MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BETH WEISZ,

Appellant,

v.

GREAT AMERICAN TITLE Q 1-103-1, LLC, a/k/a GREAT AMERICAN TITLE Q 1-103-2, LLC, a/k/a GREAT AMERICAN TITLE OF THE OZARKS, LLC,

Respondent.

DOCKET NUMBER WD82967

Date: June 9, 2020

Appeal from:
Ray County Circuit Court
The Honorable Kevin L. Walden, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, P.J., and Alok Ahuja and Gary D. Witt, JJ.

Attorneys:
Craig F. Lowther, Springfield for respondent
Douglas D. Silvius, Kate E. McKinney, Kansas City for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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BETH WEISZ, Appellant,
v.
GREAT AMERICAN TITLE Q 1-103-1, LLC, a/k/a GREAT AMERICAN TITLE Q 1-103-2, LLC, a/k/a GREAT AMERICAN TITLE OF THE OZARKS, LLC, Respondent.

WD82967 Ray County

Before Division Two Judges: Mark D. Pfeiffer, P.J., and Alok Ahuja and Gary D. Witt, JJ.

Beth Weisz entered into a contract with Innovative Builders and Developers, LLC, for construction of a new home. Weisz put the funds for construction of the home in escrow, with Great American Title Company serving as the escrow agent. The escrow agreement provided that Innovative would be entitled to payment of the full contract price in three installments or draws. The third draw, of 10% of the complete contract price, was to be "[p]aid at completion once Lien Waivers and Buyer signs off."

Weisz claimed that Innovative had defectively constructed her home, and had failed to pay contractors which Innovative had retained to work on the home. Although Weish had not "sign[ed] off" on the home, and it appears that Innovative had not obtained lien waiver from the contractors who had worked on the home, Great American paid Innovative more than $15,000 from the final 10% draw amount.

Weisz sued Innovative and Great American in the Circuit Court of Ray County. (Her claims against Innovative are not at issue in this appeal.) She alleged that Great American had breached the terms of the escrow agreement, and its fiduciary duties to Weisz, when it made unauthorized disbursements of escrowed funds. The circuit court granted summary judgment to Great American, finding that the challenged disbursements were consistent with the terms of the escrow agreement, that Weisz had expressly authorized the payments, and/or that Weisz had ratified Great American's disbursements. The circuit court also awarded Great American $6,000 in sanctions under Supreme Court Rule 55.03, finding that Weisz's claims against Great American were factually unfounded and frivolous.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Two holds:

The undisputed facts establish that Great American's payment to Innovative of the first two draw amounts was consistent with the terms of the escrow agreement, and/or expressly authorized by Weisz.

The record reflects, however, that Great American's payment to Innovative of part of the final draw amount, while Weisz and Innovative were involved in an ongoing dispute over the home's construction, violated the express terms of the escrow agreement.

Although Weisz approved the payment which invaded the final 10% of the contract price, she testified by affidavit that when she approved the payment, she was not aware of the earlier disbursements (and therefore would not have been aware that the payment she authorized encroached upon the final 10%). Therefore, there is a genuine issue of material fact whether Weisz expressly authorized Great American to pay Innovative part of the final draw amount.

Finally, although Great American claims that Weisz later ratified all of its payments, the e-mail exchange on which Great American relies for its ratification argument is subject to different interpretations. A genuine issue of material fact exists whether, in that e-mail exchange, Weisz intended to accept Great American's unauthorized disbursement as her own, and that she thereby consented to be bound by the legal consequences of Great American's unauthorized payment. Summary judgment could not be granted on the basis of a ratification argument.

Because we reverse the circuit court's grant of summary judgment to Great American, we also reverse the circuit court's award of sanctions.

Opinion by: Alok Ahuja, Judge June 9, 2020

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