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Real Property -Transfer Fees North Carolina's Unfair and Deceptive Trade Practices Act

Susan Carpenter failed to state a claim under Chapter 39A or the UDTPA.

We affirmed.

Susan Carpenter sold two properties governed by homeowners' associations. As part of proving clear title to the properties before sale, Carpenter obtained a "statement of unpaid assessments" for each one. Carpenter now contended the fees she paid for those statements were excessive under North Carolina law. She sued in a purported class action, and the district court dismissed her complaint for failure to state a claim. The district court dismissed the complaint in full because the fees Carpenter described in her complaint were not transfer fees as defined by state law and the companies were not deceptive or unfair in charging them. Carpenter appealed.

We began with Carpenter's claim that the fees defendants charged for statements of unpaid assessments were unlawful transfer fees. "A transfer fee covenant" violates North Carolina public policy "by impairing the marketability of title to the affected real property" and imposing "an unreasonable restraint on alienation and transferability of property." N.C. Gen. Stat. 39A-1(b). Accordingly, "[a] person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee, or enters into an agreement imposing a private transfer fee obligation" shall be liable for damages and attorney's fees. Id. 39A-3(b). The North Carolina Supreme Court has not elucidated the transfer fee statute, but it has articulated principles of statutory interpretation we must follow. In North Carolina, "[s]tatutory interpretation properly begins with an examination of the plain words of the statute."

The fees about which Carpenter complained do not satisfy either part of the statutory definition of "transfer fees." As the district court correctly explained, documents attached to Carpenter's complaint show that the charges for statements of unpaid assessments became a sum of money to be paid, or "payable," when those statements were prepared, not "upon the transfer" of the real property, which occurred later. Carpenter alleged she paid the fees at the time of closing, as defendants required, but that does not disturb the district court's reasoning that the fees "gained the attribute of 'to be paid' upon the preparation of the statements." Alternatively, Carpenter arguedwithout any supporting authoritythat "the transfer of an interest in real property" is not a single event but includes the entire process of preparing to transfer real property in advance of the closing date itself. We rejected this atextual construction, which would expand the statute's reach far beyond the words the General Assembly enacted.

Further, a fee or charge "payable for the right to make or accept [the] transfer" of an interest in real property is also a "transfer fee." The fees here do not qualify because they were to be paid for the statements of unpaid assessments, not for the right to transfer the property interests. Carpenter contended that, as a practical matter, she could not sell the properties without obtaining statements of unpaid assessments because lenders and closing attorneys require them. While the statements may be a prerequisite for financing and title insurance, defendants' fees are required to be paid in exchange for the statements they prepared, not for

the right to make or accept the property transfer. Under the plain language of the statute, then, these charges are not "transfer fees." The fees defendants charged Carpenter to prepare statements of unpaid assessments are not transfer fees under North Carolina law. Carpenter, therefore, failed to allege a violation of the North Carolina law prohibiting transfer fee covenants.

Finally, we considered Carpenter's claim that defendants' charges for statements of unpaid assessments violated North Carolina's Unfair and Deceptive Trade Practices Act (UDTPA). Carpenter's reliance on the transfer fee statute to support her UDTPA claim fails, since we have determined the charges are not transfer fees under Chapter 39A. Carpenter alternatively argued that, even if defendants did not technically violate the transfer fee statute, their charges nevertheless contravened the public policy underlying that statute and so violated the UDTPA. We rejected that argument. The district court rightly dismissed Carpenter's UDTPA claim.

Affirmed.

Carpenter v. William Douglas Management Inc. (Lawyers' Weekly No. 001-084-25, 13 pp.) (Allison Jones Rushing, J.) Appealed from the U.S. District Court for the Western District of North Carolina, at Charlotte (Robert J. Conrad, J.) Argued: Lucy Noble Inman, Milberg Coleman Bryson Phillips Grossman, PLLC, Raleigh, North Carolina, for Appellant; Philip M. Oliss, Jones Day, Cleveland, Ohio; Jeffrey Brandt Kuykendal, McAngus, Goudelock, & Courie, LLC, Charlotte, North Carolina, for Appellees. On Brief: Mark R. Sigmon, Scott C. Harris, Patrick M. Wallace, Jeremy R. Williams, Milberg Coleman Bryson Phillips Grossman, PLLC, Raleigh, North Carolina, for Appellant; Brett W. Bell, Alexander W. Prunka, Jones Day, Cleveland, Ohio; Steven A. Meckler, Frederick M. Thurman, Jr., **Shumaker Loop** & Kendrick, LLP, Charlotte, North Carolina, for Appellee NextLevel Association Solutions, Inc. U.S. Court of Appeals for the Fourth Circuit

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