

Appellate Ruling Protects Buyers of Homes Sold As Is

Oscar R. Rivera, Daily Business Review

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With so many distressed homes in Florida that are being acquired by real estate investors, renovated for a quick sale and resold to new buyers, a recent appellate decision should help to reinforce the longstanding hidden defect disclosure requirements even in cases of properties that are typically sold in "as is" condition.

In the case of *Thomas I. Bowman v. Jon Michael Barker et al.*, Bowman purchased a home from Barker that was later discovered to have numerous defects. He filed a lawsuit alleging that Barker failed to disclose known defects in the house contrary to his duty under the law and fraudulently misrepresented the condition of the house. The suit also included other defendants and claimed that they contributed to the problems and caused damages related to their roles in repairing, remodeling, inspecting and selling the house.

The defendants denied being aware of any defects in the property at the time of the sale and moved for summary judgment, which was granted by the circuit court.

In reversing the lower court's decision to issue a summary judgment for the defendants, the First District Court of Appeal found that the home buyer had demonstrated the existence of facts and inferences that should have allowed the case to go to trial.

These included evidence that the home sellers were experienced real estate investors in other house-flipping projects, and they had knowledge of the extremely poor initial condition of the house. In fact, they admitted that it was in such bad condition that they were able to buy it for little more than the value of the land.

The defendants also admitted to knowing about the need for substantial repairs that included structural damage and a failing foundation, which was later estimated at more than \$50,000 to repair, and about the existence of prior additions and unpermitted work.

The appellate panel found that this evidence raised questions of fact about the home sellers' knowledge and also undermined their credibility and the plausibility of their denying knowledge of the defects and the necessary repairs.

Hidden Defects

The opinion notes that the trial record contains evidence that they instructed their remodeling contractor about what work to do on the property, visited it often while the work was being performed and had agreed to repair all of the items that the home buyer identified as needing repair, including the damage and defects in the structure and the foundation.

The home sellers testified that the repairs had been completed prior to closing, but the appellate court found that there was evidence indicating that the main defendant had admitted to making several false representations on the property disclosure form, which he said was due to pressure from his Realtor and his dislike for completing those forms. The opinion also found that there were conflicting accounts of what representations he made about whether the repairs had been completed.

The evidence also revealed that the remodeling contractor has a different view of the instructions given and the scope of work. The company's representative claimed that he and his business partner were never made aware of any structural issues, nor were they asked to repair them.

The court also ruled that the fact that the house was sold as is did not make summary judgment appropriate as the duty to disclose known defects continues to exist for a home sold as is. The opinion found:

Despite selling this house as is, the sellers had a duty to disclose what they knew about its condition, and they undertook to make disclosures to appellant about the condition of the house. The record demonstrates triable

issues of fact about what that condition was, what the sellers knew about it, what disclosures were made and whether those disclosures were accurate.

For residential buyers in Florida, this ruling reinforces the fact that sellers must disclose known hidden defects even for properties that are sold in as is condition.

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