



The Danger of Seller Property Information Statements

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Abstract

Sellers must be cautious when giving written or spoken statements about a property to a buyer especially with regard to seller property information statements ("SPIS"). An SPIS could create seller liability for fraudulent or negligent misrepresentations. The liability created by an SPIS derives from the legal principle that a seller has a duty of care to the buyer to provide accurate information when the seller should reasonably know that the buyer is relying on such information (especially with regard to a latent (hidden) defects in a property). Additionally, the seller has a duty to disclose any latent defect which renders a property dangerous or likely to be a danger. Limitation of liability warnings on the SPIS will not serve to absolve the seller of potential liability for misstatements.

Full Article

In the case of *Costa v. Wimalasekera*, a purchase of a house was conditional upon the buyer receiving an SPIS from the seller and the buyer accepting the information on the form as satisfactory. The SPIS was prepared with the assistance of the seller's realtor. One of the questions asked on the statement was: "Is property subject to flooding?" The seller wrote "No". The buyer also viewed the property and detected no evidence of flooding. The buyer accepted the information on the form as satisfactory and the transaction closed.

Within one month of closing, the buyer became aware that the rear yard of the property flooded every time it rained. The water would accumulate up to one foot deep for a period of a week or longer. As a result, the buyer sued the sellers for damages to remediate the flooding problem on the basis that the seller made a fraudulent or negligent misrepresentation with regard to a latent defect in the property.

A representation is a statement of fact made by a buyer or seller and is often made to induce one of the parties to enter into an agreement. A fraudulent misrepresentation is when a party makes a representation and knows it to be false. A negligent misrepresentation is when a party makes a representation that is carelessly inaccurate or misleading or carelessly does not disclose important information. Parties to a contract have a duty of care not to make fraudulent or negligent misrepresentations if they should reasonably expect that the representations will be relied upon by the other party to the contract. A contracting party that has a



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duty of care and makes misrepresentations is liable for damages based on that misrepresentation to any contracting party that relied on the misrepresentation. Such a duty of care will arise in circumstances where the seller can reasonably expect that the buyer will rely upon the representations disclosed in an SPIS.

The court found that the flooding was a latent defect that an ordinary purchaser would not be expected to unearth in a routine inspection. The seller knew about the flooding, but did not disclose it in the SPIS as they were obligated to do (duty of care); it was for this reason that the buyer completed the purchase. It follows that that the representation of the Seller contained in the SPIS was either a fraudulent or negligent misrepresentation for which they were liable. Additionally, the court said the flooding of up to one foot of water posed a serious safety hazard to neighbourhood children and the seller had a duty to disclose it to the buyer.

The seller was ordered to pay the buyer \$25,000 in damages to remediate the flooding issues and another \$4,000 in costs.