

Nelson v. Heer, 123 Nev. Adv. Op. 26 (July 26, 2007)¹

CIVIL LITIGATION – REAL ESTATE TRANSACTIONS

Summary

Review of district court’s order denying a motion for judgment as a matter of law based on the statutory interpretation of N.R.S. Chapter 113, which governs the sale of real property.

Disposition/Outcome

Reversed. The Nevada Supreme Court reverses the district court’s denial of Nelson’s motion for judgment as a matter of law and its amended award of damages, holding that N.R.S. 113.140 requires sellers of residential property to disclose to potential buyers only those defects of which the seller is aware. Thus, the Court concluded that because Nelson had the water damage repaired and was not aware of the presence of elevated amounts of mold, Nelson did not have a duty under Chapter 113 to disclose the prior water damage or the possible presence of mold.

Factual and Procedural History

In 1990, Nelson purchased a cabin in Mt. Charleston. Approximately eight years later, a water pipe burst on the third floor of the cabin, causing substantial damage. Ultimately Nelson had the damage repaired and about four years later, placed the cabin on the market. However, Nelson did not disclose the prior water damage in the Seller’s Real Estate Disclosure Form. After viewing the property several times, Heer made Nelson an offer to purchase the cabin.

Some time after the sale, Heer learned of the prior water damage to the cabin when his homeowner’s insurance canceled his policy, citing that damage as the reason for the cancellation. After conducting several inspections, Heer then learned that the cabin contained elevated amounts of mold. The estimate to replace all of the affected areas totaled more than \$81,000.

Heer filed a complaint in the district court alleging, among other things, breach of contract under N.R.S. Chapter 113, intentional misrepresentation, and breach of the implied covenant of good faith and fair dealing. At the close of trial, Nelson filed motions for judgment as a matter of law and a new trial. The district court denied both motions and Nelson appealed.

Discussion

Pursuant to N.R.S. Chapter 113, sellers of residential property are required to disclose any defects to buyers within a specified time before closing.² However, the seller is only required to disclose defects of which he is aware.³ The issue on appeal is whether Nelson, under

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² NEV. REV. STAT. § 113.130(1)(a).

³ *Id.* at § 113.140(1).

the statute was “aware” of the defects, thus requiring disclosure. After utilizing the canons of statutory interpretation, the court concluded that once the water damage was repaired, it no longer constituted a condition that materially lessened the value or use of the cabin. Accordingly, Nelson did not have a duty to disclose the prior water damage. Thus, the Court held that the district court improperly entered judgment in favor of Heer with respect to his claim under N.R.S. 113.130.

Further, after examining the elements of intentional misrepresentation, the Court held that Heer did not sufficiently establish that the water damage caused the presence of the elevated amounts of mold in the cabin. Thus, Heer could not show that Nelson’s failure to disclose the water damage caused him to suffer damages for mold remediation. With respect to this claim, the Court held that the district court erred when it denied Nelson’s motion for judgment as a matter of law because Heer failed to establish that the water damage proximately caused the elevated amounts of mold.

With respect to Heer’s claim of breach of the implied covenant of good faith and fair dealing, the Nevada Supreme Court found no basis for the verdict in favor of Heer. Because Nelson did not have a duty to disclose the prior water damage under the N.R.S. 113.130, she did not have a duty to disclose the damage under the terms of the contract. Thus, Nelson’s omission did not constitute an arbitrary or unfair act that disadvantaged Heer. Therefore, the Nevada Supreme Court held that the district court erred by awarding damages to Heer.

Conclusion

N.R.S. 113.140(1) only requires the disclosure of defects that materially and adversely affect the value or use of the property and of which the seller is aware, realized, perceived, or knew. Because repaired water damage does not qualify as a defect under N.R.S. Chapter 113 and because Nelson was not aware of the presence of mold in the cabin, she did not violate the statutory disclosure requirements when she omitted the prior water damage from the Real Estate Disclosures Form. Therefore, the district court erred when it denied Nelson’s motion for judgment as a matter of law with respect to that claim.

Finally, Heer failed to establish that the prior water damage was the proximate cause of the subsequent presence of mold in the cabin and also failed to establish that Nelson breached the covenant of good faith and fair dealing. Therefore, the district court should have granted Nelson’s motion for judgment as a matter of law with respect to those claims as well.