<sup>4</sup>

In 2010, FCRA approved and adopted the Chaffee Crossing Master Development Guidelines (“Master Plan”). The geographical area at the center of this action is an area known as the Chaffee Crossing Historic Area. Pursuant to the Master Plan, the historic area was designated to “facilitate the creation of a pedestrian friendly environment to encourage the redevelopment of this historic core into a community and/or tourist destination.” The historic area land-use classification was assigned by the Master Plan as “Mixed Use: Historic,” which consisted of 35 percent residential, 25 percent office, 25 percent institutional, and 15 percent commercial.

Tina and Randy DeCanter are members of Old Fort Furniture, an Arkansas corporation owned by DeCanter Family Revocable Trust. Randy is the trustee of the DeCanter Family Revocable Trust. In late April 2016, after meeting with the FCRA property manager, Larry Evans, and looking at the properties and reviewing the Master Plan for the development,<sup>5</sup> Randy entered into a lease agreement with FCRA for a building located in Chaffee Crossing. Shortly thereafter, in June 2016, “Randy DeCanter” signed a real estate contract for the purchase of the building. In November 2016,

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<sup>3</sup>Over seven thousand acres of property within the boundaries of Fort Chaffee was conveyed back to the State of Arkansas.

<sup>4</sup>City of Barling v. Fort Chaffee Redevelopment Auth., 347 Ark. 105, 115, 60 S.W.3d 443, 448 (2001).

<sup>5</sup>At the first meeting, Randy was shown only one page of the Master Plan because the plans were not yet complete at that time.

“Randy DeCanter” entered into another real estate contract for the purchase of a second building in Chaffee Crossing, adjacent to the first one.<sup>6</sup> The special warranty deed for both buildings was executed thereafter, on March 16, 2017, conveying the properties to “Randall D. DeCanter and Tina M. DeCanter, husband and wife.” Randy then “caused all interest in the real property that is the subject of the suit and all other furniture store assets to be transferred to the DeCanter Family Revocable Trust.” One of the two properties purchased by Randy was later that same year sold to Premier Heating and Air, LLC, and was being used as a storage and warehouse facility.<sup>7</sup> The remaining property is utilized as the location of Old Fort Furniture, a high-end furniture store.

In June 2017, KRIJO Investments, LLC, entered into a real estate contract, signed by its manager, John Coats, with FCRA for the purchase of real property located in Chaffee Crossing. The special warranty deed explained that the conveyance was made subject to the “Chaffee Crossing Master Development Guidelines adopted by the Grantor on August 19, 2010, revised in May 2016, and future amendments thereto” and the “Chaffee Crossing Historic Area Plan adopted by the Seller on August 16, 2012, and future amendments thereto.” After purchasing the property, KRIJO Investments, LLC, leased the property to two tenants—JKC Cellars, LLC, and GrowFresh, LLC. JKC Cellars operates out of the property as a small-batch winery; GrowFresh, LLC, operates out of the property as a full-service store and resource for novice to expert home and commercial gardeners for growing year-round fresh food.

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<sup>6</sup>The second building has since been sold, and damages were not sought in relation to that property.

<sup>7</sup>Appellants allege that Premier Heating & Air, LLC, planned to renovate and remodel the property for a micro-brewery; however, those plans were halted as a result of this action.

On April 18, 2019, at its regular public meeting, FCRA's board of trustees voted to amend its land-use regulations for the area in question from "Mixed Use: Historic Area" to "Mixed Use: Industrial Office."

As explained at the outset of this opinion, a complaint was filed in April 2020, with an amended complaint filed in June. In October there was a substitution of parties, and in November, certain parties and claims were dismissed with prejudice. All that remained was appellants' deceit claim against FCRA. Appellants alleged that prior to purchasing property from FCRA, they were shown the Master Plan for the Chaffee Crossing development that explained that the area would be a "pedestrian oriented development." Appellants' complaint alleged that FCRA assured them that the requirements of the Master Plan would not be changed in a material way, which included, but was not limited to, representations that "certain walkways and light posts would be installed and that every property owner would be required to open a business within three (3) years of purchase." Appellants further alleged that "FCRA knew at the time that these representations were made that they were false representations. In fact, contemporaneous to making these representations FCRA was acting in contradiction to the representations made."

Following the March 12, 2021 hearing on FCRA's motion for summary judgment, the circuit court entered an order granting summary judgment in favor of FCRA. The circuit court stated in its order that, "accepting the plaintiff's allegations as true, they do not constitute fraud, misrepresentation, or deceit as recognized by the Arkansas Supreme Court." The court found that any misrepresentation made by FCRA related to a future event and not to a past event or present circumstance existing at the time the contract was negotiated. The circuit court found there was no

genuine issue of material fact, and FCRA was entitled to judgment as a matter of law. This appeal followed.

## II. *Standard of Review*

The law is well settled regarding the standard of review used by this court in reviewing a grant of summary judgment.<sup>8</sup> A circuit court will grant summary judgment only when it is apparent that no genuine issues of material fact exist requiring litigation and that the moving party is entitled to judgment as a matter of law.<sup>9</sup> The burden of proof shifts to the opposing party once the moving party establishes a prima facie entitlement to summary judgment, and the opposing party must demonstrate the existence of a material issue of fact.<sup>10</sup> Thus, here, FCRA, as the moving party, had the burden of establishing a prima facie case showing entitlement to summary judgment, and once established, the burden shifted to appellants to meet proof with proof demonstrating the existence of a material issue of fact in order to survive summary judgment. After reviewing the undisputed facts, the circuit court should deny summary judgment if, under the evidence, reasonable minds might reach different conclusions from the same undisputed facts.<sup>11</sup> In deciding whether genuine issues of material fact exist, the court is not to weigh the evidence or the credibility of the evidence.<sup>12</sup>

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<sup>8</sup>*Fed. Nat'l Mortg. Ass'n v. Taylor*, 2015 Ark. 78, 455 S.W.3d 811.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*See Turner v. Nw. Ark. Neurosurgery Clinic, P.A.*, 84 Ark. App. 93, 133 S.W.3d 417 (2003).

On appeal, we determine if summary judgment was appropriate by deciding whether the evidentiary items presented by the moving party in support of its motion leave a material fact unanswered.<sup>13</sup> This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party.<sup>14</sup>

### III. *Issues on Appeal*

On appeal, appellants argue that the circuit court erred in finding there was no genuine issue of material fact and contend that each element of deceit was satisfied sufficient to survive summary judgment.

Deceit, also known as fraud or misrepresentation, consists of five elements that must be proved by a preponderance of the evidence: (1) a false representation of a material fact; (2) knowledge or belief by the defendant that the representation is false; (3) intent to induce reliance on the part of the plaintiff; (4) justifiable reliance by the plaintiff; and (5) resulting damage to the plaintiff.<sup>15</sup> An action for fraud or deceit may not be based on representations relating solely to future events.<sup>16</sup> This rule is inapplicable, however, if the person making the representation knows it to be false at the time it is made.<sup>17</sup>

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<sup>13</sup>*Taylor, supra.*

<sup>14</sup>*Id.*

<sup>15</sup>*Barrows/Thompson, LLC v. HB Ven II, LP*, 2020 Ark. App. 208, 599 S.W.3d 637.

<sup>16</sup>*Goforth v. Smith*, 338 Ark. 65, 991 S.W.2d 579 (1999).

<sup>17</sup>*Id.*

On appeal, appellants detail an extensive list of misrepresentations allegedly made by FCRA during the negotiation of the real estate contracts for the properties located in Chaffee Crossing. However, below, in FCRA's first set of interrogatories and requests for production of documents, appellants were asked the following:

**INTERROGATORY NO. 9:** With respect to the misrepresentations that you contend was knowingly made at the time Plaintiff's purchased property from the FCRA as alleged in paragraphs 5 through 7 of the Second Amended Complaint:

- (a) Identify each and every misrepresentation that you contend was made by the FCRA.
- (b) Identify when each and every misrepresentation listed in subpart (a) was made.
- (c) Identify the individual or individuals who made each and every misrepresentation listed in subpart (a).
- (d) Identify the context of the representation and to whom it was stated.

In response, appellants provided the following answer to interrogatory No. 9:

- (a) Larry Evans, Bob Cooper, and Ivy Owen told Randy DeCanter this area would be kept and maintained as a walking and shopping district.
- (b) These same individuals told Randy DeCanter that there would be a steakhouse and pizza kitchen "in the near future." To further this statement the same individuals said all property would be required to be develop[ed] within three years of purchase.
- (c) Larry Evans, Bob Cooper and Ivy Owen.
- (d) Randy DeCanter asked Larry Evans and Ivy Owen "None of this will be allowed as warehouse in the future?" And was told "no" by both of them.

Additionally, Randy DeCanter attended multiple FCRA board and real estate committee meetings where these matters were discussed. Also, specifically as to the transaction with Carol King, Randy DeCanter engaged in a conversation with Rod Blake wherein Mr. Blake had knowledge of amounts that had been invested in particular properties and stated those amounts which caused Mr. DeCanter to believe that the properties were valued at least at the amounts stated by Mr. Blake.

Consequently, despite the exhaustive list of alleged misrepresentations appellants now contend on appeal, our review is focused on those readily gleaned from appellants' response to the interrogatories.<sup>18</sup> Those misrepresentations are identified as (1) FCRA agents told Randy DeCarter the subject area would be kept and maintained as a walking and shopping district; (2) Randy DeCarter was told by FCRA agents there would be a steakhouse and pizza kitchen in the subject area within the near future; (3) FCRA agents stated that all properties within the subject area would be required to be developed within three years of purchase; and (4) FCRA agents told Randy DeCarter that none of the properties would be allowed as warehouses in the future.

Representations that are promissory in nature or of facts that will exist in the future, though false, do not support a fraud action.<sup>19</sup> We recognize one exception to this general rule. In *Delta School of Commerce, Inc. v. Wood*,<sup>20</sup> our supreme court stated, “[A]n expression of opinion that is false and known to be false at the time it is made is actionable.” This exception must be weighed against a mere expression of opinion or puffery, which is not actionable for deceit.<sup>21</sup>

We agree with the circuit court's finding that the alleged misrepresentations claimed by appellants are not related to facts that existed at the time the real estate contracts were negotiated and signed. The representation that the area would be a walking and shopping district is a description of the future plans for the district. The representation that there would be certain restaurants in the

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<sup>18</sup>We note that, even considering all of the alleged misrepresentations argued by appellants in their appellate brief, the result is the same since they all relate to future events or circumstances.

<sup>19</sup>*Anthony v. First Nat'l Bank of Magnolia*, 244 Ark. 1015, 431 S.W.2d 267 (1968).

<sup>20</sup>298 Ark. 195, 199, 766 S.W.2d 424, 426 (1989) (citing *Horn v. Ray E. Friedman & Co.*, 776 F.2d 777 (8th Cir. 1985)).

<sup>21</sup>*Grendell v. Kiehl*, 291 Ark. 228, 723 S.W.2d 830 (1987).

subject area is obviously related to future events. The same conclusion is reached regarding the statement that all properties in the subject area would be required to be developed within three years and the prohibition against warehouses in the future.

Appellants contend that the misrepresentations made by FCRA, even if relating to future events, were known to be false at the time they were made and, therefore, fall within the *Delta* exception. In support of their argument, appellants contend that without the knowledge of appellants, while they purchased the properties for uses conforming to the “Mixed Use: Historic” classification, FCRA simultaneously approved the sale of, and conveyance by deed for, historic-area property within the subject area to Blake Properties, LLC, and Beam Properties, LLC, for nonconforming uses. Plainly, appellants argue, at the same time FCRA was assuring Randy Decanter that no more warehouses would be allowed in the area, FCRA was selling property to be used specifically for warehouses. We find no evidence to support appellants’ claim. Our review of the record establishes the following:

- The real estate contracts between FCRA and Randy Decanter were signed in June and November 2016.
- The real estate contract between FCRA and Beam Properties was signed on March 22, 2017.
- The real estate contract between FCRA and Blake Properties, LLC, was signed in April 2018.

Based on the above timeline, the contracts between FCRA and Blake Properties, LLC, and Beam Properties, LLC, were executed well past the time frame during which DeCarter’s contracts were executed, not simultaneously, as appellants contend. Despite appellants’ argument that FCRA knowingly made false statements, the record does not support such a finding.

#### IV. Conclusion

This court finds that the representations made by FCRA regarding the Chaffee Crossing historic area were expressions of opinion and/or predictions of future events, not misrepresentations of material facts then existing. We further find that appellants failed to provide sufficient evidence that FCRA knew the representations to be false at the time they were made; therefore, the *Delta* exception is inapplicable in this case. Consequently, we affirm the circuit court's order granting summary judgment in favor of FCRA.

Affirmed.

HIXSON and MURPHY, JJ., agree.

*Brett D. Watson, Attorney at Law, PLLC*, by: *Brett D. Watson*, for appellants.

*Jones, Jackson, Moll, McGinnis & Stocks, PLC*, by: *J. Dalton Person*, for appellee.