Nina
PARALEGAL

Nina Richards
603.734.4159

ninaparalegal@gmail.com
www.ninarichards.net

CASE BRIEF

Doreen Kelton v. Hollis Ranch, LLC

CITATION

Doreen Kelton v. Hollis Ranch, LLC, No. 2006-743, 155 N.H. 666; 927 A.2d 1243, May 23, 2007, Submitted, July 17, 2007, Opinion Issued, SUPREME COURT OF NEW HAMPSHIRE

PROCEDURAL HISTORY

The case was on appeal from the Nashua (New Hampshire) District Court's ruling for the defendant that the Consumer Protection Act, RSA 358-A:2 (Supp. 2006), did not impose strict liability upon Hollis Ranch. The Supreme Court of New Hampshire affirmed the lower court's decision.

ISSUE

Did Hollis Ranch violate the Consumer Protection Act, RSA 358-A:2 by knowingly and deceptively selling a gelding to Kelton? Did the court interpret the legislative intent of the Consumer Protection Act, RSA 358-A:2 correctly by not imposing strict liability upon Hollis Ranch?

HOLDING

For the court to impose strict liability on Hollis Ranch based on *RSA 358-A:2*, there would have to have been some form of deception on their part, given prior court rulings regarding the interpretation of this statute. The court determined that Hollis Ranch made a good faith mistake in selling a horse that had an undetected, undescended testicle as a gelding to Kelton. There was no attempt on their part to deceive Kelton. Therefore there was no violation of the Consumer Protection Act, *RSA 358-A:2*. The court's interpretation of the statute ascribed the plain and ordinary meaning to the words used by the legislature and did not ignore nor add words to determine the legislative intent.

FACTS

At an Ohio auction on April 24, 2004, "Lazy H" Horse and Trailer Sales (Lazy H) sold a horse named "ALS April Magic" (Magic) as a gelding to Hollis Ranch (defendant). Hollis Ranch sold Magic as a gelding one month later to Kelton (plaintiff) for $4,535. Soon thereafter, while stabled next to a mare, Magic began to display "stud-like" qualities.

Kelton took Magic to the Tufts University Hospital for Large Animals on March 15, 2005. There, Dr. Jose Garcia-Lopez, a veterinarian with ten years experience treating large animals, performed an examination and determined that Magic had an undescended right testicle that produced testosterone, causing the stud-like behavior.

Dr. Garcia-Lopez stated that an examination of the horse, even by a veterinarian, would not have indicated it had a recessed testicle. The horse had a surgical scar on its scrotum consistent with a gelding procedure. His own physical examination, including an ultrasound and palpitation of the area, did not indicate a recessed testicle. The only evidence of testicular tissue was the positive testosterone lab results which is not a usual and customary exam, administered prior to purchasing a horse, including one represented as being a gelding. Therefore, neither Hollis Ranch nor Kelton would have had reason to know of the undescended testicle. On March 18, 2005, Dr. Garcia-Lopez removed Magic's undescended testicle.

Kelton filed a CPA claim to recoup the cost of the procedure, other related medical and travel expenses, and attorney's fees. She argued that Hollis Ranch violated *RSA 358-A:2, VII*, which prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a par-ticular style or model, if they are of another" and *RSA 358-A:2, V*, which prohibits "[r]epresenting that goods have . . . characteristics . . . that

Nina
PARALEGAL

Nina Richards
603.734.4159

ninaparalegal@gmail.com
www.ninarichards.net

they do not have." Kelton argues that by misrepresenting Magic as a gelding, Hollis Ranch violated subsections *V* and *VII* regardless of its good faith lack of knowledge. Hollis Ranch argues that it acted in good faith and not unfairly or deceptively as the statute requires.

The trial court ruled that "in order for a misstatement to constitute a violation [of the CPA], the defendant must be aware or, at a minimum, have a reasonable basis to suspect that its representation is unreliable or untrue." The court found that: "Hollis Ranch's justifiable reliance on representations made by a third party when it had no reason to know or suspect otherwise does not rise to the level of [an] unfair or deceptive [act or practice] . . . ."

RATIONALE

To determine whether or not Hollis Ranch violated *RSA 358-A:2*, the court needed to determine the legislative intent of the law. It reviewed the ruling on *State v. Boulais* which stated that the interpretation of a statute must be based on the plain and ordinary meaning of the words used by the legislature. *State v. Boulais*, 150 N.H. 216, 218, 834 A.2d 380 (2003). The plain language of the legislature should not be ignored and words the lawmakers did not include should not be added. *Brown v. Brown*, 133 N.H. 442, 445, 577 A.2d 1227 (1990). "The legislative intent is to be found not in what the [*668] legislature might have said, but rather in the meaning of what it did say." *Corson v. Brown Prods., Inc.*, 119 N.H. 20, 23, 397 A.2d 640 (1979).

The court looked at strict liability and how that has been interpreted in New Hampshire courts. "Legal liability is said to be strict when it is imposed even though the defendant has committed no legal fault consisting of the violation of a common law or statutory duty." *Bagley v. Controlled Environment Corp.*, 127 N.H. 556, 558, 503 A.2d 823 (1986). In New Hampshire, strict liability is available only "where the Legislature has provided for it or [in] those situations where the common law of this state has imposed such liability and the Legislature has not seen fit to change it." *Moulton v. Groveton Papers Co.*, 112 N.H. 50, 53, 289 A.2d 68 (1972) (ellipsis omitted).

The trial court interpreted the statute to mean that there needed to be an element of knowledge of unfair deception on the part of Hollis Ranch. The Supreme Court of New Hampshire consulted *Webster's Third New International Dictionary* 584 (unabridged ed. 2002) for the definitions of "deceive" and "unfair" and determined that the trial court properly interpreted the words in requiring knowledge or intent. It is in line with the holding in *State v. Moran* which required deception to establish a CPA violation. *State v. Moran*, 151 N.H. 450, 452, 861 A.2d 763 (2004). Kelton failed to indicate any language in the statute that imposed strict liability, either expressed or implied.

DISPOSITION

The court affirmed the trial courts ruling for the defendant that *RSA 358-A:2* did not impose strict liability upon Hollis Ranch.