

Starcher, J., Dissenting Opinion, Case No.23883

William Toppings v. Rainbow Homes, Inc.

No. 23883 -- *William Toppings v. Rainbow Homes, Inc.*

Starcher, Justice, dissenting:

I dissent because the majority uses a overly legalistic argument to reach a very unequitable result, a result which deprives an individual of the benefits of his contract and encourages deceptive sales practices.

Mr. Toppings wanted to buy a mobile home, and he negotiated with Rainbow Homes, Inc. The parties reached an agreement, an oral agreement, which was written down in detail by the Rainbow salesperson on a pre-printed form labeled "A PLAIN LANGUAGE PURCHASE AGREEMENT."⁽¹⁾ Both parties agree that the purpose of this writing was to aid Mr. Toppings in securing financing from some entity other than the finance company associated with Rainbow. The signature lines for acceptance by the buyer, Mr. Toppings, were blank, but Rainbow's name was pre-printed, by it, on the signature line for the seller.

The glitch is that the "A PLAIN LANGUAGE PURCHASE AGREEMENT" in very fine print under the signature line pre-printed with "RAINBOW HOMES, INC.," said "Not Valid Unless Signed and Accepted by an Officer of the Company," in other words that the acceptance and signature of the officer of the company was required.

Focusing exclusively on the "Not Valid Unless Signed and Accepted by an Officer of the Company," the majority found that the "A PLAIN LANGUAGE PURCHASE AGREEMENT" with the pre-printed signature "RAINBOW HOMES, INC." could not, as a matter of law, be a signed "writing" to avoid the U.C.C. Statute of Frauds.

The majority discounts the circuit court's finding that this document was ambiguous because it was internally inconsistent, namely the use of fine print to take away that offered in readable print. Because the circumstances raised a issue of fact concerning whether Rainbow's pre-printed name could be authenticated by the numerous acts of Rainbow. The form was Rainbow's; the information on the form was completed by Rainbow; the reason for completion of the form was to secure outside financing, which requires

accurate financial information; Rainbow's salesperson acted as if this was a valid agreement; and Rainbow gave Mr. Toppings a copy of the form. The jury was properly instructed on the requirement of an authentication of the printed signature and returned a verdict in favor of Mr. Toppings.

All of the circumstances, except for "Not Valid Unless Signed and Accepted by an Officer of the Company," on Rainbow's "A PLAIN LANGUAGE PURCHASE AGREEMENT" support the jury's verdict.

I would affirm the circuit court finding of an ambiguous document and the jury's decision giving Mr. Toppings the benefit on his contract thus denying Rainbow the benefits of its deceptive "A PLAIN LANGUAGE PURCHASE AGREEMENT."

1. The material quoted from "A Plain Language Purchase Agreement" is in a similar style and size found in the original document.