

August 25, 1997
FOR PUBLICATION

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TAMMY R. GANZEVOORT,)
)
Plaintiff-Appellant,) Summer Circuit
)
v.) Hon. Thomas Goodall, Judge
)
RICHARD B. RUSSELL,) S. Ct. No. 01S01-9602-CV-00040
MARTHA T. RUSSELL, AND)
JIM CASSETTY d/b/a JIM)
CASSETTY REALTY,)
)
Defendants-Appellees.)

FILED

August 25, 1997

Cecil W. Crowson
Appellate Court Clerk

ORDER ON PETITION TO REHEAR

The plaintiff-appellant has filed a petition to rehear; the Attorney General, on behalf of the State, seeks permission to join in the petition and file an amicus brief, which applications are granted.

The petitioner takes issue first with the essential premise of the Court's decision, that the standards for determining an unfair or deceptive act under the catchall provision of the Act¹ are flexible and can be defined with particularity only in the context of the "myriad of cases from the field of business." Supra at _____. [Slip Op. p. 19.]

¹T.C.A. § 47-18-104(b)(27) ("Engaging in any other act or practice which is deceptive to the consumer or to any other person.").

1 The Tennessee Legislature did not define "unfair" and
2 "deceptive" in the Consumer Protection Act.² Where a particular
3 act or practice has not been specifically addressed in the
4 statute, the definition of those terms are left to the courts on
5 a case by case basis. See Jeffrey L. Reed, The Tennessee Consumer
6 Protection Act: An Overview, 58 Tenn. L. Rev. 455, 460 (1991).
7 The conclusion that the same definition does not apply in every
8 case is consistent with the varying provisions of the Act defining
9 unfair and deceptive acts in particular situations. Tenn. Code
10 Ann. § 47-18-104(b)(1-26) and (28-30). A review of these
11 provisions shows that though in most situations actionable fault
12 is not a prerequisite to liability, in others, knowledge is a
13 prerequisite, and in still others, intent to deceive is the
14 standard. Consequently, the petitioner's second contention, that
15 under the Act proof of deception is never dependent upon evidence
16 of intent or knowledge, is contrary to the plain language of the
17 Act.

18
19 The Court's opinion in this case defines the standard
20 applicable to this case and other similar cases in which the
21 general deterioration and non-apparent defects incident to the
22 nature and age of the property being sold ordinarily are reflected
23 in the purchase price, and in which the purchaser is given all the
24 information regarding the condition of the property known by the
25 person charged and not apparent to the purchaser. The acts of the

²Nor did congress define those terms in the Federal Trade Commission Act, on which the Tennessee act is patterned.

1 realtor in this case were not deceptive or unfair.

2

3 The Court, therefore, rejects the petitioner's
4 contention that the Act establishes a single standard applicable
5 in all cases for determining an unfair or deceptive act or
6 practice. The Court affirms the standard set forth in the opinion
7 as being the appropriate standard for this case and similar cases.

8

9 The petition to rehear is denied.

10

11 Costs are taxed to the petitioner.

12

13

14

Reid, J.

15

16

Concur:

17

18

Drowota and Birch, JJ.