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LAW: Judgments - Disclosure - Free Speech

Kansas Court of Appeals Fitzmorris v. Demas, 2005

Disclosure means having to tell it all

A Kansas appeals court has determined that a real estate salesperson had a duty to disclose the findings of two inspection reports, which reached different conclusions on termite damage, to a buyer.

In the case, buyers who had made an offer on a home owned by Carolyn Pickett hired a construction company to inspect the home. The inspection found that the home had significant termite damage. It estimated that repairs would cost between \$18,000 and \$25,000. The buyers voided the contract.

The sellers' agent received a copy of the report and informed Pickett that she would have to disclose the damage to potential purchasers. He also suggested she obtain a second opinion on the damages. The seller did so and received another inspection report that found fewer problems and estimated repair costs at \$5,000.

When the salesperson found another buyer for the home, he advised her of the damage and gave her a copy of the second report. He never mentioned the first one.

After the closing, the buyer discovered the damage was much more extensive than she'd been advised. After trying to renegotiate with the sellers, the buyer filed a suit against the sellers, the second inspector, and the salesperson.

The Court of Appeals of Kansas reversed the ruling that favored the salesperson and sent the case back to the trial court. The appeals court noted that under Kansas's license law a salesperson is required to disclose material facts that a reasonable person would find important when deciding whether to purchase a property. Since the information in the first report had caused an earlier buyer to cancel a contract, the amount of termite damage outlined in the first report was a material fact that should have been disclosed by the salesperson.

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