

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

RICHARD FERGUSON, f/d/b/a	:	APPEAL NO. C-060964
NEIGHBORHOOD GOLD,	:	TRIAL NO. A-0505654
	:	
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
	:	
vs.	:	
	:	
ALVERTIS BISHOP, JR.,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Richard Ferguson appeals the trial court's entry of summary judgment in favor of Alvertis Bishop, Jr. Because we conclude that there remain issues of fact regarding Ferguson's promissory-estoppel and breach-of-fiduciary-duty claims, we reverse the judgment of the trial court in part and remand the cause for further proceedings.

In February 2004, Ferguson, doing business as Neighborhood Gold, agreed to provide bridge financing to Mike Dixon in the amount of \$80,000. The record is unclear about the particulars of the transaction for which Dixon was to use the money. But according to Bishop, the bridge financing was to facilitate a commercial

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

lease between Dixon and Parker Leasing. Bishop, a lawyer, served as the escrow agent for Dixon. To facilitate Dixon's receipt of the \$80,000, Bishop agreed to have the money wired to an escrow account that he had established at a Cincinnati bank. He also signed a document entitled "Instructions to Attorney Alvertis Bishop Jr. and Irrevocable Agreement to Issue Funds" (the "agreement").

According to the agreement, Neighborhood Gold was to wire \$80,000 to Bishop's account. Bishop agreed to disburse the funds to Dixon, who was identified as the buyer, at a closing. The closing was to occur on February 25, 2004. The agreement also provided that Bishop was to debit the seller's proceeds in the amount of \$88,000 at the closing and to wire that amount back to Neighborhood Gold after the closing. The agreement did not identify the seller. In the event that the closing did not occur, Bishop was to return the \$80,000 to Neighborhood Gold on or before the day following the scheduled closing date. According to Bishop, the closing did not occur.

Ferguson filed the within complaint alleging that Bishop had never returned the funds to Neighborhood Gold. The complaint included claims of breach of contract, promissory estoppel, and breach of fiduciary duty. Ferguson moved for summary judgment on his breach-of-contract and breach-of-fiduciary-duty claims. Bishop moved for summary judgment on all the claims. The trial court denied Ferguson's motion, granted Bishop's, and dismissed the entire case with prejudice. But in its written decision, the trial court addressed only the breach-of-contract claim, concluding that Ferguson had not established that there existed a contract between Bishop and Ferguson.

Summary judgment is proper when (1) there remains no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and with the evidence construed in favor of the party against whom the motion is made, that conclusion is adverse to that party.<sup>2</sup> We review the trial court's decision to grant summary judgment de novo.<sup>3</sup>

In his first assignment of error, Ferguson now asserts that the trial court erred when it granted Bishop's motion for summary judgment, because there remained genuine issues of material fact on Ferguson's promissory-estoppel claim. To succeed on his claim for promissory estoppel, Ferguson had to demonstrate that Bishop had made a promise, that Ferguson had reasonably and foreseeably relied on the promise, and that Ferguson was injured as a result of relying on the promise.<sup>4</sup>

Bishop argues that, given the special nature of bridge financing, Ferguson was unreasonable in his expectation that Bishop would return the money immediately after the closing. But the agreement made clear Bishop's promise to disburse the funds and to return the funds, either after the closing or on the day after the proposed closing was to have occurred. Whether Ferguson's reliance on the promise was reasonable and foreseeable was a question of fact. And there was evidence that Ferguson was injured by Bishop's disbursement of funds prior to a closing that never occurred, and by his failure to return the funds as promised in the agreement.

We conclude that the trial court erred when it granted summary judgment on Ferguson's promissory-estoppel claim. The first assignment of error is well taken.

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<sup>2</sup> Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

<sup>3</sup> *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 2000-Ohio-186, 738 N.E.2d 1243.

<sup>4</sup> See *Weiper v. W.A. Hill & Assoc.* (1995), 104 Ohio App.3d 250, 661 N.E.2d 796; *Songer v. Fifth Third Bank* (Feb. 16, 1983), 1st Dist. No. C-820417.

In his second assignment of error, Ferguson claims that the trial court erred when it granted Bishop's motion for summary judgment with respect to his breach-of-fiduciary-duty claim. To recover on this claim, Ferguson had to demonstrate "the existence of a fiduciary relationship, failure to comply with a duty accorded that relationship, and damages proximately resulting from that failure."<sup>5</sup> Ferguson presented sufficient evidence to create genuine issues of material fact about whether the agreement established a fiduciary relationship between Bishop and Ferguson and whether Bishop had failed to comply with his fiduciary duty when he disbursed the funds to Parker Leasing prior to the scheduled closing and failed to remit the funds to Ferguson. We conclude that the trial court erred when it granted summary judgment to Bishop on Ferguson's breach-of-fiduciary-duty claim. The second assignment of error is sustained.

In the final assignment of error, Ferguson asserts that the trial court erred when it granted summary judgment to Bishop on Ferguson's breach-of-contract claim. We disagree.

To show that a contract existed between Ferguson and Bishop, Ferguson had to show that the alleged contract was supported by consideration.<sup>6</sup> Ferguson argued that the \$80,000 constituted the required consideration. But that money did not benefit Bishop. While it may be arguable that the agreement brought a benefit to Bishop because it gave him business with Dixon, there was no evidence presented of such a benefit. The trial court properly concluded that there was no contract between the parties. The third assignment of error is without merit.

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<sup>5</sup> *Ligman v. Realty One Corp.*, 9th Dist. No. 23051, 2006-Ohio-5061, ¶9.

<sup>6</sup> *Forestor v. Scott* (1973), 38 Ohio App.2d 15, 17, 311 N.E.2d 27.

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We therefore sustain the first and second assignments of error, reverse the trial court's judgment with respect to Ferguson's promissory-estoppel and breach-of-fiduciary-duty claims, and remand this cause to the trial court for further proceedings on those claims. The trial court's entry of summary judgment on the breach-of-contract claim is otherwise affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on August 29, 2007  
per order of the Court \_\_\_\_\_.  
Presiding Judge