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Court of Civil Appeals of Alabama.

Jennifer Alley WOOD

v.

ADT LLC and Defenders, Inc.

2180739

|

May 29, 2020

Synopsis

Background: Customer brought action against home security company based on claims of unjust enrichment, fraudulent inducement, and wantonness, which arose from dispute as to how much customer was supposed to be charged for home security company's services. Customer also sought an injunction prohibiting home security company from committing torts. The Circuit Court, Lee County, No. CV-14-900640, dismissed the claim for injunctive relief but otherwise denied home security company's motion to dismiss. Customer appealed. The Supreme Court affirmed, without opinion. The Circuit Court, Lee County, No. CV-14-900640, then entered partial summary judgment for home security company on all claims except the unjust-enrichment claim, which was a claim that was later settled. Customer appealed.

Holdings: The Court of Civil Appeals, Donaldson, J., held that:

[1] customer's initial telephone conversation with home security company did not result in the formation of a binding contract;

[2] customer could not have reasonably relied on any alleged fraud when she signed written contract;

[3] customer's rescission of written contract meant that she suffered no injury from contract's allegedly unconscionable provisions; and

[4] customer was not entitled to a continuance of hearing on partial-summary-judgment motion so that she could seek

discovery of proof that home security company knew that there were defects in the security equipment when it sold the equipment to her.

Affirmed.

West Headnotes (8)

[1] **Fraud** 🔑 Elements of Actual Fraud**Fraud** 🔑 Acts induced by fraud

“Fraud in the inducement” consists of one party's misrepresenting or suppressing a material fact concerning the subject matter of the underlying transaction and the other party's relying on the misrepresentation to his, her, or its detriment in executing a document or taking a course of action.

[2] **Contracts** 🔑 Conditions Precedent in General

Customer's initial telephone conversation with home security company did not result in the formation of a binding “contract,” and thus conversation could not be a basis on which customer, who was in a dispute with home security company as to how much she was supposed to be charged for equipment and security monitoring, could maintain claims against home security company for fraudulent inducement; during the telephone conversation, home security company's employees indicated that the formation of a binding contract to purchase equipment and security monitoring was subject to conditions precedent of customer's authorization of technician to install the equipment and customer's execution of a written contract agreeing to pay for three years of security monitoring.

[3] **Fraud** 🔑 Reliance on Representations and Inducement to Act

An essential element of any fraud claim is reasonable reliance.

[4] Fraud 🔑 Reliance on Representations and Inducement to Act

Customer of home security company could not have reasonably relied on any alleged fraud when she signed written contract to use home security company's services, and thus customer could not maintain claims against home security company for fraudulent inducement; despite customer's argument that technician's statements contradicted those made in advertising and her initial telephone conversation with home security company employees, no binding contract was formed based on the initial telephone conversation, and the alleged contradictions imposed a duty on customer to inquire and to investigate in order to protect her own interests before signing the written contract.

[5] Negligence 🔑 Necessity of legal or proximate causation

In order to be actionable, a wanton act or omission must proximately cause the injury of which the plaintiff complains.

[6] Contracts 🔑 Particular contracts

Home security company's customer suffered no injury from her contract's allegedly unconscionable provisions, which related to the parties' rights in the event of a legal dispute, and thus the alleged unconscionable provisions could not be a basis for customer's wantonness claim against home security company, where customer rescinded the contract two days after she had signed it and before home security company could make any attempt to enforce the allegedly unconscionable provisions.

[7] Contracts 🔑 Operation and effect

Generally speaking, the effect of rescission is to extinguish the contract, and the contract is annihilated so effectually that in contemplation of law it has never had any existence, even for the purpose of being broken.

[8] Judgment 🔑 Hearing and determination

Home security company's customer who was asserting claims of fraudulent inducement and wantonness against home security company was not entitled to a continuance of hearing on partial-summary-judgment motion so that customer could seek discovery of proof that home security company knew that there were defects in the security equipment when it sold the equipment to her; fraudulent-inducement claims failed due to lack of reliance, wantonness claim failed due to lack of injury of the allegedly unconscionable contract provisions that formed the basis for that claim, and home security company's alleged knowledge of defects in the equipment would not have changed those conclusions. Ala. R. Civ. P. 56(f).

Appeal from Lee Circuit Court (CV-14-900640); Christopher J. Hughes, Judge**Attorneys and Law Firms**

Jennifer A. Wood, Auburn, appellant.

Rebecca A. Young of Wilson Elser Moskowitz Edelman & Dicker, LLP, Birmingham, for appellees.

Opinion

DONALDSON, Judge.

*1 Jennifer Alley Wood appeals from a partial summary judgment entered by the Lee Circuit Court (“the trial court”) in favor of ADT LLC (“ADT”) and Defenders, Inc. (“Defenders”), in an action brought against them by Wood. We affirm.

Procedural History

In November 2014, Wood, who is a licensed attorney representing herself in these proceedings, sued ADT and Defenders, one of ADT's authorized dealers. In her complaint, as amended, Wood alleged that, before January 13, 2013,

she had seen ADT advertisements representing that ADT provided its customers with protection from criminal acts 24 hours a day, 7 days a week; that ADT's security equipment and monitoring services were reliable, secure, and technologically advanced; and that ADT's employees were security professionals who responded appropriately to every alarm signal. Wood further alleged that, on January 13, 2013, in reliance on those representations, she placed a telephone call to Defenders and spoke to two of its employees, Don Bonelli and Scott Johnson. Wood alleged that, during that telephone conversation ("the January 13, 2013, telephone conversation"), she negotiated with Defenders regarding the purchase and installation of an ADT security system that was to be monitored by ADT. Wood further alleged that, during those negotiations, Bonelli and Johnson represented to Wood that the total amount she would have to pay for the home-security equipment and the installation of that equipment was \$161.32 and that the contract would include three years of monitoring of her home-security equipment by ADT for a price of \$36.99 per month. Wood also alleged that, during those negotiations, Bonelli and Johnson represented that the contract would include a free lifetime warranty on the home-security equipment, a theft-loss guarantee obligating ADT and Defenders to reimburse Wood for \$500 of her homeowner's insurance deductible if her house was burglarized while the home-security system was activated, and a 100% money-back guarantee providing that Wood would receive a full refund of all money paid to ADT and Defenders if she entered into the contract and then subsequently decided that she was dissatisfied with any aspect of the home-security system or monitoring services. Wood alleged that, relying on the representations made by ADT's advertisements and the representations made by Bonelli and Johnson during the January 13, 2013, telephone conversation, she used her credit card to pay ADT and Defenders \$161.32 for the purchase and installation of the security equipment during the telephone conversation.

Wood further alleged that James Randazza, an employee of Defenders, came to her house on January 15, 2013, to install the home-security system. Wood alleged that Randazza told her that she would have to pay an additional \$140.61 before he would install the home-security equipment and that she would have to pay ADT \$44.99 per month for monitoring services instead of \$36.99 as allegedly represented to her by Bonelli and Johnson. Wood alleged that, on January 15, 2013, she paid the additional \$140.61 for the installation with her credit card and agreed to pay ADT \$44.99 per month for monitoring the home-security system. Wood alleged that, after she had paid

the additional \$140.61 and \$56.72 for monitoring services for the rest of January and February 2013 and after Randazza had installed the home-security system, Randazza gave her a written contract, other sales documents, and a form she could sign and return if she wanted to cancel the contract. Wood alleged that, because she understood that she had the right to cancel the contract if she was dissatisfied with it, she signed the written contract without reading it.

*2 Wood alleged that, later on January 15, 2013, she read the written contract and sales documents and discovered that they contained provisions that contradicted the representations she had relied on in entering into the contract. Wood alleged that, the next day, she attempted to renegotiate the terms of the written contract, but ADT and Defenders refused to renegotiate the terms. Wood alleged that she then canceled the contract by executing and delivering the cancellation form Randazza had given her; however, ADT and Defenders did not refund \$9.87 of the money she had paid them. Wood further alleged that, after she had commenced her action, she learned that, when she bought the ADT home-security system on January 13, 2013, ADT had known that there were defects in its home-security system that could be exploited by criminals and that ADT had not disclosed the existence of those defects to her before she purchased the ADT home-security system.

Based on those factual allegations, Wood's complaint, as amended, claimed that ADT and Defenders had fraudulently induced Wood to enter into a contract with them by misrepresenting that ADT would provide Wood with protection from criminal acts 24 hours a day, 7 days a week; by misrepresenting that ADT's security equipment and monitoring services were reliable, secure, and technologically advanced; by misrepresenting that ADT employees were security professionals who responded appropriately to every alarm signal; by misrepresenting the warranty on the home-security equipment she had bought; by misrepresenting the \$500 theft-loss guarantee; by misrepresenting that she would receive a full refund of all the money paid to ADT and Defenders if she was dissatisfied with any aspect of the home-security system or monitoring services; by misrepresenting that the total cost of the home-security equipment and installation was \$161.32; and by misrepresenting that ADT's monitoring services cost \$36.99 per month. Wood further claimed that, when ADT and Defenders misrepresented those facts, they had also fraudulently induced her to enter into the contract by suppressing the true facts. In addition, Wood claimed that ADT and Defenders had fraudulently induced

her to enter into a contract by suppressing the existence of defects in ADT's home-security system and by suppressing the fact that the contract contained unconscionable provisions relating to the parties' rights in the event of a legal dispute. Wood also claimed that ADT and Defenders wantonly wrote, adopted, and imposed upon Wood allegedly unconscionable contractual provisions relating to the parties' rights in the event of a legal dispute. Finally, Wood claimed that ADT and Defenders had been unjustly enriched by keeping \$9.87 of her money after she had canceled the contract. As relief, Wood sought damages and an injunction prohibiting ADT and Defenders from committing torts.

ADT and Defenders moved the trial court to dismiss Wood's action pursuant to Rule 12(b)(6), Ala. R. Civ. P. The trial court dismissed Wood's action insofar as it sought injunctive relief but otherwise denied the motion to dismiss. Wood then appealed from the judgment dismissing the action insofar as it sought injunctive relief to our supreme court, which affirmed that judgment without opinion. Wood v. ADT, LLC (No. 1160961, 277 So. 3d 959 (Ala. 2018) (table).

In February 2019, ADT and Defenders filed a motion for a partial summary judgment with respect to all of Wood's claims except her unjust-enrichment claim. Wood filed a response to the partial-summary-judgment motion accompanied by 77 exhibits. In addition to the response and exhibits she filed in opposition to ADT and Defenders' partial-summary-judgment motion, Wood filed a Rule 56(f), Ala. R. Civ. P., affidavit stating that she needed ADT and Defenders' responses to some of her discovery requests in order to present essential evidence in opposition to ADT and Defenders' partial-summary-judgment motion and requesting a continuance of the hearing on that motion until she had obtained those responses.

*3 The trial court denied Wood's request for a continuance pursuant to Rule 56(f) and held a lengthy hearing regarding the partial-summary-judgment motion on April 2, 2019. One of the 77 exhibits filed by Wood in opposition to the partial-summary-judgment motion was a recording of the January 13, 2013, telephone conversation, which Defenders had made and produced to Wood during the discovery phase of the action. The recording, which was approximately 50 minutes in duration, was played in open court during the hearing regarding the partial-summary-judgment motion, and a significant portion of the hearing was devoted to a discussion of the statements made by Bonelli, Johnson, and Wood during the January 13, 2013, telephone conversation

as reflected by the recording. On April 5, 2019, the trial court entered a written order granting ADT and Defenders a partial summary judgment with respect to all of Wood's claims except her unjust-enrichment claim. In pertinent part, that order stated:

“This matter came before the Court on [ADT and Defenders'] motion for partial summary judgment. The issues were briefed extensively. An equally extensive hearing was held at which multiple audio and video exhibits were reviewed, as well as those submitted with the parties' various pleadings. Based upon the foregoing, the Court finds that there is no genuine issue as to any material fact and that [ADT and Defenders] are entitled to judgment as a matter of law on [Wood's tort claims]. Therefore, summary judgment is granted in favor of [ADT and Defenders] as to [Wood's tort claims].”

“This matter is set for trial as to [Wood's unjust-enrichment claim] on October 7, 2019, at 9:00 a.m.”

On April 18, 2019, ADT filed a notice informing the trial court that Wood had accepted an offer of judgment in the amount of \$100 with respect to her unjust-enrichment claim and requesting that the trial court enter a judgment in favor of Wood in the amount of \$100 with respect to that claim. On April 29, 2019, the trial court entered a final judgment that stated:

“Based upon the Notice of Acceptance of Offer of Judgment filed by [ADT], the parties have agreed to the entry of a judgment in favor of [Wood] as to [Wood's unjust-enrichment claim]. Accordingly, judgment for [Wood] in the amount of \$100.00 is entered on [her unjust-enrichment claim], costs taxed as paid.

“This resolves all pending matters between all parties and is a final judgment.”

On June 6, 2019, Wood appealed to our supreme court; our supreme court subsequently transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.¹

Facts

The following excerpts from the recording of the January 13, 2013, telephone conversation are pertinent to our analysis of this appeal:

“MR. BONELLI: Thanks for calling [Defenders], your local authorized ADT dealer.

“My name's Don Bonelli.

“And who am I speaking with today?

“MS. WOOD: Jina Wood.

“....

“MR. BONELLI: Okay. Yeah. This — it looks like you received one of our flyers or advertisements in the mail about our promotion that we're running right now with ADT.

“MS. WOOD: Yes. Uh-huh.

“MR. BONELLI: Okay. Yeah. I'd be glad to take a few moments and explain a little bit about this promotion and our Life Protection System and then I can get all your questions that you may have answered.

“MS. WOOD: Okay.

“MR. BONELLI: Okay. Yeah. You probably already saw there that we're offering a \$850 package at no cost to you for the equipment or the activation. And you own the system. It's not leased.

“All right. The system comes with your two door sensors for your front and your back door.

*4 “How many doors do you have that lead into your home from the outside?

“MS. WOOD: Three.

“....

“MR. BONELLI: Now, all -- everything that we install comes with a lifetime warranty and maintenance plan, which is important, because you own the system. If anything -- which basically means if something's not working right or down the road if something happens to your system, we will fix it or replace it. It will be at no cost to you for the parts and the labor. And we do put all that in writing, so —

“MS. WOOD: Okay. Okay.

“MR. BONELLI: Yeah. Lifetime warranty covers parts and labor for the lifetime that you have our service.

“MS. Wood: Okay.

“MR. BONELLI: All right. And then all of your equipment that I'm mentioning to you is free. The activation fee is also free.

“ADT normally charges \$199 for their installation, but with this special promotion, we have reduced it to just the \$99. Okay?

“MS. WOOD: Okay.

“MR. BONELLI: And then all we ask is that you pick up the monthly monitoring for your family's protection. It's just a little more than a dollar a day. It's going to be \$36.99 a month.

“....

“MS. WOOD: Okay. I also — there was a bonus \$100 VISA card [promotion] online.

“MR. BONELLI: Oh, okay. So you did a little research and you looked it up online. ...

“... In this promotion and, basically, how they do that is there's a couple different ways they do marketing. So, you know, the [promotion] that you received in the mail, it's almost the same exact one that you saw online, except [the promotion you received in the mail] comes with your six door and window sensors where the one online only comes with two, but the one online comes with a VISA gift card, but this one doesn't.

“Now, I'll tell you what. I've been doing this for a pretty long time, so I have a — I'm able to do some extra things other representatives can't. So if you want, I'll see if I can get both promotions combined for you, so you can still get to take advantage of the extra sensors, but also you can still get that \$100 VISA gift card.

“MS. WOOD: Okay.

“MR. BONELLI: Yeah. So if I can do that for you, would that be something that you would --

“MS. WOOD: It would help. But biggest thing is we have a lot of windows --

“MR. BONELLI: Do you?

“MS. WOOD: We have eighteen. And not all of them are ground level.

“....

“MR. BONELLI: So, yeah, you're probably better off just doing the ground level windows. I mean, don't get me wrong. I mean, if you want to put sensors on the upstairs windows too, you can, but —

“MS. WOOD: Now, what -- okay. There's only four windows that are real high, but there are fourteen others that are fairly easily accessible.

“MR. BONELLI: Okay.

“MS. WOOD: How would we do that? What extra cost would there be if we went on and did the fourteen that are fairly accessible, the windows?

“....

“MR. BONELLI: Yeah. I mean, do you — because I can give you — like, for example, we give you six storm window sensors with the promotion. You have three doors already we're going to put sensors on.

“MS. WOOD: Uh-huh.

“MR. BONELLI: Which leaves you with three windows. And you said there's fourteen, so that leaves you with eleven more. The option would be to -- one of your options would be to swap the motion detector out for two window sensors, which would just leave you with nine more to get.

*5 “Which I could try to work with you to get a couple more added in there to give you — you know, to cover all the windows.

“MS. WOOD: Right.

“MR. BONELLI: Or -- but you'll end up still having to buy some, you know.

“MS. WOOD: Right.

“MR. BONELLI: Or the other option would be, you know, three doors and three windows and then — you know, three windows, we can put on windows that, you know, are a little bit easier to open than it would be to break out and get into, and then the glass —we can swap the motion detector out

for a glass-break sound sensor, which we can use to cover where you have a lot of windows at.

“MS. WOOD: Right.

“MR. BONELLI: And then the rest -- and then we could figure out how many other windows you need covered and then go from there.

“MS. WOOD: Uh-huh.

“MR. BONELLI: So, generally, what we would do is we'll have the technician just come to your house and he'll go over these different options with you about, you know, what you want and what maybe, you know, his advice is and give you those suggestions and his expert advice on what's the best way to protect these windows.

“MS. WOOD: Right.

“MR. BONELLI: And then whatever makes sense to you and your husband, when he's there, he'll be able to, you know, customize it to fit your layout of your home and your lifestyle.

“MS. WOOD: Right.

“MR. BONELLI: But did you have a particular preference? I mean, when I went over with you, you know, those couple options, did that --

“MS. WOOD: I would prefer the sensor on the window, just because — you know, I don't know. Because they could probably get it open without breaking it. I don't know.

“MR. BONELLI: Sure. And that's fine. And I understand everybody's got their own, you know, preference and opinion on things. And that's completely fine. And that's why we have the -- you know, the tech come out and he can — it makes it a lot easier when he's there and you can see exactly, you know, how the sensor works and, you know --

“MS. WOOD: Right. How much are — how much are the sensors for the windows?

“MR. BONELLI: Well, if you purchase them individually, they're around, like, \$120 each. But if you buy more than one, they can — the techs can always give you a package deal where you don't have to pay full price for each individual sensor.

“MS. WOOD: Okay.

“MR. BONELLI: But I'll tell you what: Let me go back to this. If we do — okay, three doors, and then three windows. And then if I swap out the motion for two more, that gives you five windows.

“So right now we've got three door sensors and five window sensors is what we have.

“And you said there's fourteen, right?

“MS. WOOD: Uh-huh.

“MR. BONELLI: Okay. So that leaves me with nine more windows that you want protected.

“I'll tell you what. Give me one second. I'm gonna see what I can do to try to help you out with some extra sensors to make sure I'm just helping you out as much as I can.

“MS. WOOD: Right.

“MR. BONELLI: Yeah. So let me -- can I get you qualified real quick?

“Normally, if I can have you approved, I can talk my supervisor into doing a few more things than normal. Can I just get you qualified real quick? I just need your -- to verify your eligibility for the monthly monitoring service, I need your Social Security number to run a credit check or your date of birth, whatever you want to give me.

*6 “MS. WOOD: Okay. Let me -- my hus -- okay. Let me try to figure out first off if we're going to do it.

“MR. BONELLI: Sure.

“MS. WOOD: And can you give me just a rough estimate as to how much it would be?

“There's going to be nothing wrong with my credit, but we're in the process of possibly doing something and we might need some good credit and I know each time that you do a credit check it kind of (inaudible).

“MR. BONELLI: This isn't like — well, I mean, if you're applying for a major loan or if you're closing on a house -- see, we get people that call before they refi or before they're closing on their homes all the time. So this actually — they make it to where it's not going to affect your credit score. We don't use Experian or TransUnion. It actually is just an inquiry through Equifax, so it's actually not gonna affect your tri-merge report.

“MS. WOOD: Uh-huh.

“MR. BONELLI: Okay. So, yeah, it's not gonna -- it's, you know — it's not like you're applying for a line of credit or any type of credit cards or any type of loans. So it (inaudible) utility. It's not gonna hurt you.

“....

“MR. BONELLI:

“All right. And I guess, you know, normally, if I gave you an estimate — you know, normally what it's gonna cost to cover all these, you know, fourteen windows and three doors, which is seventeen entry points — that's a lot of entry points. And you're already getting, you know, the eight sensors already.

“I mean, generally, you're gonna be looking at around a little over a thousand dollars with the installation to get everything covered. But, I mean, it does protect every single — all seventeen entry points and it gives you what you want.

“So, I mean, sometimes, you know, investing in your protection or your security to protect your home and your family is worth it. But I do want to make sure I'm helping you out as much as I can. So if you want to give me a second, I want to just make sure I'm giving you the best deal I can.

“MS. WOOD: Okay.

“MR. BONELLI: So if you want to give me a second, I want to just make sure I'm giving you the best deal I can. So give me one moment.

“I'll be right back with you, okay?

“MS. WOOD: Okay.

“MR. BONELLI: One moment, please.

“MR. JOHNSON: Jina?

“MS. WOOD: Yes.

“MR. JOHNSON: I appreciate you holding on here. My name's Scott Johnson. I'm actually the manager here. You've been speaking with Don and he's explaining to me what you're trying to accomplish there.

“....

“MR. JOHNSON:

“Now, I know he's -- a couple of different things. You know, you called in on a promotion that has six sensors instead of two, so that's helpful in this situation. And then he's referring to, now, on the Internet there's a different promotion with the two sensors, but a VISA gift card.

“MS. WOOD: Right.

“MR. JOHNSON: One, he's wanting me to combine those. Actually, what I could — couple of different things here. You've got three doors, it sounds like, so we've got some extra sensors there. And he was wanting to have the technician trade the motion detector for two more contacts. He's telling me you've got fourteen — I guess there's fourteen windows that you're concerned about somebody possibly coming through?

*7 “MS. WOOD: Yeah.

“MR. JOHNSON: So, obviously, not being there, they probably all sound the same over the phone, but some are probably worse than others, but, nonetheless, without the tech being there yet -- anyway, him trading the promotion out for two more helps. If I combine these promotions -- the two offers, then I could take that VISA card and turn that into two more, which then would give us actually seven of the fourteen, so we're about halfway there.

“MS. WOOD: Okay.

“MR. JOHNSON: That still has your three doors covered. Don can put — Don can put one in at \$49, which helps, but sure doesn't — doesn't answer all these issues.

“MS. WOOD: Right.

“....

“MR. JOHNSON: But there's certain — let me see here. Are there certain days or times of day that would be good for you to have the technician come out and look at this?

“I'll tell you what we've got here in a moment.

“MS. WOOD: Probably morning would be better. And like a Tuesday or Thursday or Friday.

“MR. JOHNSON: Tuesday morning I do have an 8:00 to 9:00 available, if that would work for you.

“MS. WOOD: Okay.

“MR. JOHNSON: That's the 15th.

“MS. WOOD: Okay.

“MR. JOHNSON: 15th, 8:00 to 9:00. It is a Tuesday.

“MS. WOOD: Okay.

“MR. JOHNSON: All right. Let's get that reserved.

“All right. Now to reserve the appointment, we can use either a credit card, a debit card or a check by phone, whatever would work best for you.

“MS. WOOD: Okay. Now, why do you need that?

“MR. JOHNSON: This'll be enough to cover the install amount. If the technician comes — we don't send you a salesman out there. This'll be the technician. If he comes out and meets with your approval, he would actually go ahead and sign you up and go ahead and do that. If you still need to — if you don't have it done, we're not keeping your money.

“MS. WOOD: Okay.

“MR. JOHNSON: And if you still need to add more, your payment would be on file and then you could call in and you could still — if you do end up having to buy more [sensors], you still could.

“MS. WOOD: Okay.

“MR. JOHNSON: Although with ten of those [sensors] being covered, I'm pretty confident you'll probably be covered.

“MS. WOOD: Okay. Now, if, for whatever reason, I decide, well, you know, I really do want the four other [sensors]

“MR. JOHNSON: Uh-huh.

“MS. WOOD: how much are they gonna be?

“MR. JOHNSON: Well, retail will be \$129 [per sensor]. So you might be looking at four to five hundred dollars. And I don't know in a package like that, when they call that in, how they could work with you on that. But I know what full — full retail is 129.

“MS. WOOD: Okay.

MR. JOHNSON: But, generally, once he's there -- and the goal here is for you to say yes at some level. So, generally, once he's there, that gives -- that's gonna give you a little more leeway there if you're trying to -- if that's how you end up accomplishing that.

“And you may. I mean, actually, the wireless remote control that comes in this package can be traded for one of those also, which I didn't think about that.

“MS. WOOD: Yeah.

“MR. JOHNSON: So that gives you yet another shot there, you know?

*8 “MS. WOOD: Okay.

“....

“MS. WOOD: Right. The reason I'm hesitant is because my husband is thinking he wants to just get one of the ones he can install himself, and so --

“MR. JOHNSON: That doesn't get you any insurance discount nor police response that way. If you're home, you're aware of it, but — and most of the time this is not gonna happen when you're home.

“MS. WOOD: Right. But that's all basically, what I was trying to do now is to get a good bottom line to give him and then we could go over how much it would cost for him to just install one on his own.

“MR. JOHNSON: You're never really gonna know until the technician comes out. I mean, you don't -- the technician comes out, if this doesn't meet with your approval, he's not gonna install anything unless you and your husband are onboard with it, you know. But that would be, one, a security expert as opposed to a salesman coming out there -- whatever an expert some of the salesmen are, but a technician surely is.

“MS. WOOD: Okay.

“MR. JOHNSON: And even if he just -- even if he just takes that inform[ation] -- I mean, hopefully you have it installed.

“We'd love to have you protected by the best. But even if [your husband] just took the information he gains from the technician and if he puts his own system in, he's still able to do that. Although he's gonna have to buy those pieces, obviously.

“MS. WOOD: Right.

“MR. JOHNSON: But, you know, when it's all said and done, the police response can be pretty important, although something making a whole lot of noise if somebody breaks in helps.

“MS. WOOD: Right.

“MR. JOHNSON: And I can tell you the ADT sign out there, the impact of that, nine out of ten thieves are gonna go somewhere else. They don't want to deal with that. So there is a big — you know, a big advantage to that also.

“But, you know, at least you would know for sure at that point. And if you go, fantastic, we'd love to have you. If not, we part friends. We don't keep any of your money.

“MS. WOOD: Okay. And it's \$99 for the installation; is that right?

“MR. JOHNSON: Right. Right. That's the labor charge, correct.

“MS. WOOD: Okay. All right. Can you — is there any way you can keep all this and then if I call you back within, you know, 24 hours, we can still (inaudible)?

“MR. JOHNSON: I don't have -- actually, everything I just said, I can't really — I can't change anything right now. It's just a phone contact. There's really nothing for me to keep or do anything with. Once we get an appointment set, I can go in there and add this extra equipment and then zero it out and such. Do you know what I mean? It's -- it what it is.

“Right now you've got six sensors. I mean, that's — you know, if you call back for the six sensors, that's the easy part, that would still be there.

“MS. WOOD: Right.

“MR. JOHNSON: The extra two for the VISA, that becomes an issue. You know, the extra four altogether, but, you know, that's where your issue is, but, you know --

“MS. WOOD: Right.

“MR. JOHNSON: I mean, I don't know how else to get you the information you truly need until you either get a bunch of salesmen out there or get a technician out there.

*9 “MS. WOOD: Right. Okay. And who's the one that's coming out here?

“MR. JOHNSON: It'll be an actual technician from your area.

“MS. WOOD: Okay.

“MR. JOHNSON: At the end of the process — actually, at the end of the process, it will give Don a name. He could give you that name. And he is an employee of ours. He is background checked, he is in uniform, and he does have photo ID on his uniform.

“MS. WOOD: Yeah.

“MR. JOHNSON: So that is a good point, actually, too, that it's not just some joe-schmo that we, you know, send out there for you.

“MS. WOOD: Right.

“MR. JOHNSON: He is a factory-trained certified technician with a background check and drug-tested, the whole deal.

“....

“MS. WOOD: Right. Yeah. Yeah. Okay. And so, basically, what you need from me is a credit card to reserve the \$99 fee for the technician coming out here.

“MR. JOHNSON: Right.

“MS. WOOD: Is that right?

“MR. JOHNSON: Yes.

“MS. WOOD: Okay.

“MR. JOHNSON: And if you have it done he'd be the one that would actually sign you up and then we would keep the \$99 and go ahead and get you installed.

“If not, we don't keep the \$99 anyway.

“MS. WOOD: Okay.

“MR. JOHNSON: And, hopefully, you do, but I keep saying that, but

“MS. WOOD: Yes. Okay. And then if we do go on and get it, we just have to do a three-year contract with you all to monitor us?

“MR. JOHNSON: Right. ADT will do the monitoring. They supply the certificate of installation for your insurance discount.

“MS. WOOD: Right.

“MR. JOHNSON: The other thing, too, with us installing it, one, it's gonna be installed correctly. And I have no idea -- I mean, I'm not -- this is not picking on your husband at all, but it — you know, I mean, I'm sure our guy's done more than he has. [Your husband] might do a fine job, actually. I don't know. But the other, too, is we're gonna warrant this thing, parts and labor, for as long as you're with ADT.

“MS. WOOD: Right.

“MR. JOHNSON: So if you ever have an issue, we're gonna repair or replace it, no cost to you, parts or labor, so that's worth something too.

“....

“MS. WOOD: Okay. I'm sorry about that.

“Now, I can't find -- you know, all I'm calling on is this advertisement that y'all have got.

“MR. JOHNSON: Right.

“MS. WOOD: I can't find anything that tells me that I'm actually talking to ADT. I just looked it up online and I can't find your number (inaudible).

“MR. JOHNSON: Well, there's hundreds of numbers that come in, actually. Although — well, two things. One, I can get you approved without the Social [Security number], if there's an opposition with the Social; but, two, I don't know if Don has your email address yet or not, but you'll get a confirmation email.

“....

“MS. WOOD: I prefer you do it without my Social, just because I've tried to look you up and I can't verify that I'm actually talking to ADT. I'm paranoid.

“MR. JOHNSON: Sorry about that confusion.

“Well, you know, security comes —security-minded folk, that would not be uncommon. Actually, after break-ins people really are nervous. But, no, I can assure you we're not here to run off with your information. And if you've got longevity there, you'll be fine.

*10 “MS. WOOD: Yeah, okay. (Inaudible)

“....

“MR. BONELLI: Now to verify the alarm, if your alarm goes off we're first gonna call you on a primary number. If you don't answer the primary number, then we'll try a secondary number.

“MS. WOOD: Right. Okay.

“MR. BONELLI: Okay? And then if you -- yeah, if (inaudible) password. If you don't answer either number, then we'll automatically dispatch the police to your home and then we'll try to contact, like, a family member or a friend under your emergency contact list that might know where we can find you since we were unable to.

“....

“MR. BONELLI: Yeah. No problem. And then, of course, the technician's gonna have all of that exciting stuff in writing for you to review and sign when he comes out.

“MS. WOOD: Okay.

“MR. BONELLI: Yeah. And then if you want to --

“MS. WOOD: Can you email that to me too?

“MR. BONELLI: Yeah. I'll send you an order confirmation to your email. I was just gonna say, if you've got a pen or a piece of paper laying around, I'll actually give you my full name and my customer service number and your order number.

“....

“MR. BONELLI: Att.net. Okay. Easy enough.

“All righty. Sounds good. All right. And then if you want, I know he was giving you — we're doing thirteen sensors here. If you want, I can — they do allow me to add in an extra sensor for just \$49. It's up to you if you want to take advantage of it or not.

“MS. WOOD: Okay. So you're saying that he's doing thirteen sensors covered?

“MR. BONELLI: That's free. That's included with the \$99 installation.

“MS. WOOD: Okay.

“MR. BONELLI: What they do is they allow me to -- I can either give you an extra sensor for basically \$70 off of the regular price.

“MS. WOOD: Okay.

“MR. BONELLI: So instead of it being the \$129, it'd be the \$49.

“....

“MR. BONELLI: All right. And where was I at?

“Let's see. Yeah, we have the \$49. Yeah. So you wanted the extra sensor for the \$49?

“MS. WOOD: Yeah.

“MR. BONELLI: So that'll give you fourteen total, which just leaves you with three more. So there you go.

“MS. WOOD: Yeah.

“....

“MR. BONELLI: All right. Let's see what else is here.

“All right. Now they do charge sales tax on the installation, so with the \$99 and the \$49, that's \$148 plus your state sales tax.

“MS. WOOD: Okay.

“MR. BONELLI: It's gonna come out to \$161.32 is what I'm gonna put on [your credit] card.

“MS. WOOD: Okay.

“....

“MR. BONELLI: Okay. Let me go ahead and get this going for you. The rest of this call will be recorded for quality assurance purposes.

“We have the installation of your security system set for Tuesday, January 15th, and that's between 8:00 and 9:00

a.m. The package that you are receiving will include the — you're getting a total of fourteen door and window sensors, which can be a combination of three door sensors and eleven window sensors.

“MS. WOOD: Okay.

“MR. BONELLI: Plus, you get the digital keypad with the police, fire, and medical panic buttons. You also get a battery backup, a control panel, interior siren, the door and window decals, a yard sign, the key-chain remote. You get the certificate of the installation to pass to your insurance company, so you get your discount on your insurance rate.

*11 “Yeah, that'll definitely help you out, so don't forget to do that. You also get a lifetime warranty. Covers parts and labor.

“MS. WOOD: Uh-huh.

“MR. BONELLI: And then you get a Theft Protection Guarantee, which will be in writing, but I didn't even mention it actually. This means that if you ever experience any loss or damages from a break-in while it was armed, we'll cover up to \$500 of your insurance deductible --

“MS. WOOD: Okay.

“....

“MR. BONELLI: Okay. And then your monitoring rate will be \$36.99.

“MS. WOOD: Uh-huh.

“MR. BONELLI: Okay. A total of \$161.32 is what will be deducted from your account today.

“MS. WOOD: Okay.”

(Emphasis added.)

Regarding what occurred on January 15, 2013, when the Defenders technician, James Randazza, came to Wood's house, the statement of facts in Wood's principal brief states:

“James Randazza, an employee of Defenders, arrived at Mrs. Wood's home on January 15, 2013 to install the alarm system and initiate monitoring services. (C. at 2810).

“Mr. Randazza informed Mrs. Wood the alarm system she had purchased on January 13th was outdated, but for \$3,627.68 he could install a better system. (C. at 2051-52, 2784, 281011). In addition, Mr. Randazza said

the monitoring services Mrs. Wood had purchased relied upon a traditional telephone line which could be cut by a criminal, thereby rendering her system useless. (C. at 2052, 2810). For \$8.00 more a month, Mr. Randazza would initiate cellular monitoring services. (Id.). Mrs. Wood declined to spend \$3,627.68 on her security system, but agreed to pay \$8.00 more a month for cellular monitoring. (C. at 2052, 2810-11).

“Although Mrs. Wood was told the final purchase price was \$161.32, Mr. Randazza refused to install her alarm system until Mrs. Wood paid a total of \$1,243.32. (C. at 2052-53, 2810-11). When Mrs. Wood insisted Mr. Randazza honor the \$161.32 price, Mr. Randazza said he would install the equipment if Mrs. Wood paid an additional \$140.61. (C. at 2053, 2537, 2811). Mrs. Wood reluctantly consented. (C. at 2053, 2811).

“ADT charged Mrs. Wood \$56.72 for monitoring services commencing on January 15, 2013. (C. at 2193, 2537, 2707).

“After he collected payment, installed Mrs. Wood's alarm system, and initiated monitoring services, Mr. Randazza provided Mrs. Wood with sales documents. (C. at 2056, 2194, 2250-59, 2811). Upon reading these documents, Mrs. Wood discovered every reason she had purchased an ADT alarm system and monitoring services had been contradicted, negated, and rendered void by the sales documents. (C. at 2194, 2812-14).”

(Emphasis added.)

On January 16, 2013, Wood requested that ADT and Defenders renegotiate the terms of the written contract. When ADT and Defenders refused to renegotiate, Wood rescinded the written contract on January 17, 2013. ADT and Defenders subsequently refunded the \$161.32 deposit Wood had paid by credit card on January 13, 2013, the additional \$140.61 she had paid for installation of the security system on January 15, 2013, and all but \$9.87 of the \$56.72 she had paid for monitoring services.

Standard of Review

“[An appellate court's] review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). [The appellate court] appl[ies] the same standard of review as the trial court applied. Specifically, [the appellate court] must determine

whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, [the appellate court] must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce ‘substantial evidence’ as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. ‘[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.’ West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989).”

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Analysis

*12 Wood argues, among other things, that the trial court committed reversible error in granting ADT and Defenders a partial summary judgment with respect to her tort claims because, she says, she produced substantial evidence establishing all the essential elements of each of her tort claims. Based on the materials before the trial court, the judgment must be affirmed.

I. Wood's Fraud Claims

[1] [2] The theory of recovery upon which all of Wood's fraud claims are based is fraud in the inducement. “Fraud in the inducement consists of one party's misrepresenting [or suppressing] a material fact concerning the subject matter of the underlying transaction and the other party's relying on the misrepresentation to his, her, or its detriment in executing a document or taking a course of action.” Oakwood Mobile Homes, Inc. v. Barger, 773 So. 2d 454, 459 (Ala. 2000) (emphasis omitted). The recording of the January 13, 2013, telephone conversation establishes that no binding contract was formed during that conversation because Defenders' employees indicated to Wood that the formation of a binding contract to purchase the security equipment and to use ADT's monitoring services was subject to two conditions: (1)

Wood's authorizing the technician to install the equipment after talking to him on January 15, 2013, and (2) Wood's execution of a written contract agreeing to pay for three years of monitoring services by ADT. Those two conditions were conditions precedent to the formation of a binding contract. See Reeves Cedarhurst Dev. Corp. v. First American Fed. Savings & Loan Ass'n, 607 So. 2d 180, 182 (Ala. 1992) (holding that, when a lender's correspondence indicated that the borrower must sign loan-renewal documents, pay accrued interest, provide a corporate resolution, and provide a financial statement in order to extend the maturity date of the borrower's loan, the execution of the loan-renewal documents, the payment of the accrued interest, the providing of the corporate resolution, and the providing of the financial statement were conditions precedent to the formation of a binding contract to extend the maturity date). As pointed out in Reeves Cedarhurst, our supreme court has “held that a plaintiff could not recover in a breach of contract action where ‘it was distinctly understood that the contract was not to become effective unless’ another executed it and the other had not done so.” Id. (quoting Ferlesie v. Cook, 201 Ala. 571, 572, 78 So. 915, 916 (1918)). At the conclusion of the January 13, 2013, telephone conversation, Wood was not contractually obligated to purchase the security equipment or to use ADT's monitoring services. Indeed, the recording of the January 13, 2013, telephone conversation establishes that, on January 15, 2013, Wood could have declined the installation of the security equipment, received a refund of her \$161.32 deposit, and been under no contractual obligation whatsoever to ADT or Defenders.

*13 [3] [4] Although Wood authorized the installation of the security equipment and signed the written contract to use ADT's monitoring services on January 15, 2013, the record establishes that she could not have reasonably relied on any alleged fraud when she did so. “An essential element of any fraud claim is ‘reasonable reliance.’” Mantiply v. Mantiply, 951 So. 2d 638, 658 (Ala. 2006).

“[The Alabama Supreme] Court explained the reasonable-reliance principle in Torres v. State Farm & Casualty Co., 438 So. 2d 757 758–59 (Ala. 1983):

“ ‘Because it is the policy of courts not only to discourage fraud but also to discourage negligence and inattention to one's own interests, the right of reliance comes with a concomitant duty on the part of the plaintiffs to exercise some measure of precaution to safeguard their interests. In order to recover for misrepresentation, the plaintiffs' reliance

must, therefore, have been reasonable under the circumstances. If the circumstances are such that a reasonably prudent person who exercised ordinary care would have discovered the true facts, the plaintiffs should not recover. Bedwell Lumber Co. v. T & T Corporation, 386 So. 2d 413, 415 (Ala. 1980).

“ ‘ “If the purchaser blindly trusts, where he should not, and closes his eyes where ordinary diligence requires him to see, he is willingly deceived, and the maxim applies, ‘voluntisic] non fit injuria.’ ”

“ ‘Munroe v. Pritchett, 16 Ala. 785, 789 (1849).’

“....

“... [T]he reasonable reliance standard imposes ... on a plaintiff a ‘general duty ... to read the documents received in connection with a particular transaction,’ Foremost Insurance Co. v. Parham, 693 So. 2d [409] at 421 [(Ala. 1997)], together with a duty to inquire and investigate. ‘Fraud is deemed to have been discovered when the person either actually discovered, or when the person ought to or should have discovered, facts which would provoke inquiry by a person of ordinary prudence, and, by simple investigation of the facts, the fraud would have been discovered.’ Gonzales v. U-J Chevrolet Co., 451 So. 2d 244, 247 (Ala. 1984). As [our supreme court] stated in Ex parte Caver, 742 So. 2d 168, 172–73 (Ala. 1999):

“ ‘Foremost ended the era of “ostrichism” that had been heralded in when this Court adopted the “justifiable reliance” standard in Hickox v. Stover, 551 So. 2d 259 (Ala. 1989), and it foreclosed the right of a person to blindly rely on an agent's oral representations or silence to the exclusion of written disclosures in a [document].’

“When reviewing a plaintiff's actions pursuant to the reasonable-reliance standard, this Court has consistently held that a plaintiff who is capable of reading documents, but who does not read them or investigate facts that should provoke inquiry, has not reasonably relied upon a defendant's oral representations that contradict the written terms in the documents.”

AmerUs Life Ins. Co. v. Smith, 5 So. 3d 1200, 1207-08 (Ala. 2008)(footnote omitted).

According to Wood, on January 15, 2013, before she had authorized Randazza to install the security system, Randazza “informed Mrs. Wood the alarm system she had purchased on January 13th was outdated, but for \$3,627.68 he could

install a better system”; informed her that the monitoring system she had discussed with Bonelli and Johnson “relied upon a traditional telephone line which could be cut by a criminal, thereby rendering her system useless”; informed her that Randazza could change the security system to cellular monitoring, but she would have to pay \$8 more per month for that feature; and refused to install the security system unless she paid an additional \$140.61. The record establishes that Randazza's statements contradicted the representations that Wood alleges had been made to her in ADT's advertising before January 13, 2013, regarding the quality and advanced technology of the security equipment she had discussed with Bonelli and Johnson. Randazza's statements also contradicted the representation that the installation of the security equipment she had discussed with Bonelli and Johnson would cost only \$99 for labor. Those contradictions that were expressed to Wood imposed a duty on Wood to inquire and to investigate in order to protect her own interests before paying any additional money, before authorizing Randazza to install any equipment, and before signing a written contract. Instead, Wood paid additional money without investigating the contradictions, authorized the installation of the equipment without investigating the contradictions, and signed the written contract without conducting any investigation and without reading the written contract. The materials before the trial court established that, as soon as she read the written contract, Wood immediately realized that the written contract contradicted some of the representations that had been made to her before January 15, 2013. After Randazza made statements contradicting some of the representations that had been made to her by ADT and Defenders before January 15, 2013, Wood could have waited to obtain and read the written contract before she paid any additional money, before she authorized the installation of the equipment, and before she signed the written contract. Accordingly, ADT and Defenders were entitled to a judgment as a matter of law with respect to all of Wood's fraud claims. Therefore, we affirm the partial summary judgment with respect to all of Wood's fraud claims.

II. Wood's Wantonness Claim

*14 Wood argues that the trial court committed reversible error in granting ADT and Defenders a partial summary judgment with respect to her wantonness claim because, she says, ADT and Defenders' partial-summary-judgment motion did not challenge that claim. We have carefully reviewed the partial-summary-judgment motion, however, and we find

that the motion did indeed challenge Wood's wantonness claim. Therefore, we cannot reverse the partial summary judgment with respect to Wood's wantonness claim based on her argument that it was not challenged by the partial-summary-judgment motion.

[5] [6] [7] In order to be actionable, a wanton act or omission “must proximately cause the injury of which the plaintiff complains.” Martin v. Arnold, 643 So. 2d 564, 567 (Ala. 1994) With respect to her wantonness claim, Wood complains that she was injured by the presence in the written contract of allegedly unconscionable provisions relating to the parties’ rights in the event of a legal dispute. Wood, however, rescinded the written contract two days after she signed it and before ADT and Defenders could make any attempt to enforce the allegedly unconscionable provisions.

“ ‘Generally speaking, the effect of rescission is to extinguish the contract. The contract is annihilated so effectually that in contemplation of law it has never had any existence, even for the purpose of being broken. Accordingly, it has been said that a lawful rescission of an agreement puts an end to it for all purposes, not only to preclude the recovery of the contract price, but also to prevent the recovery of damages for breach of the contract.’ ”

Alabama Great S. R.R. v. Independent Oil Co., 230 Ala. 222, 224, 160 So. 720, 722 (1935) (quoting 6 R.C.L. § 323, p. 942). Once Wood rescinded the contract, “in contemplation of law [the allegedly unconscionable provisions] never had any existence.” Id. Therefore, Wood suffered no injury as a result of the inclusion of those allegedly unconscionable provisions in the contract, and, consequently, any wantonness on the part of ADT and Defenders in including the allegedly unconscionable provisions in the written contract was not actionable. See Martin. Therefore, we affirm the partial summary judgment with respect to Wood's wantonness claim.

III. Rule 56(f) Affidavit

[8] Wood also argues that the trial court committed reversible error when it denied her request made pursuant to Rule 56(f), Ala. R. Civ. P., for a continuance of the hearing

regarding the partial-summary-judgment motion. When the trial court asked Wood why she needed the outstanding discovery referred to in her Rule 56(f) affidavit in order to oppose the partial-summary-judgment motion, she stated that she needed the discovery to seek proof that ADT and Defenders knew that there were defects in their security equipment when they sold it to her. Evidence proving that ADT and Defenders had such knowledge, however, would not affect the requirement that she establish the essential element of reasonable reliance with respect to her fraud claims or affect the fact that she was not injured by the inclusion of the allegedly unconscionable provisions in the written contract with respect to her wantonness claim. Therefore, we find no reversible error in the trial court's denial of Wood's request for a continuance of the hearing on the partial-summary-judgment motion.

IV. Wood's Other Arguments

Wood makes numerous other arguments; however, none of them warrant reversal of the partial summary judgment because none of them could overcome either her inability to establish the essential element of reasonable reliance with respect to her fraud claims or her inability to establish the essential element of injury with respect to her wantonness claim. Therefore, we have omitted a discussion of those other arguments.

Conclusion

*15 For the reasons discussed above, we affirm the partial summary judgment in favor of ADT and Defenders.

AFFIRMED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.

All Citations

--- So.3d ----, 2020 WL 2781237

Footnotes

1 Wood signed and filed an acknowledgment that the judgment in her favor with respect to the unjust-enrichment claim had been satisfied; however, the record does not contain a release signed by Wood, and ADT and Defenders have not

argued that Wood's acknowledgment of the satisfaction of that judgment barred her appeal from the partial summary judgment disposing of her tort claims. Therefore, we express no opinion regarding that issue.

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