IN THE COURT OF APPEALS 4/23/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00462 COA

ABDUL LALA

APPELLANT

v.

JOHN ED AINSWORTH AND PETROLEUM LAND SERVICES, INC.

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. LARRY EUGENE ROBERTS

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

J. RICHARD BARRY, MARK TYSON

ATTORNEY FOR APPELLEES:

ROBERT M. DREYFUS, JR.

NATURE OF THE CASE: SUMMARY JUDGMENT

TRIAL COURT DISPOSITION: GRANTED SUMMARY JUDGMENT

BEFORE FRAISER, C.J., KING, McMILLIN, AND PAYNE, JJ.

KING, J., FOR THE COURT:

This appeal arises from the Lauderdale County Circuit Court's judgment of April 11, 1995, sustaining John Ed Ainsworth and Petroleum Land Services, Inc.'s motion for summary judgment. The trial court found that Abdul LaLa was not justified in relying on negotiations which were not incorporated

into a final contract since the prior negotiations merged into the final contract. We find no error and accordingly, affirm the judgment of the trial court.

I.

In late 1991, or early 1992, Abdul LaLa, an entrepreneur and businessman engaged in the development of motel properties, undertook a project to construct a Comfort Inn near the intersection of Interstate 59/20 and Mississippi Highway 19. Abdul selected property situated in sixteenth section school leasehold land.

During the fall of 1992, Abdul began negotiating with Ed Johnson, a principal of Bonita Properties, Inc., to purchase the property and to enter into a sixteenth section land lease contract. Ed Johnson, in turn, negotiated the lease with John Ed Ainsworth, land manager with the Lauderdale County School Board. During the course of negotiations, Johnson requested an abatement of the rent under the lease. In response, on November 9, 1992, Ainsworth sent Johnson and Abdul a letter stating in pertinent part that:

> This letter will serve as notice to you that in recognition of the problems that have arisen on Lots 4 and 5, the School District is granting you, during your continuing construction phase, a fourteen (14) month period of rent abatement on the lease to be executed at closing, and that no rent will be due from you until March 1994.

There was an indication on the letter that a copy was sent to the Lauderdale County School Board.

On November 19, 1992, Abdul and the Lauderdale County Board School signed the contract. This contract did not contain a provision to abate the annual rent nor did it incorporate the letter of November 9, 1992, from Ainsworth to Johnson and Abdul.

In September of 1993, the Lauderdale County Board of Education informed Abdul that he was in default on rent payments. In a cover letter with the first rent installment, Abdul stated that he understood the terms of the lease to include a fourteen-month abatement. On September 24, 1993, Robert Compton, attorney for the Lauderdale County Board of Education, informed Abdul that he was in default on the second year of the contract together with interest past due on the first and second year rent. Compton also informed Abdul that he had no knowledge of the rent abatement agreement. Abdul paid a total of $29,407.92 plus interest representing the first and second rent installments due under the contract.

On April 7, 1994, Abdul filed a complaint against John Ed Ainsworth and Petroleum Land Services, Inc. in the Circuit Court of Lauderdale County, Mississippi, to recover the monies paid on the contract. Basing his right to recover the money solely on the November 9, 1992, letter from Ainsworth to Johnson and Abdul, Abdul alleged that Ainsworth and Petroleum Land Services, Inc., had acted with gross negligence and committed fraud and misrepresentation in their negotiations with him regarding the contract. Abdul sought $30,598.53 in actual damages, and punitive damages of a sufficient amount to punish the Defendant and deter similar future actions, post-judgment interest at a legal rate together with all court costs and reasonable attorney’s fees.

On June 6, 1994, Ainsworth filed his answer and denied that Abdul was entitled to any relief. In his answer, Ainsworth requested dismissal of the action and alleged that the letter of November 9, 1992, constituted negotiations prior to the time that the parties entered into the final lease agreement, and that such negotiations merged into the contract.

On October 6, 1994, Ainsworth filed a motion to dismiss or in the alternative a motion for summary judgment. On March 24, 1995, the trial court held a hearing on the motions. On April 11, 1995, the trial court granted summary judgment in favor of Ainsworth and Petroleum Land Services.

II

WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT?

Abdul's sole complaint is that Ainsworth, land manager for Lauderdale County School Board, and president of Petroleum Land Services, Inc. caused him injury by making fraudulent misrepresentations in the November 9, 1992, letter. Abdul argues that even though the contract between him and Lauderdale County School Board was not signed until November 19, 1992, he reasonably relied on Ainsworth's representation. Abdul contends that because a reasonable jury could have found in his favor on alternative theories, namely fraud and misrepresentation, the trial court erred when it granted the motion for summary judgment. We disagree.

This Court conducts a de novo review of the record to determine whether the trial court properly granted a motion for summary judgment. *Nationwide Mut. Ins. Co. v. Garriga*, 636 So. 2d 658, 661 (Miss. 1994); *Pace v. Financial Sec. Life*, 608 So. 2d 1135, 1138 (Miss. 1992). The de novo review includes looking at the evidentiary matters and viewing them in the light most favorable to the party against whom the motion has been made. *Garriga*, 636 So. 2d at 661. The movant has the burden of proving that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993).

On April 11, 1995, the trial court granted summary judgment in favor of Ainsworth and Petroleum Land Services. As a basis for granting the motion, the trial court found that Ainsworth and Petroleum Land Services only had the authority to *negotiate* leases on behalf of the Lauderdale County Board of Education and that the Lauderdale County Board of Education, alone, could enter into a binding and enforceable agreement after approval. The trial court also found that Abdul's underlying claim of fraud was without merit because Abdul was not justified in relying upon the November 9, 1992, unless the letter had been presented to the school board, approved, and placed into the minutes. Additionally, the trial court found that the November 9, 1992, letter merged into the final contract signed on November 19, 1992, and was extinguished. *See Paul O'Leary Lumber Corp. v. Mill Equip. Inc.*, 332 F. Supp. 1144, 1144 (S.D. Miss. 1970); *Security Mut. Fin. Corp. v. Willis*, 439 So. 2d 1278, 1278 (Miss. 1983).

We agree with the findings of the trial court and are unpersuaded that the factual scenario in the instant case is one other than Abdul's failure to protect his own interests in business. The record indicates that the letter of which Abdul complains was dated November 9, 1992, and that ten days later on November 19, 1992, Abdul and Lauderdale County School Board signed a *detailed* sixteenth

section lease contract. Sections on payment of rent, rent adjustment and appraisal, and special provisions, along with numerous other provisions, were included in the contract.

There is nothing in the record to indicate that Abdul made any effort to ensure that the November 9, 1992, letter became a part of the final contract. Neither does Abdul assert that he made such efforts. Instead, Abdul argues that he was justified in relying on Ainsworth's representation in the November 9, 1992 letter since Ainsworth was an agent of Lauderdale County School Board with apparent authority to make such representations.

We find that although Ainsworth may have had such authority to negotiate for the school board, and while it may have been reasonable for Abdul to have relied on the representation made during the negotiations, it was unreasonable for Abdul to rely on the negotiations, specifically the November 9, 1992, letter beyond the signing of the final contract on November 19, 1992. Indeed, since the letter was part of the negotiation for the contract, it was Abdul's duty to protect his own interest by making sure that the letter of November 9, 1992, became a part of the contract. Furthermore, the facts clearly indicate, as does Abdul in his brief, that Abdul is an entrepreneur and experienced businessman, engaged in the development of motel properties. Therefore, any notion of adhesion or unfair influence by either party must logically be excluded. As with any negotiations, both parties have a responsibility to ensure that his or its interests are protected, and to ensure that negotiations protecting such interests are included in the final contract. In the instant case, Abdul failed to do so. Additionally, if Abdul felt that the representation made by Ainsworth should have been part of the contract, Abdul should have requested a reformation of the contract based upon mutual mistake. However, this remedy was not sought.

Based on the specific facts of this case, we are obligated to agree with the trial court that summary judgment was proper. We, therefore, affirm the judgment of the trial court.

THE JUDGMENT OF LAUDERDALE COUNTY CIRCUIT COURT IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE APPELLEES IS AFFIRMED. APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.