

Concealing Defects can be Expensive

Home owners selling their “mint condition”, “like new” home learned the hard way that their efforts to conceal existing serious defects had consequences – expensive ones.

The Story. Before the buyers purchased their home in 2003, they knew from the seller's residential property condition disclosure report that there was no water seepage, no dampness, and no drainage problems. The property inspector found nothing defective from the physical inspection of the property and noted that the house's interior had been freshly painted.

The buyers relied on the sellers' representations of "mint condition" and "like new" in the MLS, the property condition disclosure report and the physical appearance of the property. The sellers later stated that "new" actually meant since 1999 when they bought the property and made some repairs, but the interior paint job was recent and the lower level family room carpeting had been installed six months prior to the sellers selling to the buyers.

When the new buyers moved in, they subsequently found the lower level carpeting soaking wet so they pulled it back, discovering evidence of water seepage and new wood surrounding water-stained rotting wood that apparently had existed before the carpet had been laid. They also found mold in a utility room that neither they nor the inspector had seen because the room was crammed full of storage items and evidence of long standing rot and mold caused by water seepage behind new sheetrock. The buyers took pictures to document the problems.

The buyers filed suit against the sellers and the real estate agents alleging that both the sellers and the real estate agents knew about the water damage/defects and knowingly misrepresented the condition of the property as "mint condition" and "like new" to induce the buyers to buy.

The sellers argued that they saw nothing indicating water seepage, mold or rot (the court did not believe them), that the buyers relied on their own personal inspections of the property and that of their inspector's (they should have hired a *competent* inspector), not on the seller's representations.

The court held that if the sellers had had no knowledge of the defects their argument might have worked, but these sellers could not have been ignorant of the defects (the buyers' pictures told the story) and were found to have had actual knowledge.

The court dismissed the real estate agents from the case when it determined that they had no knowledge of the defects or the cosmetic cover up.

The sellers were not so lucky. The court found that:

- the sellers had full knowledge of the defects;
- the hidden defects were not reasonably ascertainable by a visual inspection;
- the buyers relied on the written MLS information and their physical inspection;
- the cosmetic treatments to disguise the defects were "designed to mislead these buyers and their inspector who had no way of knowing what existed behind the replacement walls, conveniently 'freshly painted'"; and
- the buyers would not have bought the property had they known of its condition.

The Court's Decision. The court found that the sellers hiding known defects was outrageous conduct and awarded the buyers \$92,282 for repairs and \$25,000 for emotional distress.

Reminder to Listing Agents. Remind sellers 1) that knowingly misrepresenting their property's condition can be costly as a court can, as here, award damages to repair known hidden defects, and 2) negligently causing property damage can encompass emotional distress if the distress can be foreseen.

*Camerone v. Phillips, Docket No.: CV03-0483400S, (1/17/07).