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High court boosts homeowner's suit over inspection

March 22, 2003

By ANNE WALLACE ALLEN

The Associated Press

MONTPELIER - A couple who was unhappy with an inspector's report about a 200-year-old house won some relief Friday from the state's highest court.

"We're very hopeful that this will lead to some kind of protection for consumers," said Sylvia Covington, whose husband, Paul Schmitt, sued Rutland inspector Richard Lalancette. "That's what this has all been about."

The case began in 1997, when real estate agent Ann Swanson showed Schmitt a house for sale in East Corinth. Schmitt asked Swanson to recommend an inspector, and she gave him the name of Lalancette, according to court documents.

In his suit, Schmitt said Lalancette's inspection failed to identify serious structural flaws in the house, and he held Lalancette liable for breach of contract. He also claimed Lalancette had colluded with Swanson - a violation of Vermont's Consumer Fraud Statute - by being motivated not to issue unfavorable reports that would prevent real estate closings.

Lalancette was motivated by a desire to continue receiving referrals, Schmitt said.

The case before the Vermont Supreme Court involved one aspect of Schmitt's suit: his attempt to get the names of other customers who were referred to Lalancette by Swanson.

According to the Supreme Court decision, Schmitt wanted to talk to the other

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homeowners to see if their inspection reports were accurate, and he wanted to determine if there was a pattern of serious problems being underreported.

The Superior Court in Chelsea denied Schmitt's request and issued a protective order preventing Schmitt from contacting Lalancette's former customers.

In its ruling Friday, the Vermont Supreme Court said the trial court had overstepped its authority to issue a protective order if it finds a good cause.

"This is not a situation in which any of the customers were protected by attorney-client privilege. There is no allegation of intimidation or abuse of the customers. The discovery sought was entirely routine," the decision said. "In fact, Schmitt had learned of one witness, Tyler Yandow, from public records because Yandow had filed a professional conduct complaint against Lalancette, and yet the trial court prohibited Schmitt from contacting him."

Vermont law on discovery "protects the manner in which parties have to make disclosures, or protects them from having to make the disclosures at all, Johnson wrote. "... but there is nothing in (the law) that implies that courts have the authority to prevent a party to litigation from conducting its own private investigation to identify witnesses or obtain desired information, without relying upon formal discovery."

The court ordered a new trial, with new discovery rights for Schmitt.

"Without having been able to contact the former clients, Schmitt has been unable to fully develop his case against Lalancette," the decision said.

Covington said Friday that she and her husband hoped the case would lead to more regulation of how home inspectors and real estate agents interact.

"There are other states that have laws in place for consumer protection around the issue of home inspections," Covington said.

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