

Supreme Court of Florida

COPY

No. 77,892

CARL A. MORITZ, et ux.,
Petitioners,

vs.

HOYT ENTERPRISES, INC.,
Respondent.

[July 23, 1992]

OVERTON, J.

This is a petition to review Moritz v. Hoyt Enterprises, Inc., 576 So. 2d 351 (Fla. 4th DCA 1991), in which the district court held that Hoyt Enterprises (Hoyt) was entitled to attorney's fees as the prevailing party under circumstances where Carl and Sara Moritz had been found to have breached a contract but were still entitled to a judgment for the majority of the

funds held on deposit. We find conflict with Casavan v. Land O'Lakes Realty, Inc., 542 So. 2d 371 (Fla. 5th DCA 1989), in which the Fifth District Court of Appeal held that the prevailing party, for the purpose of awarding attorney's fees, is the party who recovers the larger portion of the sum in dispute.¹ We approve the decision of the district court in this cause, concluding that this record establishes that Hoyt prevailed on the significant issues tried in this cause.

The relevant facts reflect that on December 2, 1986, the Moritzes entered into a contract with Hoyt Enterprises for the purchase of a lot and the construction of a single-family home bordering on the Loxahatchee River in Jupiter, Florida. The house was in the initial stages of construction at the time the parties entered into the contract. The Moritzes gave Hoyt a deposit of \$52,000, or 10% of the \$520,000 sale price. They also advanced \$5,877.45 for extras, making the total deposit \$57,877.45.

In February of 1987, the Moritzes complained of the quality of certain items, including the kitchen cabinets. The Moritzes asserted that the quality was not consistent with that of a luxurious custom home. The Moritzes contacted an attorney in March of 1987 and on March 6, 1987, entered into a contract to buy a different house located on the ocean. They subsequently

¹ We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

closed on the second house. On March 27, 1987, by letter from their attorney, the Moritzes repudiated their contract with Hoyt, claiming that the house had not been built in accordance with the plans and demanded the return of their deposit money. Hoyt claimed it offered to return the Moritzes' deposit, minus damages caused by their breach, but the Moritzes refused. Hoyt subsequently sold the home for \$510,000, \$10,000 below the original purchase price, not including the extras.

The Moritzes then brought the instant action, alleging that Hoyt had breached the agreement by failing to construct a building in accordance with the agreement and according to their desires and specifications. The Moritzes also sought to impress an equitable lien on the property, asserting that the deposit money had been used to build the house and that, consequently, Hoyt had been unjustly enriched. Hoyt answered, denying the allegations and affirmatively asserting that the Moritzes had breached the contract; that it was entitled to retain the down payment as liquidated damages; and that it had offered to return the deposit, less its damages, to the Moritzes. Hoyt counterclaimed, alleging that the Moritzes' repudiation of the contract caused Hoyt damages in excess of \$5,000.

The trial court, in a partial summary judgment, determined that Hoyt was not entitled to the deposit as liquidated damages and that the measure of damages that could be sought was limited to Hoyt's general compensatory damages. The trial court found these damages to be the difference between the agreed purchase

price and the actual value of the property at the time of the Moritzes' alleged breach. The trial court, upon final hearing, entered a detailed final judgment making express findings of fact. In its final judgment, the trial court noted:

The legal question presented is whether the contractor, Hoyt Enterprises, breached the contract so as to entitle the buyers, the Moritzes, to refuse to perform. If Hoyt breached the contract, then the Moritzes are entitled to the return of their deposit, plus interest. If Hoyt did not breach the contract, then the Moritzes' refusal to perform constituted a breach and Hoyt is entitled to recover the difference between the value of the house at the time of the breach and the contract price, plus interest on his counterclaim, minus the amount deposited by the Moritzes.

The trial court found that Hoyt's "actions . . . did not constitute a material breach going to the essence of the contract, and thus did not excuse the Moritzes' performance." With regard to the use of the deposited funds, the trial court recognized that "an escrow agent is liable to his principal for any damage flowing from his breach of [an] escrow agreement," but determined that "there was no damage from the use of the escrow funds. Moreover, when the Moritzes became aware that Hoyt had used the escrow funds in the construction, they made no demand that Hoyt place a like amount in an escrow account." The trial court found that the reasonable value of the house at the time of the breach was equal to the \$510,000 that Hoyt received for the house. The trial court also found that the contract price, plus extras, equaled \$526,861, and concluded that Hoyt's damages on the counterclaim were \$16,861, plus interest in the amount of

