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GREGORY J. GARLOCK and DEBORAH M. GARLOCK,
husband and wife, Plaintiffs vs. THE FIRST NATIONAL BANK
OF MCCONNELLSBURG, Defendant, FULTON COUNTY
BRANCH, CIVIL ACTION - NO. 50 OF 1996-C EQUITY

Garlock v. First National Bank of McConnellsburg

Sale of real property - innocent material misrepresentation

1. Innocent misrepresentation is basis for rescission of a contract if the misrepresentation is material and if recipient was justified in relying on the misrepresentation.
2. Misrepresentation is material if it substantially contributes to the party's decision to assent to the contract.
3. Statement by bank employee of bank which owned house that it would make a "nice little fixer-upper" is not material because it did not substantially contribute to plaintiffs' decision to buy the house.
4. Plaintiffs were not justified in relying on "fixer-upper" statement because the statement was merely an assertion of opinion, not a statement of fact.

Dwight C. Harvey, Esquire, counsel for plaintiffs
David C. Cleaver, Esquire, counsel for defendant

OPINION AND ORDER

Walker, P.J., January 12, 1998:

Factual and Procedural Background

On September 24, 1993, plaintiffs, husband and wife, purchased a house from Defendant First National Bank. Previously, in late August or the beginning of September, plaintiffs had noticed that the house was for sale while driving through Wells Tannery, Fulton County, Pennsylvania. They learned that it was owned by First National Bank of McConnellsburg, and that Suzanne Hockersmith, an employee of that bank, lived close by. They stopped at her house, and she agreed to go over with them and show them the house. They entered the house through the basement door, as the Bank never received the keys to the property. The Bank had obtained the house through a sheriff's sale.

Suzanne Hockersmith took plaintiffs through the house and she pointed out several things that were in obvious need of repair, such as the broken pipes in the basement, the fact that the kitchen had only one cupboard and an old sink, and pointed out that the walls in the

living room had been redone in the last several years. Additionally, Suzanne Hockersmith gave them information about some of the previous owners of the house. The plaintiffs then left, but came back to look at the house a second time, again accompanied by Suzanne Hockersmith. After having looked through the house again, they went outside. Plaintiff Gregory Garlock then made the statement that the roof and the walls looked square and that the main frame of the house looked good. In response to this statement, Suzanne stated that the house would make them "a nice little fixer upper," or a statement of similar nature. Subsequently, plaintiffs contacted the bank and discovered that the Bank needed to recover the amount of \$15,300 on the house. Plaintiffs then made a bid to the Bank to buy the house for \$18,000, which was accepted. The Bank financed a total mortgage of \$21,500.

After having moved in November of 1993, plaintiffs started making repairs to the house, performed by Gregory Garlock himself as well as his family and friends. In February 1996, plaintiffs learned that the house had structural problems, and after having hired an inspector, they also learned that the house was supported only by two by two beams. Currently, the floor of the house is sagging and must be supported by extra beams, and the walls are flexing back when pushed in. Additionally, plaintiffs blame the breaking of the glass in the upstairs windows on the settling of the unstable house.

Plaintiffs filed a complaint on March 21, 1996, seeking rescission of the contract based on innocent misrepresentation. A bench trial was held on November 13, 1997. At this time, this court viewed the house in issue, and heard testimony from both parties. Plaintiffs' counsel submitted two trial memoranda of law on the issues of innocent misrepresentation and laches.

Discussion

Plaintiffs seek rescission on the basis of the theory of innocent misrepresentation. A material misrepresentation, whether made knowingly or innocently, provides a basis for rescission of the contract. *Boyle v. Odell*, 413 Pa. Super. 562, 570, 605 A.2d 1260 (1992). "A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so." *Restatement (Second) of Contracts*, § 162 (1979). A

misrepresentation induces a party's manifestation of assent if it substantially contributes to his decision to manifest his assent. *Restatement*, § 167. In order for the contract to be voidable, it is further required that the recipient is justified in relying on the material misrepresentation. *Restatement*, §164(1).

Plaintiffs argue that Suzanne Hockersmith's statement that the house would make plaintiffs a "nice little fixer-upper" induced plaintiffs to buy the house, since they had limited means and were looking for a cheap house that they could fix up. Plaintiffs furthermore argue that they justifiably relied on that statement, because Suzanne Hockersmith appeared to be authorized by the bank to show the house, and by talking about its condition and previous owners, she represented to plaintiffs that she had knowledge about the condition of the house.

First of all, this court does not find that the representation made by Suzanne Hockersmith that the house would make plaintiffs a "nice little fixer-upper" was material. An example of a material misrepresentation in the sale of real estate was the situation where the plaintiffs had purchased a house at an auction which had been represented by the auctioneers as "splendid for apartments which could bring in handsome income." *La Course v. Kiesel*, 366 Pa. 385, 77 A.2d 877 (1951). After the purchase, plaintiffs learned that, unbeknownst to the auctioneers, zoning restrictions prohibited the use of the property for anything else than as a single residence. *La Course*, 77 A.2d at 879. The court found that this misrepresentation was material, because any fair minded person would understand the statement to mean that no restrictions existed for the use of the property as apartments. *Id.* In the underlying case, the evidence introduced at trial showed that plaintiffs had gone through the house twice, and taken a good look at it. After having looked at the house a second time, Plaintiff Greg Garlock made a statement to the effect that the roof and the walls looked square and that the main frame of the house looked good. It was only in response to this statement that Suzanne stated that the house would make them "a nice little fixer-upper." It appears from the testimony that plaintiffs had made their own assessment as to the quality of the house. The court does not find it a credible inference that plaintiffs, after having found that house looked good, would not have entered into the contract if Suzanne had not made that statement. In other words, this

court does not believe that the statement substantially contributed to the plaintiffs' decision to buy the house.

Secondly, this court does not find that the plaintiffs justifiably relied on the "fixer-upper" statement. A person may not justifiably rely on assertions of opinions. *Restatement (Second) of Torts, § 168.*

An assertion of opinion is one which expresses only a judgment as to quality, value, authenticity, or similar matters. *Id.* In the underlying case, this court finds Suzanne Hockersmith's "fixer-upper" statement to be one of opinion about the quality of the house, and not in any way an assertion of fact. The fact that she went through the house and pointed out defects does not justify reliance on her statement. The defects were obvious upon mere visual inspection, and thus did not imply any superior knowledge by Suzanne or the Bank. The outcome of this case probably would have been different if Suzanne Hockersmith had made a statement to the effect that the house was "sturdy" or "in good condition." Such a statement could have been understood as a statement of fact, inducing reliance. However, the statement that the house would make a "nice little fixer-upper" could not reasonably be understood to be such a factual statement.

Because this court does not find that Suzanne Hockersmith's statement to plaintiffs was a material misrepresentation on which plaintiffs could justifiably rely, the court finds in favor of Defendant First National Bank, and declines to rescind the contract. Therefore, this court need not address the issue of laches. Unfortunately for plaintiffs, they are now stuck with a house which needs substantial repair. The house, which is over a hundred years old, may have outlived the time period for which it was meant to last, but the responsibility for this cannot be put on the defendant.

ORDER OF COURT

January 12, 1998, this court finds that Defendant First National Bank did not make a material misrepresentation on which plaintiffs could justifiably rely, and therefore declines to rescind the contract.

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