

Court Warns Buyers of Caveat Emptor Doctrine

Harris Martin



Not familiar with the term “*Caveat Emptor* Doctrine”?

It’s Latin for “Let the buyer beware”. It’s the rules/laws that control the sale of real property after closing.

CLEVELAND — Homebuyers who knew of basement cracks and prior sump problems prior to the purchase cannot maintain a fraud claim against the sellers based on those defects if they later experience water intrusion, an Ohio appeals court has held. *Thaler, et al. v. Zovko, et al.*, No. 2008-L-091 (Ohio Ct. App., 11th Dist.).

In affirming summary judgment for William and Joan Zovko, Ohio’s 11th Appellate District said in its Dec. 24 opinion that buyers who experience latent defects but fail to show any reliance on misrepresentations are subject to the *caveat emptor* doctrine.

Wayne and Kathleen Thaler alleged in a complaint filed in the Lake County (Ohio) Court of Common Pleas that they experienced significant water intrusion and mold in their basement after purchasing a house from the Zovkos in 2007. They alleged that the Zovkos concealed the true extent of problems they had with a leaky sump pump and basement wall cracks prior to the sale.

The Thalers said they paid Ohio State Waterproofing \$15,000 for repairs, and that the company believed that the true extent of problems with the basement wall were not discoverable until repairs were being made.

The Zovkos asked for summary judgment, asserting that the statutory disclosure form noted a broken water line and that the sellers had discussed with the Thalers the basement wall cracks and a sump pump repair in 1996.

The Zovkos also noted that the Thalers’ retained an inspector, who termed the wall cracks “not a problem,” and that Thaler himself was a licensed plumber who was familiar with sump pumps and water intrusion issues.

The trial court granted the Zovkos’ motion, ruling that the buyers failed to show that the Zovkos experienced any problems not disclosed prior to the sale, or that they misrepresented or concealed additional problems.

The Thalers appealed, arguing that the trial court committed error in granting the motion when it was not correctly filed or docketed with the clerk of courts, and because the trial court erred in finding there were not material issues of fact to preclude summary judgment.

The Appellate District rejected the appeal based on procedural grounds, noting that the issue was addressed previously and the court’s clerical error was corrected.

The court also found for sellers on the substantive issue, as well.

“Aware of a possible problem, the buyer has a duty to either (1) make further inquiry of the owner who is under a duty not to engage in fraud, . . . , or (2) seek the advice of

someone with sufficient knowledge to appraise the defect,” the court explained, quoting *Durica v. Donaldson* (Marc. 3, 2000), 11th Dist. No. 97-T-0183, 2000 Ohio App. LEXIS 789, 11).

The court also noted that the sales contract included an “as is” clause, and said that relieves a seller of the duty of disclosing latent defects.

“Quite simply, apart from the bare allegations in their complaint and argument in brief in opposition to the Zovkos’ motion for summary judgment, the Thalers failed to submit any evidence of a misrepresentation or concealment on the part of the Zovkos,” the court said. “There is no evidence that the Zovkos were aware of the extent of the water problems beyond which they disclosed.”

“It bears repeating that the ‘doctrine of *caveat emptor* is designed to finalize real estate transactions by preventing disappointed real estate buyers from litigating every imperfection existing in residential property,’ especially, where, as is the case here, there is no fraud and the buyers were well aware of the defect, yet they chose not to inspect further and purchased the property,” the court added, quoting *Belluardo v. Blankenship* ([June 4, 1998], 8th Dist. No. 72601, 1998 Ohio App. LEXIS 2409, 7).

Gerald R. Walker of Redmond, Walker & Murray in Painesville, Ohio, was counsel for the Thalers.

James A. Zaffiro and Robert J. Belinger of Independence, Ohio, represented the Zovkos.

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