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CLERK
SUPREME COURT, VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750386

PROFESSIONAL REALTY CORP.

Appellant

v.

WALTER F. BENDER, SR. AND
PATRICIA G. BENDER

Appellees

APPENDIX

GROVER C. WRIGHT, JR.
COUNSEL FOR APPELLANT
SUITE 303 BEACH TOWER BUILDING
3330 PACIFIC AVENUE
P. O. BOX 51
VIRGINIA BEACH, VIRGINIA

LUCIAN B. COX, III
COUNSEL FOR APPELLEES
1518 ATLANTIC AVENUE
VIRGINIA BEACH, VIRGINIA

IN THE SUPREME COURT OF VIRGINIA

PROFESSIONAL REALTY CORP.,

Appellant,

RECORD NO. 750386

v.

WALTER F. BENDER, SR. and
PATRICIA G. BENDER,

Appellees.

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IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

PROFESSIONAL REALTY CORP.,

Plaintiff,

AT LAW
NO. L-74

v.

WALTER F. BENDER, SR.,
and
PATRICIA G. BENDER,

Defendants.

L-606

Serve both defendants at-
2237 Laurel Cove Dr.
Virginia Beach, Va.

MOTION FOR JUDGMENT

1. The plaintiff, Professional Realty Corp., is a duly licensed real estate broker who on June 12, 1974, earned a stipulated and agreed commission of $3500.00 by being the procuring cause of a definite contract for the sale of Lot 3, Section 4, Part 1, Plat of West Alanton, generally known as 1815 N. Alanton Drive, Virginia Beach, Virginia, from the owners and sellers, Gene S. Meekins and Anna M. Meekins, to the defendants, Walter F. Bender, Sr. and Patricia G. Bender, as purchasers.

2. The defendants, in bad faith, in breach of their duty to the plaintiff, and in anticipatory breach of said contract, did on July 15, 1974, repudiate, abandon and breach said contract, causing the plaintiff damages and loss ofsaid commission.

3. The plaintiff and the Sellers have been ready, willing and able to perform said contract and have done so.

GROVER C. WRIGHT, JR.
ATTORNEY AT LAW
3330 PACIFIC AVE.
VIRGINIA BEACH, VA.

WHEREFORE, the plaintiff moves the Court for judgment against the defendants, jointly and severally, in the sum of $3500.00, plus interest and costs.

PROFESSIONAL REALTY CORP.

By Counsel

Grover C. Wright, Jr., p.q.
P.O. Box 51,
Virginia Beach, Va. 23458.

Filed in the Clerk's Office the 24 day of July, 1974

Writ Tax $5.00
Fee 15.00
Libr. 1.00
Sheriff
Total Paid $21.00

Teste:

JOHN V. FENTRESS, Clerk

Evelyn J. Carboy D. C.

Dec. 17, 1974 - Judge Owen

PROFESSIONAL REALTY CORP.	)	
Plaintiff	)	
vs.	)	Law #606
WALTER F. BENDER, SR. and PATRICIA G. BENDER	)	
Defendants.	)	

This day came the parties, and their attorneys, and a jury not being demanded, the whole matter of law and fact was submitted to the court for consideration, and after hearing the evidence of the plaintiff, the defendant by counsel, moved the court to strike the evidence as being contrary to the law and the evidence, which motion the court doth sustain.

Whereupon, it is considered by the court that the plaintiff take nothing by his said suit, but for his false clamor be in mercy, etc.

Copy Teste: John V. Fentress

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

PROFESSIONAL REALTY CORP.,

Plaintiff,

AT LAW
NO. L-606

v.

WALTER F. BENDER, SR. and
PATRICIA G. BENDER.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

The plaintiff files with the Clerk this notice of appeal from the judgment entered herein on the 17th day of December, 1974, states that a statement of the incidents of the case will hereafter be filed and assigns the following errors:

1. The Court erred in striking the plaintiff's evidence.

2. The Court erred in entering summary judgment for the defendants.

I certify that a copy hereof was mailed to counsel of record for the defendants. L. B. Cox, III, 1518 Atlantic Avenue, Virginia Beach, Virginia 23451, this 8 day of January, 1975.

Grover C. Wright, Jr., p.q.

FILED

JAN 9 1975

JOHN V. FENTRESS, Clerk
By _____ D. C.

ROVER C. WRIGHT, JR.
ATTORNEY AT LAW
3330 PACIFIC AVE.
VIRGINIA BEACH, VA.

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

PROFESSIONAL REALTY CORP.,

Plaintiff,

AT LAW
NO. L-606

v.

WALTER F. BENDER, SR. and
PATRICIA G. BENDER,

Defendant.

STATEMENT OF FACTS AND INCIDENTS OF THE CASE

The plaintiff in presenting its case in chief proved the allegations of fact set forth in its motion for judgment. However, at the conclusion of the plaintiff's evidence, the Trial Court sustained the defendants' motion to strike the plaintiff's evidence and entered up summary judgment for the defendants, the Court being of the opinion that as a matter of law a broker has no right to sue a defaulting buyer for a commission under a three party sales contract which imposes on the seller the duty to pay the commission.

Statement prepared by Grover C. Wright, Jr., p.q.

Signed this 9th day of January, 1975.

Austin Owen, Judge

Delivered to the Clerk and filed in the office of the Clerk this 10 day of January, 1975.
John V. Fentress, Clerk

By Barbara A. Hacks
Deputy Clerk

GROVER C. WRIGHT, JR.
ATTORNEY AT LAW
3330 PACIFIC AVE.
VIRGINIA BEACH, VA.

OFFICIAL SALES CONTRACT

METRO MLS, INC.

This Agreement, of Sale made in triplicate this 12th day of June, 1974,

between Walter F. Bender, Sr. & Patricia G. Bender hereinafter known as the Buyer

and Gene S. Meekins & Anna M. Meekins hereinafter known as the Seller

and Professional Realty Corporation a member of Metro MLS, Inc.,

hereinafter known as the Agent.

WITNESSETH: That for and in consideration of the sum of One Thousand and 00/100 Dollars ($1,000.00) by check in hand paid, receipt of which is hereby acknowledged, the Buyer agrees to buy and the Seller agrees to sell for the sum of Seventy-eight Thousand Five Hundred and 00/100 Dollars ($ 78,500.00) all that certain piece, parcel or lot of land described as follows, to-wit:

Lot 3, Section 4, Part 1, Plat of West Alanton (1315 W. Alanton Drive), Virginia Beach, Virginia, together with all improvements thereon, including wall to wall carpeting, all drapes, shutters, air conditioner on sunporch and refrigerator in bar, awnings. Seller guarantees all electrical, plumbing and heating to be in good working order on date of settlement. Seller will replace water stained tiles on ceiling of sunporch. Seller will provide termite inspection letter.

The purchase price to be paid as follows:

$ 1,000.00 deposit to apply to purchase price.

~~19,000.00 additional cash at settlement.~~

42,900.00 second deed of trust to be taken by Seller at 9% per annum payable in monthly payments of $321.75 (interest only) for Sept., Oct., Nov. & December, 1974. ~~Buyer will make a $5,000.00 payment on second deed of trust on January 1, 1975~~ and the balance of $37,900.00 to be paid thereafter in monthly payments, including principal and interest, of $313.05. If any anticipation of 1st or 2nd deed of trust is made during 1974, ~~entire balance will be due and payable~~ at such time. Right of anticipation on second deed of trust is reserved by ~~buyers after January 1, 1975. The entire balance on the second deed of trust~~ will be due and payable five years from the date thereof. (Over)

Possession to be at settlement.

It is understood and agreed by the Buyer and Seller that all money deposited with this contract shall remain in escrow with the Agent until date of settlement.

The Buyer agrees promptly to do everything necessary to obtain said loan, but if loan is not obtainable earnest money shall be returned to Buyer, excepting out-of-pocket expense.

The Seller agrees to convey the above property with a General Warranty Deed with the usual covenants of title, same to be prepared at the expense of Seller. Seller shall pay the cost of the transfer tax on deed and any expense in connection with the removal of title defects. Buyer shall pay all costs of preparing deeds of trust and all costs of recording all deeds. Discount fee to obtain necessary mortgage loan, not to exceed none %, shall be paid by Seller.

All taxes, insurance, rents and interest are to be pro-rated as of pass gratis

and settlement to be made on or before August 1, 19 74, or as soon thereafter as title can be examined and papers prepared, allowing a reasonable time to correct any defects reported by the title examiner.

It is understood that the title is to be free and clear of all liens and indebtedness of every kind except the liens above mentioned.

It is understood that the property is to be conveyed subject to any restrictions of record now thereon.

The Seller agrees to pay the Agent a cash commission for his services, on the sale price of the property, at the rate of as agreed - $3500.00 flat - 10% to Professional Realty Corporation.

Witness the following signatures and seals: Non Metro listing.

Professional Realty Corp (AGENT) Walter F. Bender Sr. (SEAL)

(BY) Jean Conlee Patricia G. Bender (SEAL)

Professional Realty Corp (AGENT) Gene S. Meekins (SEAL)

(BY) Jean Conlee Anna M. Meekins (SEAL)