

IN THE CHANCERY COURT, STATE OF WYOMING

2023 WYCH 4

Cody Clark and Kim Humiston,

Plaintiffs,

v.

Andre Romo,  
Jeff and Cindy Charron, and  
Symphony Homes, LLC,

Defendants.

Case No. CH-2023-0000002

WY Chancery Court  
Jun 16 2023 10:53AM  
CH-2023-0000002  
70211614  
N/A

**FILED**

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**Order Granting Motion to Dismiss for Lack of Subject Matter Jurisdiction**

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[¶ 1] Before the court is defendants' motion to dismiss for lack of subject matter jurisdiction (FSX No. 69620169). Plaintiffs objected to the motion (FSX No. 69751019). And the court heard oral argument on the motion. Having considered the briefing and oral arguments, and for the reasons below, defendants' motion is granted.

**INTRODUCTION**

[¶ 2] This is a common enough case. Homebuyers sue residential lot sellers and a homebuilder over alleged defects in the construction of their new home. But what is a common case in most courts is a novel subject-matter jurisdiction case in this nascent court. Here, in its first opportunity to address its jurisdictional contours, the chancery court confirms it is a streamlined forum for resolving business and trust (not consumer) cases.

**BACKGROUND**

**A. The parties and agreements**

[¶ 3] This defective home construction case features two plaintiffs (husband and wife), three individual defendants, one company defendant, and two agreements.

[¶ 4] The two plaintiffs, Cody Clark and Kim Humiston, purchased a residential lot and home in Natrona County. *Am. Compl.*, ¶ 3-5. The three individual defendants, Andrew Romo and Jeff and Cindy Charron, sold the residential lot to plaintiff homebuyers under a residential real estate agreement. *Id.* That residential real estate agreement allegedly incorporates a construction contract providing Symphony Homes, LLC would build a home on the lot purchased by plaintiffs from the individual defendants. *Id.* ¶ 5. Symphony Homes, LLC is a dissolved Wyoming LLC and the fourth and final defendant in this action. *Id.* ¶ 7.

[¶ 5] Plaintiffs signed the residential real estate contract but did not sign the construction contract. *Id.* ¶ 6. Plaintiffs allege that, through the agreements, defendants promised a one-year warranty covering workmanship and materials. *Id.* ¶ 8.

### **B. The home defects**

[¶ 6] Plaintiffs assert defendants failed to construct the home and install fixtures in a workmanlike manner. *Id.* ¶ 9 They allege the following defects:

- HVAC system does not function because it is grossly undersized.
- Flooring has gaps between planks and other deviations from the manufacturer's installation directions.
- The roof leaks.
- Northwest siding flaps in the wind.

*Id.*

[¶ 7] Repeatedly, plaintiffs have requested repairs. *Id.* ¶ 10. Notwithstanding these requests and the one-year home warranty, defendants have failed to repair the defects. *Id.*

### **C. The lawsuit**

[¶ 8] Plaintiffs filed their initial complaint on January 27, 2023 against the three individual defendants. (FSX No. 68991454). Two months later, plaintiffs filed an amended complaint adding Symphony Homes, LLC as a defendant. (FSX No. 69685390).

[¶ 9] The complaint asserts five claims for relief: (1) breach of contract, (2) breach of warranty, (3) fraudulent misrepresentation, (4) breach of the implied covenant of good faith and fair dealing, and (5) deceptive trade practices under the Wyoming Consumer Protection Act. *Am. Compl.* ¶¶ 12-31.

[¶ 10] Defendants could have responded to the complaint by objecting to proceeding in chancery court under W.R.C.P.Ch.C. 3(a), which requires dismissal if any party objects before the date its first pleading is due. Instead of simply objecting, defendants answered the initial complaint, participated in a lengthy case management and scheduling conference, moved to dismiss for lack of subject matter jurisdiction, moved to stay pending arbitration, answered the amended complaint, and argued the motions before this court. This order addresses the threshold motion to dismiss for lack of subject matter jurisdiction.

#### **D. The motion-to-dismiss arguments**

[¶ 11] Defendants ground their argument in rule and statute. They argue Rule 2(e)(3) specifically excludes the consumer claims asserted here from the court's jurisdiction and Wyo. Stat. § 5-13-115 generally limits chancery court jurisdiction to commercial, business, and trust (not consumer) issues.

[¶ 12] Plaintiffs urge this subordinate court to look away from Rule 2(e)(3) adopted by the Wyoming Supreme Court. As plaintiffs see it, the rule violates separation of powers by diminishing the chancery court's jurisdiction. The legislature (not the judiciary) establishes jurisdiction. And, here, the legislature established the chancery court's jurisdiction without explicitly excluding consumer claims.

[¶ 13] Alternatively, plaintiffs continue, Rule 2(e)(3) does not exclude plaintiffs' claims against the individual defendants because those claims are against non-business entities. And this court may exercise ancillary jurisdiction over consumer claims under Wyo. Stat. § 5-13-115(c) and W.R.C.P.Ch.C. 2(c).

#### **LEGAL STANDARD**

[¶ 14] Subject matter jurisdiction is a court's power to hear and decide the type of case in question. *MH v. First Jud. Dist. Ct. of Laramie Cnty.*, 2020 WY 72, ¶ 5, 465 P.3d 405, 407 (Wyo. 2020). This power derives from constitution and statute. *CSC Grp. Holdings, LLC v. Automation & Elecs., Inc.*, 2016 WY 26, ¶¶ 20-21, 368 P.3d 302, 307 (Wyo. 2016). A court

either has subject matter jurisdiction, or it does not. *Sherard v. State*, 2022 WY 37, ¶ 8, 505 P.3d 1259, 1262 (Wyo. 2022). If it does not, then any “action taken by that court, other than dismissing the case, is considered to be null and void.” *Devon Energy Prod. Co., LP v. Grayson Mill Operating, LLC*, 2020 WY 28, ¶ 11, 458 P.3d 1201, 1205 (Wyo. 2020) (quoting *Weller v. Weller*, 960 P.2d 493, 496 (Wyo. 1998)).

[¶ 15] Whether the court has subject matter jurisdiction is a legal question. *Apodaca v. Safeway, Inc.*, 2015 WY 51, ¶¶ 9-10, 346 P.3d 21, 23 (Wyo. 2015). When evaluating subject matter jurisdiction, the court accepts allegations in the complaint as true and considers them in the light most favorable to the non-moving party. *Id.* The court may also consider materials outside the complaint. *Devon Energy Prod. Co., LP*, ¶¶ 10-11, 458 P.3d at 1205.

## ANALYSIS

### **A. Born of legislation, the chancery court is a subordinate court subject to rules adopted by the Wyoming Supreme Court.**

[¶ 16] Wyoming’s constitution vests judicial power in the “supreme court, district courts, and such subordinate courts as the legislature may, by general law, establish and ordain from time to time.” Wyo. Const. Art. 5, § 1. The chancery court is a subordinate court established and ordained by the legislature. Wyo. Stat. §§ 5-13-101 through -203. This means that unlike district courts who enjoy broad original jurisdiction under the constitution, the chancery court has only limited original jurisdiction as provided by statute. *Compare* Wyo. Const. Art. 5, § 10 *with* Wyo. Stat. § 5-13-115(b).

[¶ 17] Though the legislature provides subordinate courts with limited jurisdiction, the Supreme Court exercises superintending control over subordinate courts. Wyo. Const. Art. 5, § 2. Superintending control includes the authority to control court business and prescribe rules of practice and procedure. *Kittles v. Rocky Mountain Recovery, Inc.*, 1 P.3d 1220, 1223 (Wyo. 2000). The power to prescribe rules is both constitutional and inherent and is limited only by the rules’ “reasonableness and conformity to constitutional and legislative enactments.” *Powers v. State*, 2014 WY 15, ¶ 19, 318 P.3d 300, 306–07 (Wyo. 2014). Legislative enactments are “those that deal with the substantive rights of persons or the jurisdiction of the court.” *White v. Fisher*, 689 P.2d 102, 106–07 (Wyo. 1984).

[¶ 18] This is all to say, the Wyoming Supreme Court has plenary power to control court business and prescribe rules dealing with practice and procedure. *Id.* But court rules

dealing with substantive rights and jurisdiction must conform to legislative enactments. *Id.* (“We cannot by rule in any way change substantive rights or enlarge the jurisdiction of any court.”) (quoting *McGuire v. McGuire*, 608 P.2d 1278, 1290 (Wyo. 1980)).

[¶ 19] The chancery court’s enabling legislation supplements the Supreme Court’s constitutional and inherent authority to prescribe rules for the chancery court. In pertinent part, statute states:

The Wyoming supreme court is hereby vested with management and supervisory powers, including financial auditing authority, over the chancery court of the state of Wyoming. The Wyoming supreme court shall establish procedures and regulations for the effective and expeditious resolution of disputes between parties and the administration of the business of the chancery court, including the Wyoming Rules of Civil Procedure for the Chancery Courts and procedures [governing filings, removals, trials, mediations, special master referrals, and discovery].

Wyo. Stat. § 5-13-104(a). *See also White*, 689 P.2d at 106–07 (Wyo. 1984) (recognizing statutes supplement constitutional rule-making authority; they do not constitute legislative delegations of rule-making authority).

[¶ 20] Exercising its rule-making authority, the Wyoming Supreme Court adopted rules reflecting the chancery court’s legislatively-defined characteristics, including specialized jurisdiction, expedited discovery and resolution, and non-jury trials. *Compare* W.R.C.P.Ch.C. *with* Wyo. Stat. § 5-13-104, 115(a).

**B. The chancery court is a specialized court of limited jurisdiction that resolves business and trust cases on an expedited schedule.**

[¶ 21] These rules and statute form the backdrop for the present dispute. The Wyoming legislature ordained the chancery court as “a court of limited jurisdiction” designed for the streamlined resolution of business, commercial, and trust litigation. Wyo. Stat. § 5-13-115. Statute defines this limited jurisdiction on three levels: dispute type, relief type, and case type. Wyo. Stat. § 5-13-115.

- *Dispute type.* The chancery court resolves only those “disputes involving commercial, business, trust and similar issues.” Wyo. Stat. § 5-13-115(a).

- *Relief type.* The chancery court only has “jurisdiction to hear and decide [those] actions for equitable relief or declaratory relief and for actions where the prayer for money recovery” exceeds \$50,000. Wyo. Stat. § 5-13-115(b). This amount-in-controversy excludes claims for punitive damages, interest, costs, and fees. *Id.*
- *Case type.* The “cause of action [must] arise[] from at least one” of 20 case types,<sup>1</sup> including breach of contract, uniform commercial code actions, commercial insurance disputes, shareholder derivative actions, internal business affairs, business dissolution, business agreements, and uniform trust code actions. Wyo. Stat. § 5-13-115(b)(i)-(xvii). Beyond these enumerated case types, the chancery court “may exercise supplemental ancillary jurisdiction” at its sole discretion. Wyo. Stat. § 5-13-115(c).

To be heard by the chancery court, cases must satisfy each level.

[¶ 22] Rule 2 of the Chancery Court Rules of Civil Procedure repeats, nearly verbatim, the three-level, legislative grant of specialized jurisdiction. *Compare* Wyo. Stat. § 5-13-115(a) and (b) *with* W.R.C.P.Ch.C. 2(a) and (b). But the rule provides greater granularity by listing specific actions that do not fit within the legislative grant of jurisdiction. W.R.C.P.Ch.C. 2(e). This list of excluded actions features personal injury and wrongful death cases, individual residential real estate disputes, non-commercial landlord-tenant disputes, consumer debts, and—most relevant here—consumer claims against business entities. *Id.*

[¶ 23] The pertinent rule language follows:

(e) Excluded Actions. Except as otherwise provided in this rule or otherwise provided by statute, the following includes, but is not limited to, the actions that are not within the jurisdiction of the chancery court:

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<sup>1</sup> Recent legislation will expand chancery court jurisdiction to include two additional case types: (1) disputes concerning a digital asset registered under W.S. 3429201 through 3429209, Wyoming Session Laws 2023, Ch. 174, § 2 (S.F. 76) (effective Dec. 1, 2023); and (2) a claim or counterclaim in an action based on a contract entered into by a governmental entity that is otherwise within the jurisdiction of the chancery court and where the contract provides for venue in the chancery court, Wyoming Session Laws 2023, Ch. 9, § 1 (H.B. 97) (effective July 1, 2023).

(3) Consumer claims against business entities or insurers of business entities, including breach of warranty, product liability, and personal injury cases and cases arising under consumer protection laws;

[¶ 24] The parties view this intersection between rule and statute from different lenses. Defendants see no inconsistency between rule and statute. Both require dismissal of consumer claims—the one specifically, and the other generally. But where defendants see harmony, plaintiffs sees incongruence. They assert that because Rule 2(e) places jurisdictional limitations not found in statute, the court should look to statute, not rule. These differing views present a threshold question of whether statute and rule conflict.

**C. Though more specific than statute, chancery court rules conform to the legislative grant of limited jurisdiction.**

[¶ 25] Answering this threshold question begins by reviewing the applicable statute, Wyo. Stat. § 5-13-115. And that review begins by asking whether the statute is unambiguous (reasonable persons consistently and predictably agree on meaning) or ambiguous (subject to varying interpretations). *Roman v. State*, 2022 WY 48, ¶ 15, 507 P.3d 453, 457 (Wyo. 2022). When a statute is unambiguous, courts give effect to the plain and ordinary meaning of its terms. *Id.* Courts consider each clause in the statute and interpret all statutes relating to the same subject or purpose harmoniously. *Solvay Chemicals, Inc. v. Wyoming Dep't of Revenue*, 2022 WY 122, ¶ 8, 517 P.3d 1123, 1128 (Wyo. 2022) (quoting *PacifiCorp, Inc. v. Dep't of Revenue, State*, 2017 WY 106, ¶ 10, 401 P.3d 905, 909 (Wyo. 2017)).

[¶ 26] Section 5-13-115 directly and unambiguously limits the chancery court's jurisdiction to resolving "disputes involving commercial, business, trust, and similar issues." Wyo. Stat. § 5-13-115(a). Neither party contends this limitation is ambiguous, but they disagree over the meaning of the undefined terms "commercial" and "business" disputes.<sup>2</sup> In defendants' reading, these terms encompass disputes between businesses but exclude disputes between businesses and consumers. In plaintiffs' reading, the terms

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<sup>2</sup> Divergent opinions among the parties is not conclusive evidence of ambiguity. *Wyo. Cmty. Coll. Comm'n v. Casper Cmty. Coll. Dist.*, 2001 WY 86, ¶ 17, 31 P.3d 1242, 1249 (Wyo. 2001).

broadly encompass disputes involving businesses, including disputes between consumers and businesses.

[¶ 27] Statute does not define disputes involving “commercial” and “business” issues. Absent statutory definitions, the court gives the terms their plain and ordinary meaning. *See Lozano v. Cir. Ct. of Sixth Jud. Dist.*, 2020 WY 44, ¶ 49, 460 P.3d 721, 735 (Wyo. 2020). This plain and ordinary meaning may be gleaned from dictionaries. *Craft v. State*, 2012 WY 166, ¶ 14, 291 P.3d 306, 310 (Wyo. 2012).

[¶ 28] Perhaps unsurprisingly, dictionaries do not include entries for the terms “commercial dispute,” “business dispute,” “commercial issue,” and “business issues.” But some dictionaries define related terms like “commercial litigation,” and “commercial law.”

- “Commercial litigation” is “a situation in which one company takes legal action against another;”<sup>3</sup>
- “Commercial law” means “[t]he law regulating transactions among businesses and banks. Commercial law is a broad field of law governing the transactions and disputes that arise among businesses that buy and sell goods and the banks and other institutions that facilitate such transactions.”<sup>4</sup>

These closely related definitions describe “commercial litigation” and “commercial law” as disputes among businesses and between businesses and financial institutions.

[¶ 29] This description harmonizes with the list of eligible case types enumerated in statute, most of which explicitly involve disputes between businesses or involving internal business affairs, including the following:

- Breach of fiduciary duty;

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<sup>3</sup> Commercial Litigation, Cambridge Dictionary, *available at* <https://dictionary.cambridge.org/us/dictionary/english/commercial-litigation> (last visited June 13, 2023).

<sup>4</sup> Commercial Law, Bouvier Law Dictionary, (Vol. 1, Desk Ed. 2012) 1550.

- Violation of law involving the sale of assets or securities; a corporate restructuring; a partnership, shareholder, joint venture, or other business agreement; trade secrets, or employment agreements (not including discriminatory claims);
- Shareholder derivative actions;
- Commercial class actions;
- Business transactions involving or arising out of dealings with commercial banks and other financial institutions;
- Dispute concerning internal affairs of business organizations;
- Dispute concerning environmental or commercial insurance coverage;
- Dissolution of corporations, partnerships, LLCs, LLPs, joint ventures, banks, and trust companies;
- Dispute concerning trademark, tradename, or service mark.

Wyo. Stat. § 5-13-115(b).

[¶ 30] Though most eligible case types involve disputes between businesses or about business governance, not one eligible case type explicitly involves consumers. Take, for example, how statute confers jurisdiction for commercial class actions but not for consumer class actions; for business transactions involving commercial banks or other financial institutions but not for transactions involving consumers; and for disputes involving internal business affairs but not for disputes involving consumers. Wyo. Stat. § 5-13-115(b).

[¶ 31] Notably missing from the list of eligible cases is a case type that explicitly and necessarily involves disputes between businesses and consumers—consumer protection claims. Had the legislature intended to give the chancery court jurisdiction over disputes between businesses and consumers, it likely would have included this quintessential consumer-versus-business case type. But the legislature did not do so. Instead, it drew a line between disputes among businesses and about business governance, which fall within the chancery court’s jurisdiction, and claims between businesses and consumers, which do not.

[¶ 32] This line drawing is consistent with Wyoming consumer protection law. The Consumer Protection Act only applies to “consumer transactions,” which is defined as “the advertising, offering for sale, sale or distribution of any merchandise (good or service) to any individual for purposes that are primarily personal, family or household.” Wyo. Stat. § 40-12-102(a)(ii). Recently, the Wyoming Supreme Court differentiated “consumer transactions” subject to the Consumer Protection Act from “commercial transactions” not subject to the act. *Dellos Farms, Inc. v. Sec. State Bank*, 2022 WY 107, ¶¶ 9-15, 516 P.3d 846, 848–50 (Wyo. 2022) (distinguishing between commercial agricultural loans and personal agricultural loans, between commercial mortgages and personal mortgages, and between commercial auto loans and consumer auto loans). In short, consumer transactions involve individuals who transact with businesses for personal, family, or household purposes and commercial transactions involve businesses who transact with other businesses or financial institution for commercial purposes. *See id.* ¶12, 516 P.3d at 849 (reasoning a commercial loan’s purpose is commercial; a consumer loan’s purpose is personal, family, or household).

[¶ 33] Excluding consumer claims from the meaning of “commercial” and “business” disputes also keeps with the jurisdictional boundaries of similar courts in sister states. Though Wyoming law does not specifically define terms like “business or commercial dispute” or “business litigation,” Michigan and West Virginia law does. Michigan’s business court statute defines “business or commercial dispute” as (1) actions where all parties are business enterprises; (2) actions between a business enterprise and its current or former owners, managers, shareholders, directors, officers, employees, suppliers, guarantors, or competitors; or (3) actions about a nonprofit’s organizational structure, governance, or finances. Mich. Comp. Laws Ann. § 600.8031(c). Similarly, West Virginia’s business court rules define “business litigation” as cases where “the principal claims involve matters of significance to the transactions, operations, or governance between business entities” and cases that do not “involve consumer litigation.” WVTCR 29.04(a).

[¶ 34] Based on related dictionary definitions, an *in pari materia* review of the eligible case types, the use of “consumer” and “commercial” in the adjacent consumer protection context, and the definitions of similar terms in comparable contexts in sister states, this court determines the plain meaning of the phrase “disputes involving commercial [and] business . . . issues” captures disputes among businesses, disputes between businesses

and financial institutions, and disputes about business governance and excludes disputes between businesses and consumers.

[¶ 35] Given this plain meaning, rule and statute do not unconstitutionally conflict. Both exclude consumer claims from the chancery court's jurisdiction. Rule 2(e) is more explicit than statute in that it specifically excludes consumer claims. But greater specificity does not render the rule inconsistent with the general exclusion of consumer litigation.

[¶ 36] Plaintiffs note the list of eligible cases includes breach of contract, which may involve consumers, and "transactions governed by the Uniform Commercial Code," which may include transactions between consumers and businesses. While some breach of contract and UCC claims may involve consumers, the statute's overall tenor strikes a tone that excludes disputes between consumers and businesses. Statute limits chancery court jurisdictions to disputes involving commercial, business, and trust (not consumer) issues. The list of eligible case types includes cases that specifically involve disputes between businesses or about business governance and does not include any disputes that explicitly involve consumers. And similarly situated sister state business courts define terms like "business or commercial dispute" or "business litigation" as excluding consumer disputes.

**D. Section 5-13-115 and Rule 2(e) exclude this case from the chancery court's jurisdiction.**

[¶ 37] Rule 2(e) reflects the Wyoming Supreme Court's interpretation of the chancery court statute as one that limits jurisdiction to specific cases involving disputes among businesses, disputes between businesses and financial institutions, disputes about business governance, and disputes concerning trusts. The rule excludes consumer litigation like residential real estate disputes, non-commercial landlord tenant disputes, consumer debt issues, and most relevant here:

Consumer claims against business entities or insurers of business entities, including breach of warranty, product liability, and personal injury cases and cases arising under consumer protection laws;

W.R.C.P.Ch.C. 2(e)(3).

[¶ 38] This case asserting consumer claims against a business entity falls squarely into this exclusion. Residential homebuyers sue the limited liability company that constructed

the home for defective home construction. There is no real dispute that Symphony Homes, LLC is a business entity and that plaintiffs are consumers. Though dissolved, Symphony Homes, LLC continues its existence as a limited liability company for the purposes of defending this action. Wyo. Stat. § 17-29-701. And to borrow from the Consumer Protection Act, the individual plaintiffs purchased the home or personal residence for “purposes that are primarily personal, family, or household.” Wyo. Stat. § 40-12-102(a)(ii). There is no allegation plaintiffs financed the home purchase under a commercial mortgage or that plaintiffs are in the business of buying and selling residential real estate.

[¶ 39] Seeking to escape Rule 2(e)(3), plaintiffs argue the claims against the individual defendants who sold the real estate are not consumer claims against “business entities.” While this argument may save the claims against the individual defendants from Rule 2(e)(3), it does not save the claims from Rule 2(e)(7), which excludes “individual residential real estate disputes” from the chancery court’s jurisdiction. The argument also does not save the claims from the statute providing the chancery court resolves only those “disputes involving commercial, business, trust and similar issues.” Wyo. Stat. § 5-13-115(a). A dispute between individuals does not involve commercial or business issues.

[¶ 40] Despite plaintiffs’ request, the chancery court cannot exercise ancillary jurisdiction under Wyo. Stat. § 5-13-115(c) because no claims survive for which the court has jurisdiction. But even if the chancery court could exercise ancillary jurisdiction, it would be reluctant to exercise ancillary jurisdiction over a claim that falls outside the legislative grant of jurisdiction and that falls squarely within the list of excluded actions adopted by the Supreme Court.

## CONCLUSION

[¶ 41] The chancery court is not designed to be—and cannot be—all things to all litigants. It is a streamlined forum for resolving business, commercial, and trust litigation—not consumer litigation. Accordingly, defendants’ motion to dismiss for lack of subject matter jurisdiction is **GRANTED** and this case is **DISMISSED** without prejudice to plaintiffs refiling in an appropriate jurisdiction.

[¶ 42] Having determined it lacks subject matter jurisdiction, the court must not address any other pending motions in this matter.

**IT IS SO ORDERED.**

**Dated:** 6/16/2023

/s/ Richard L. Lavery  
CHANCERY COURT JUDGE