
REAL ESTATE

Fraud

Residential Property

ARBITRATION AWARD: Defense award. The plaintiff paid the defendants \$20,000 as settlement on the defendants' motion for attorney's fees.

CASE/NUMBER: Case I.D. Confidential.

TRIBUNAL: JAMS/Endispute / July 25, 1996.

ARBITRATOR: Hon. Jack T. Ryburn, retired, of JAMS/Endispute.

ATTORNEYS: Plaintiff - John G. Benedict (Crane & McCann, Santa Monica).

Defendants - Jonathan B. Cole, David B. Owen (Nemecek & Cole, Sherman Oaks).

TECHNICAL EXPERTS: Plaintiff - William L. Hockenberry, architect. Tustin.

Defendants - Dusty Shulz, general contractor, Calabasas.

FACTS: On Sept. 26, 1994, the defendant sellers, executed a seller's disclosure statement indicating no known leaks in their El Segundo property. The plaintiff thereafter purchased the property from the defendants on Dec. 15, 1994. On Jan. 5, 1995, the plaintiff came home to find extensive leaking

throughout the residence, including puddling in the front entrance way and water running in streams down several walls. The plaintiff brought this action against the defendant sellers based on fraud, negligent misrepresentation and failure to disclose known facts.

CONTENTIONS: The plaintiff contended that the defendants must have had prior knowledge of the leaking, given the extensive leak observed of Jan. 5, 1995 and the evidence or prior water intrusion around the doors and windows.

The defendants contended that they had no knowledge of prior leaks; that the interior of the house was constructed entirely of rough-sided wood planking and permanent stains would result if any water came in contact with the wood. The defendants also contended that the fact that no such stains existed at the time of the home inspections demonstrated that no prior leaking had occurred; that although the home had been inspected on several occasions, only minor evidence of staining was present and it was disclosed; and that the leaking complained of was the result of abnormally heavy rains that occurred in January 1995. The defendants further contended that the damages claimed by the plaintiff were overstated since there was no evidence that doors and windows could not be repaired rather than replaced, as the plaintiff asserted.

DAMAGES: The plaintiff sought cost-of-repair damages of \$43,000 to replace all doors, windows and the roof of the premises.

SETTLEMENT DISCUSSIONS: The plaintiff made a C.C.P. §998 settlement demand for \$29,000. The defendants made a C.C.P. §998 offer of compromise for \$2,500, raised to \$13,000.

OTHER INFORMATION: The award was rendered approximately seven months after the case was filed. The four-day arbitration was held over from sessions beginning on Feb. 29, 1996 and concluding on July 25, 1996 before Judge Jack Ryburn, retired of JAMS/Endispute. The plaintiff reportedly paid \$20,000 to the defendants to settle the defendants' motion for attorney's fees.