

Time of Request: Tuesday, June 03, 2008 11:11:37 EST
Client ID/Project Name: newsletter
Number of Lines: 175
Job Number: 1821:96000742

Research Information

Service: LEXSEE(R) Feature
Print Request: Current Document: 1
Source: Get by LEXSEE(R)
Search Terms: 585 So.2d 290

Send to: LEMONS, JILL
KEVIN F JURSKINSKI PA LAW OFFICE OF
7800 UNIVERSITY POINTE DR STE 200
FORT MYERS, FL 33907

LEXSEE 585 SO.2D 290



Positive

As of: Jun 03, 2008

**C & J SAPP PUBLISHING COMPANY, Appellant, v. TANDY CORPORATION
and FIRST LEASING & FUNDING OF FLORIDA, Appellees**

Case Nos. 89-01726, 90-00201 Consolidated

Court of Appeal of Florida, Second District

585 So. 2d 290; 1991 Fla. App. LEXIS 3604; 16 Fla. L. Weekly D 1068

April 19, 1991, Filed

SUBSEQUENT HISTORY: [**1] Released for
Publication October 4, 1991.

PRIOR HISTORY: Appeal from the Circuit Court for
Lee County; R. Wallace Pack, Judge.

DISPOSITION: Reversed and remanded for
proceedings consistent herewith.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant publishing
company sought reversal of the orders of the Circuit
Court for Lee County (Florida) granting appellee
computer manufacturer and appellee leasing company
summary judgment in appellant's fraud and negligent
misrepresentation tort action.

OVERVIEW: Appellant publishing company leased a
computer system from appellee computer manufacturer.
Appellant did so on appellee manufacturer's
representation that the system was new, which the system
appeared to be outwardly. When the system was later
repaired, however, appellant discovered that certain
internal components were used. Appellant thereafter sued
appellee manufacturer on various grounds, including
fraud and negligent misrepresentation, and sought
punitive damages. Appellant also sued appellee leasing
company, which countersued when appellant stopped

lease payments. The circuit court granted summary
judgment to appellee manufacturer on, inter alia,
appellant's fraud, negligent misrepresentation, and
punitive damage claims, and granted summary judgment
to appellee leasing company on its counterclaim. On
appeal, a state appellate court affirmed without discussion
appellee leasing company's victories but reversed on the
fraud, misrepresentation, and punitive damage claims.
The court held that appellant had sufficiently pled fraud
and negligent misrepresentation and that appellee
manufacturer's willful action, if proven, warranted
punitive damages.

OUTCOME: The judgment as to appellee leasing
company was upheld without discussion, but appellee
manufacturer's summary judgment on the fraud, negligent
misrepresentation, and punitive damages claims was
reversed. Appellant made the minimal statement needed
to plead fraud and negligent misrepresentation, and if it
could show willfulness it could collect punitive damages.

LexisNexis(R) Headnotes

*Civil Procedure > Pleading & Practice > Defenses,
Demurrers, & Objections > Failures to State Claims
Civil Procedure > Pleading & Practice > Pleadings >
Complaints > Requirements*

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

[HN1] In order to state a cause of action, *Fla. R. Civ. P. 1.110(b)* specifies that a complaint need only contain a short and plain statement of the ultimate facts which indicate the pleader is entitled to relief. In determining whether a complaint meets the requirements of this rule, an appellate court must strictly confine itself to the four corners of the complaint. The appellate court must also assume that all of the facts alleged are true and draw all reasonable inferences in favor of the pleader.

Civil Procedure > Pleading & Practice > Pleadings > Heightened Pleading Requirements > General Overview
Torts > Business Torts > Fraud & Misrepresentation > General Overview

[HN2] In order to state a cause of action for fraud, a complaint must allege: (1) a false statement concerning a material fact; (2) knowledge by the person making the statement that the representation is false; (3) intent by the person making the statement that the representation will induce another to act on it; and (4) reliance on the representation to the injury of the other party.

Civil Procedure > Remedies > Damages > Punitive Damages
Torts > Damages > Punitive Damages > Award Calculations > Appellate & Posttrial Review
Torts > Damages > Punitive Damages > Conduct Supporting Awards

[HN3] Allegations that a defendant's actions in perpetrating a fraud were willful and wanton are sufficient to plead an adequate predicate for punitive damages.

Contracts Law > Breach > General Overview
Torts > Damages > General Overview
Torts > Products Liability > Negligence

[HN4] Where compensatory damages sought for a tort are identical to the compensatory damages sought for breach of contract, compensatory damages and punitive damages for the tort are not recoverable.

Civil Procedure > Summary Judgment > Standards > Materiality
Torts > Business Torts > Fraud & Misrepresentation > Negligent Misrepresentation > Elements***Torts > Negligence > Defenses > Contributory Negligence > Limits on Application > Intentional Torts***

[HN5] In order to recover for negligent misrepresentation, a plaintiff must establish: (1) a misrepresentation of a material fact; (2) knowledge by the representor as to the truth or falsity of the representation, or that the representation was made under circumstances in which he ought to have known of its falsity; (3) intent by the representor that the representation induce another to act on it; and (4) injury to the plaintiff as a result of acting in justifiable reliance on the misrepresentation.

Civil Procedure > Summary Judgment > Standards > Genuine Disputes
Civil Procedure > Summary Judgment > Standards > Materiality

[HN6] If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, the summary judgment is improper.

COUNSEL: John Charles Coleman of Coleman & Coleman, Fort Myers, for Appellant.

Craig P. Clendinen and Michael A. Raffanti of Trenam, Simmons, Kemker, Scharf, Barkin, Frye & O'Neill, Tampa, for Appellee, Tandy Corporation; Michael R. Whitt of Law Office of Kevin F. Jursinsky, Fort Myers, for Appellee, First Leasing & Funding of Florida, Inc.

JUDGES: Schoonover, Chief Judge. Campbell and Hall, JJ., concur.

OPINION BY: SCHOONOVER

OPINION

[*291] The appellant, C & J Sapp Publishing Company (Sapp), challenges several orders entered in favor of the appellees, Tandy Corporation (Tandy) and First Leasing and Funding of Florida (First Leasing). The appellant also challenges a final summary judgment in favor of First Leasing and a partial summary judgment in favor of Tandy. We affirm in part and reverse in part.

This dispute arose out of Sapp's purchase of a computer system in 1983. The appellant contends that Chris and Jean Sapp visited the Tandy store in Fort Myers and requested assistance in selecting a computer system that [*2] would fit their company's needs and

serve the purposes for which the system was to be purchased. The Sapps informed Tandy that they desired new rather than used equipment. Tandy's sales representatives advised the Sapps that certain equipment would meet their company's needs, and pursuant to Tandy's suggestion, the equipment was leased to Sapp through First Leasing. Sapp also contends that neither Tandy nor First Leasing ever advised Sapp that any part of the computer system itself was not new, and an external inspection did not reveal that the system was not new.

In July 1986, while a Tandy employee was working on the system, Sapp discovered, through repair stickers on the inside of the computer, that important parts of the computer system were used and had been the subject of maintenance as early as 1980.

Sapp subsequently filed a multicount complaint against the appellees. In its last amended complaint, Sapp sought relief on the grounds of fraud, negligent misrepresentation, breach of warranty of merchantability, breach of warranty by description, and breach of contract. First Leasing filed a cross-complaint against Tandy alleging that Tandy delivered used equipment when new equipment [**3] had been paid for and it filed a counterclaim against Sapp alleging that Sapp had breached the lease between the parties.

The trial court, after several years of pretrial practice, entered many orders and judgments which are the subject of this consolidated appeal. The court first struck Sapp's claim for punitive damages and dismissed its fraud count with prejudice. It then granted First Leasing's motions for summary judgment on Sapp's remaining claims and on its counterclaim and entered summary judgments in those matters, together with orders taxing costs and attorney's fees. The trial court also granted Tandy's motion for summary judgment, and entered a partial summary judgment and an order assessing attorney's fees in that matter. Sapp filed timely notices of appeal from the above orders and judgments, and these appeals were subsequently consolidated by this court.

We find no merit in any of the appellant's contentions in regard to its appeal involving First Leasing and, accordingly, affirm, without discussion, the judgment entered in favor of First Leasing and the order awarding it costs and attorney's fees.

Although Sapp appealed the summary judgment

entered in favor of Tandy, [**4] including the counts for breach of warranty and breach of contract, Sapp's counsel specifically abandoned argument on these counts, and we, therefore, affirm the trial court's rulings on breach of warranty and contract. Sapp contends, however, that the court erred by dismissing its fraud claim, striking its claim for punitive damages, awarding attorney's fees to Tandy, and granting a summary judgment in favor of Tandy on its claim for negligent misrepresentation.

[*292] We agree with the appellant's contention that it alleged a cause of action for fraud against Tandy. [HN1] In order to state a cause of action, a complaint need only contain a short and plain statement of the ultimate facts which indicate the pleader is entitled to relief. *Fla. R. Civ. P. 1.110(b)*. In determining whether a complaint meets the requirements of this rule, we must strictly confine ourselves to the four corners of the complaint. We must also assume that all of the facts alleged are true and draw all reasonable inferences in favor of the pleader. *Thompson v. Martin*, 530 So.2d 495 (Fla. 2d DCA 1988).

[HN2] In order to state a cause of action for fraud, a complaint must allege: (1) a false statement concerning [**5] a material fact; (2) knowledge by the person making the statement that the representation is false; (3) intent by the person making the statement that the representation will induce another to act on it; and (4) reliance on the representation to the injury of the other party. *Lance v. Wade*, 457 So.2d 1008 (Fla. 1984). Considering the fraud count in a light most favorable to Sapp and drawing all reasonable inferences in favor of Sapp, we find that the complaint contains sufficient allegations to state a cause of action for fraud. *Lance*. Accordingly, we find that the trial court erred by dismissing the fraud count.

The trial court also erred in striking Sapp's claim for punitive damages, and upon remand, the claim should be reinstated. [HN3] Allegations that a defendant's actions in perpetrating a fraud were willful and wanton are sufficient to plead an adequate predicate for punitive damages. *Harris v. Lewis State Bank*, 482 So.2d 1378 (Fla. 1st DCA 1986).

We also agree with Sapp's contention that the trial court erred in granting a summary judgment in favor of Tandy on Sapp's negligent misrepresentation claim. In its motion for summary judgment [**6] on this count of Sapp's complaint, Tandy contended that Sapp failed to

plead damages different from those suffered from the alleged breach of contract and, therefore, could not maintain a tort claim. *Rosen v. Marlin*, 486 So.2d 623 (Fla. 3d DCA 1986) [HN4] (where the compensatory damages sought for a tort are identical to the compensatory damages sought for breach of contract, compensatory damages and punitive damages for the tort are not recoverable). Since the appellant seeks general relief on this claim, and not specific dollar amounts, it would be premature to preclude proof of differentiated damages and a summary judgment on this basis is improper at this stage of the proceedings. *Burton v. Linotype Co.*, 556 So.2d 1126 (Fla. 3d DCA 1989).

Tandy's motion for summary judgment also alleged that there was no representation relied upon by Sapp and, therefore, there was no disputed issue of material fact. We disagree with Tandy's position in this regard. [HN5] In order to recover for negligent misrepresentation, a plaintiff must establish: (1) a misrepresentation of a material fact; (2) knowledge by the representor as to the truth or falsity of the representation, [**7] or that the representation was made under circumstances in which he ought to have known of its falsity; (3) intent by the representor that the representation induce another to act

on it; and (4) injury to the plaintiff as a result of acting in justifiable reliance on the misrepresentation. *Atlantic Nat'l Bank v. Vest*, 480 So.2d 1328 (Fla. 2d DCA 1985).

[HN6] If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, the summary judgment is improper. *Young v. Johnson*, 538 So.2d 1387 (Fla. 2d DCA 1989). Although the deposition and answers to interrogatories are inconsistent, there is sufficient evidence to reveal a genuine issue of material fact as to whether a misrepresentation was made to the appellant. The trial court, therefore, erred in granting a summary judgment in favor of Tandy.

In view of this opinion, we also reverse the order awarding Tandy attorney's fees and costs, without prejudice to the reconsideration of Tandy's motion for attorney's [*293] fees and costs at the conclusion of this matter.

Reversed and remanded for [**8] proceedings consistent herewith.

***** Print Completed *****

Time of Request: Tuesday, June 03, 2008 11:11:37 EST

Print Number: 1821:96000742

Number of Lines: 175

Number of Pages: 4

Send To: LEMONS, JILL
KEVIN F JURSIANSKI PA LAW OFFICE OF
7800 UNIVERSITY POINTE DR STE 200
FORT MYERS, FL 33907