

Let the Buyer Beware: Shielding Sellers From Liability

BY ALAN NOCHUMSON

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With the residential market continuing its upward trajectory, many individuals are now purchasing diamonds in the rough for investment purposes. These individuals rehab and then quickly flip the property. Some of these "rehabbers" are better than others. Not surprisingly, some sellers cut some corners in completing the renovation project and fail to disclose problems with the property to an unsuspecting buyer.

A recent Superior Court of Pennsylvania opinion should bring a chill to the spine of any buyer who purchased a property from a less-than-forthright seller. In *Youndt v. First National Bank*, the Superior Court dismissed a fraud claim against a seller on the basis of an integration clause and "as is" condition clause included within the real estate agreement.

Several years ago, First National Bank retained the services North Country Real Estate to sell a commercial property owned by the bank. Ronda and Kevin Youndt subsequently entered into a written agreement to purchase the property. The two-page agreement included provisions wherein the Youndts acknowledged that they were buying the property in "as is" condition and that they had either inspected the property or had waived their right to do so.

The agreement also contained an integration clause, in that the Youndts essentially agreed that all previous representations made about the property were not binding on the bank unless such representations were also expressly stated in the agreement itself.

Less than a year after they bought the property, the Youndts discovered severe problems with the water and sewage system. The Youndts then filed suit against the bank, North Country and the agent who acted on North Country's behalf, among others. In the complaint, the Youndts alleged that the defendants committed fraud on them by failing to disclose the problems with the water and sewage system. In the complaint, the Youndts stated that they specifically requested from the agent disclosure of any problems with the property and that she "indicated that there were no problems."

The defendants then filed preliminary objections partly on the grounds that the fraud claim was precluded by the "as is" condition and integration clauses contained in the agreement of sale. The trial court granted the preliminary



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objections and dismissed the complaint. The Youndts then appealed the trial court's ruling to the Superior Court of Pennsylvania.

The Superior Court found that the parol evidence rule defeated the fraud claim because the rule barred the introduction of evidence regarding the agent's alleged misrepresentations. According to the Superior Court, "[o]nce a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract."

The Superior Court then rejected the Youndts' attempt to invoke the exception to the parol evidence rule as applied in fraudulent inducement cases. Unlike fraud in execution cases, "the party proffering evidence of additional prior representations does not contend that the representations were omitted from the written agreement, but, rather, claims that the representations were fraudulently made and that 'but for them' he would never have entered into the agreement."

However, the Superior Court noted that this exception does not generally apply in fraudulent inducement cases where the written agreement contains an integration clause.

The Superior Court pointed out that "an exception to this general formulation of the impact of the parol evidence rule has been created and followed by the so-called 'real estate inspection cases,' i.e., *LeDonne v. Kessler* and its progeny." Under the *LeDonne* line of cases, Pennsylvania courts have permitted evidence of oral representations to be admitted in instances where the alleged misrepresentations regard latent defects to the property undiscoverable by visible inspection even when the real estate agreement includes an integration clause.

Relying on the Supreme Court of Pennsylvania's decision in *Bardwell v. Willis Company*, the Superior Court held that the

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Lighthouse Mortgage 800-784-1331	5.50/0	5.00/0	N/A	5.75/0	No
Madison First Financial 877-462-3728	5.38/0	5.00/0	N/A	5.75/0	No
East Coast Financial 800-353-9440	5.88/0	5.38/0	N/A	N/Q	No
Price Financial Services 800-401-9091	5.38/0	5.00/0	N/A	5.75/0	No
Wilmington Mortgage 610-558-3099	5.63/0	5.25/0	N/A	6.00/0	No
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American Family Mrg. 610-358-5324	4.88/3.25	4.63/3	2.00/3	5.13/3	No
Century Mortgage Corp. 800-224-7006	5.13/3	4.63/3	3.38/2	5.75/1.5	No

* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$360,000.
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LeDonne exception does not apply to the agent's alleged misrepresentation.

In *Bardwell*, the Supreme Court "addressed the viability of a plaintiff's claim for fraud in the context of a real estate transaction where the contract contained an integration clause and another clause stating that there is no 'warranty as to the condition or repair' of the premises."

The Supreme Court "reasoned that to allow a plaintiff to introduce parol evidence that the defendant made representations regarding the condition of the property, where the contract specifically states that the plaintiff agreed that no such representations were made, would render the language of the contract superfluous."

Similar to *Bardwell*, the Superior Court pointed out that the Youndts signed an agreement of sale stating that "it was the parties' whole agreement and that there were no repre-

sentations made by the named defendants regarding the condition of the property." The Superior Court was particularly strident with the Youndts because it believed that the claims of fraud were an effort by them to disavow the terms to which they expressly agreed.

In a concurring opinion, Judge Mary Jane Bowes also agreed that the underlying case was clearly distinguishable from *LeDonne* in that the agreement of sale unequivocally stated that the Youndts were not buying the property in reliance upon any prior representations concerning the condition of the property.

In this white-hot real estate market, some buyers are agreeing to take the property in its present condition in order to trump an offer made by an equally eager potential buyer. By doing so, however, such buyers must understand they are placing themselves in harm's way and closing their access to the courts.