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Wife Not Responsible for Spouse's Inaccuracies in Disclosure

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In order to protect homebuyers from "seller fraud," the Pennsylvania General Assembly enacted the Real Estate Seller Disclosure Law (RESDL). At its heart, sellers are statutorily required to make, through closing, written disclosures to homebuyers about the condition of the property.

In a recent decision handed down by the Superior Court in *Growall v. Maietta*, a wife, who jointly owned a property with her husband, was not held responsible for inaccuracies contained in such a property disclosure statement that he prepared and she blindly signed.

In *Growall*, the defendant husband and wife placed a house they owned, which was divided into three apartments, on the market. The husband completed the seller-disclosure statement for himself and his wife. The wife apparently did not review the responses made in the statement prior to signing it. In the seller-disclosure statement, they marked the following questions in the negative: "Are you aware of any water leakage, accumulation or dampness within the basement, garage or crawl space?" "Do you know of any repairs or other attempts to control any water or dampness problem in the basement, garage or crawl space?" "Are you aware of any past or present water leakage in the house or other structure?"

Several months after signing the seller-disclosure statement, the husband became aware of a water-leakage problem in the basement apartment. The husband hired a plumber to fix the problem. The wife was allegedly never aware of the water problem or of the husband's attempt to fix the problem.

Soon thereafter, the husband and wife signed an agreement to sell the property to the plaintiff-purchaser. Since the seller-disclosure statement was never updated prior to the sale, the purchaser bought the property without knowing about the water problem in the basement.

Less than a year later, the water problem in the basement resurfaced and the purchaser called the husband about making him whole for the water damage to the property. Although the husband freely admitted to the previous water problem, the wife denied that she was ever informed of its existence. She

explained that the house had belonged to her husband's family and she, unlike her husband, was relatively uninvolved in maintaining the house and dealing with the tenants.

After the husband and wife refused to pay for the damages caused to the property as a result of the ongoing water problem, the purchaser filed suit against them for violating the RESDL, among other things.

At arbitration, the purchaser was awarded a monetary judgment against both the husband and the wife. After an appeal by the husband and wife, at trial, the jury rendered a monetary judgment only against the husband. The purchaser then appealed the trial jury's findings to the Superior Court.

The Superior Court ultimately held that the wife's failure to disclose the water problem in the basement apartment did not violate the RESDL simply because she was not aware of any water leak in the basement until after the purchaser approached her and her husband about the situation after closing already took place.

In doing so, the Superior Court pointed out that a seller is not obligated under the RESDL to make any specific investigation or inquiry in an effort to complete the property disclosure statement. Rather, the Superior Court stated that a seller, in completing the property-disclosure statement, is only prohibited from "make any representations that the seller . . . knows or has reason to know are false, deceptive or misleading and shall not fail to disclose a known material defect."

The Superior Court did caution that, if information disclosed in the property disclosure statement is subsequently rendered inaccurate prior to final settlement as a result of any act, occurrence or agreement subsequent to the delivery of the statement, then the seller is required to notify the buyer of the inaccuracy.

Keeping that in mind, the Superior Court noted that, at the time the disclosure statement was signed by the wife, the information contained in the statement was accurate, and thus the purchaser's RESDL claim rested solely upon her alleged duty to notify him prior to closing of the subsequent water problem that rendered the statement inaccurate. The Superior Court, however, refused to place that burden upon the wife because she "could not disclose what she did not know."

The Superior Court rejected the purchaser's attempt to place an absolute duty on the wife to know the condition of her property by investigating the condition of the property or by disclosing her lack of knowledge.

The Superior Court cited language in the RESDL, which specifically provided that a seller is not obligated to make any specific investigation or inquiry in completing the property disclosure statement, and that a seller is not liable for any error, inaccuracy or omission of which he or she had no knowledge.

The Superior Court then distinguished and called into question the line of cases relied upon by the purchaser involving innocent misrepresentations made by sellers in the real estate context.

According to the Superior Court, these cases impose a strict liability standard where the "innocent" misrepresentation centers upon "basic facts" about the property readily ascertainable by the selling party, such as zoning restrictions and boundary lines. The Superior Court did not believe that the wife's "ignorance of an isolated incident of water damage/flooding in the basement constitutes such a 'basic fact' as to trigger absolute liability."

Irrespective, the Superior Court rejected "a strict liability standard concerning innocent misrepresentations where the RESDL does not impose such an absolute duty." Indeed, the Superior Court warned that that the cited cases were decided prior to the enactment of the "RESDL and therefore, its continued viability in this area may rightly be called into question."

The Superior Court also noted how Pennsylvania courts treat "innocent" misrepresentations where the relief sought is rescission of the contract as opposed to monetary damages. In *Growall*, the purchaser sought out-of-pocket losses in the form of repairs, loss of rent, etc., but did not sue to rescind the contract. According to the Superior Court, since "[t]here appear[ed] to be no basis for such damages under a claim of innocent misrepresentation in Pennsylvania," the purchaser had no cause of action under the RESDL against the wife for her 'innocent' misrepresentations about the condition of the property.

The Superior Court in *Growall* gave a free pass to an individual who did not take her legal obligations under the RESDL seriously. The wife, in signing the disclosure statement, did not make any attempt to respond to the questions contained in the statement herself or even fully read the responses to the statement prepared by her husband, which responses were based solely upon his knowledge.

By essentially allowing the wife to disclaim any knowledge about the condition of the property, the Superior Court defeated the whole purpose behind the RESDL, which is to compel a seller to give a homebuyer information about the condition of the property so that homebuyer can then make an informed decision to extend an offer to purchase the property, enter into an agreement to purchase the property, and finally proceed forward with closing.

The inequitable result cast in *Growall* should encourage real estate agents and attorneys alike who represent homebuyers to require, in situations where there are multiple sellers, each seller to complete a separate disclosure statement. If the wife in *Growall* had been forced to complete a separate statement, she very well may have approached her husband about assisting her in responding to the questions in the statement, which, in turn, may have caused him to reveal to her the water problem plaguing the basement of the property and thus obligated her to disclose it to the purchaser prior to closing.

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