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

MILDRED FAYE CASTRUCCI,	:	APPEAL NO. C-090084 TRIAL NO. A-0808591
Plaintiff-Appellant,	:	*JUDGMENT ENTRY.*
vs.	:	
HUFF-DREES REALTY, INC.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiff-appellant, Mildred Faye Castrucci, appeals the judgment of the Hamilton County Court of Common Pleas dismissing her complaint against defendant-appellee, Huff-Drees Realty, Inc., in a dispute arising out of a sale of real estate.

Castrucci listed her home for sale with agent Mary Gleason of Sibcy Cline Realtors. She received an offer to buy the residence on a printed form supplied by Huff-Drees. The contract identified Sibcy Cline as the "Listing Realtor" and Huff-Drees as the "Selling Realtor." Gleason was identified in the contract as the "Listing Agent," and the Huff-Drees employee was identified as the "Selling Agent."

In the printed form, there was a provision with boxes permitting the buyer to choose or decline "to purchase an owner's policy of title insurance at this time to be

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

paid for by the Seller (in addition to Settlement Charges in Section 3)[.] Buyer chooses HUFF REALTY Title to provide all appropriate and necessary title insurance services and products to Buyer and Buyer's lender in order to close this transaction." (Underlining in original.) The buyer of Castrucci's home chose the box requiring Castrucci to purchase title insurance from Huff Realty Title.

Castrucci filed suit, asserting that, because Huff-Drees had acted as the "selling realtor," it had owed her a duty to represent her interests. She alleged that Huff-Drees's actions in requiring her to pay for the buyer's title insurance constituted a breach of that duty and that Huff-Drees had engaged in unfair and deceptive practices under the Ohio Consumer Sales Practices Act ("the CSPA"), R.C. 1345.01, et seq. Castrucci purported to bring the action on behalf of a class of all similarly situated parties who had been charged for title insurance under Huff-Drees's contract.

Huff-Drees filed a motion to dismiss, which the trial court granted. In dismissing the suit, the court held that, under the unambiguous language of the contract, Huff-Drees represented the buyer of the home and not Castrucci. Accordingly, the court held that Huff-Drees had not owed any duty to Castrucci.

In a single assignment of error, Castrucci now argues that the trial court erred in granting the motion to dismiss.

A dismissal under Civ.R. 12(B)(6) should be granted only when it appears beyond doubt from the complaint that the plaintiff can prove no set of facts that would entitle her to relief.[2] This court reviews the granting of a Civ.R. 12(B)(6)

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[2] *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus.

motion de novo, and like the trial court, we are constrained to take all the allegations in the complaint as true and to draw all reasonable inferences in the plaintiff's favor.[3]

In this case, the court properly granted the motion to dismiss. We first note that the CSPA does not apply to real estate transactions.[4] Presumably recognizing that exclusion, the trial court construed the complaint as one sounding in contract. Because we must make all reasonable inferences in Castrucci's favor, we construe the complaint in like fashion.

The construction of a written contract is a matter of law for the court.[5] The court must enforce the plain and ordinary meaning of the language as written if it is unambiguous.[6]

Here, the contract unambiguously identified Gleason as the "Listing Agent" whom Castrucci had hired to sell her home, and Gleason signed the contract as Castrucci's representative. In contrast, the Huff-Drees agent signed the contract as the buyer's representative on the signature line marked "Selling Agent." Other clauses in the contract, including a provision requiring Castrucci to give the buyer or Huff-Drees notice of her intent to terminate the contract under certain conditions, also made it clear that Huff-Drees represented the buyer and not Castrucci.

And while Castrucci argues that a realtor may represent both the buyer and the seller in a transaction, the contract in the case at bar did not reflect such an arrangement. The court correctly concluded that Castrucci could not recover under the plain and unambiguous terms of the contract, and that Huff-Drees had not

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[3] *Tri-State Computer Exchange, Inc. v. Burt,* 1st Dist. No. C-020345, 2003-Ohio-3197, ¶11.
[4] See, e.g., *Harwood v. BPJ Investments, Inc.,* 8th Dist. No. 91832, 2009-Ohio-2267, ¶32, citing *Shore W. Constr. Co. v. Sroka* (1991), 61 Ohio St.3d 45, 48, 572 N.E.2d 646.
[5] *Saunders v. Mortensen,* 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶9.
[6] Id.

breached any duty to Castrucci. Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on April 14, 2010

per order of the Court _____.
Presiding Judge