

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

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| JAMES MICHAEL WESTFALL, | : | APPEAL NO. C-120652 |
| | : | TRIAL NO. A-1102115 |
| and | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| CHERYL ANN WESTFALL, | : | |
| Plaintiffs-Appellants, | : | |
| vs. | : | |
| PETER D. CHABRIS, | : | |
| KELLER WILLIAMS ADVISORS, | : | |
| WALT BIRD, | : | |
| and | : | |
| HUFF REALTY, INC., | : | |
| Defendants-Appellees | : | |
| and | : | |
| MCFARLAND LOFTS, LLC, | : | |
| Defendant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiffs-appellants James Michael Westfall and Cheryl Ann Westfall appeal the judgment of the Hamilton County Court of Common Pleas granting summary judgment in favor of defendants-appellees Peter D. Chabris, Keller Williams Advisors, Walt Bird, and Huff Realty, Inc.

This case involves a contract to purchase a condominium unit from developer McFarland Lofts, LLC, by the Westfalls. The Westfalls' real-estate agent was Walt Bird of Huff Realty, Inc. Peter D. Chabris of Keller Williams Advisors was the real-estate agent for McFarland. Pursuant to the terms of the purchase contract, the Westfalls drafted a check made payable to the developer in the amount of \$13,750 as an earnest-money deposit. The Westfalls later terminated the contract and demanded that the developer return the deposit. When the developer failed to do so, the Westfalls initiated this action.

In their complaint, the Westfalls alleged that Chabris, Keller Williams, and the developer had violated R.C. 5311.25 and the Consumer Sales Practices Act, R.C. 1345.01 et seq. They also alleged that Bird and Huff Realty had engaged in negligent representation. The trial court granted summary judgment in favor of Chabris and Bird and their respective agencies. And the court granted the Westfalls' motion for a default judgment against the developer. The Westfalls appeal the entry of summary judgment on their R.C. 5311.25 claim against Chabris and Keller Williams, as well as the entry of summary judgment on their negligent-representation claim against Bird and Huff Realty.

In two assignments of error, the Westfalls argue that the trial court erred (1) by interpreting the purchase contract in a manner that benefitted the defendants-appellees; and (2) by drawing inferences in favor of the defendants-appellees in ruling on the motions for summary judgment. In essence, both arguments challenge the trial court's entry of summary judgment in favor of the defendants-appellees. So we address the assignments of error together.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is

entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party. *See Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, 936 N.E.2d 481, ¶ 29. This court reviews a ruling on a summary judgment de novo. *Id.*

R.C. 5311.25(A)(1) requires that a deposit made in connection with the sale of a condominium be held in trust or escrow. In this case, the plain language of the purchase contract required that the earnest-money check, made payable by the Westfalls to the developer, would be deposited by the developer, not Chabris or Keller Williams, into a trust account. Because the Westfalls failed to present any evidence demonstrating a genuine issue of material fact with respect to any violation of R.C. 5311.25 by Chabris or Keller Williams, the trial court properly entered summary judgment against the Westfalls on that claim.

Furthermore, the trial court properly entered judgment in favor of Bird and Huff Realty on the Westfalls' negligent-representation claim because the claim was not grounded in any breach of duty by their agent or his agency, but in a breach of the purchase contract by the developer. Consequently, we overrule the assignments of error and affirm the trial court's judgment.

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

HENDON, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the clerk:

Enter upon the journal of the court on May 24, 2013

per order of the court _____.
Presiding Judge