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No Liability for Inaccurate MLS Information

A North Carolina court has considered whether a listing broker can be liable for incorrectly stating in the listing that the property was connected to the city sewer when the property actually had a septic tank.

Thomas and Lois Proctor ("Sellers") listed their home for sale with Colon Mintz, Jr. ("Salesperson") of Re/Max Property Associates ("Brokerage"). The Salesperson placed the listing into the local multiple listing service ("MLS"). As part of the property's description, the Salesperson entered that the property was connected to the city sewer system. In fact, the property was not connected and instead had a septic tank. At the bottom of the listing, there was the following disclaimer: "Information deemed RELIABLE but not GUARANTEED".

Wayne and Lynn Crawford ("Buyers") sought to purchase a home that they could rent to their daughter and her roommates. Real estate professional Lou Garrabrant ("Buyer's Representative") represented the Buyers in their search. The Buyers became interested in the Sellers' property, and the Buyer's Representative gave them a copy of the MLS listing sheet for the property. However, the listing sheet identified the Buyer's Representative as the preparer of the listing and the disclaimer did not appear on the modified listing sheet.

The Buyers visited the property and hired an inspector to conduct an inspection of the home. The inspector determined that the sewer system and plumbing functioned properly. However, the Buyers did not discuss whether the property was connected to the sewer system with the inspector, as they allegedly believed the information contained in the MLS listing was accurate.

The Buyers purchased the Sellers' property. Approximately two years after the closing, raw sewage appeared on the property's lawn. The Buyers hired a plumber, and soon thereafter learned that the property had a septic tank and that the tank had a leak. After repairing the problem, the tank developed another leak. At this point, the Buyers paid to connect to the city

sewer system.

The Buyers brought a lawsuit against the Sellers, the Salesperson, and the Brokerage, alleging negligent misrepresentation and unfair trade practices. The trial court dismissed the Buyers' motion for attorneys' fees and also their unfair trade practices allegations. The court held a trial on the negligent misrepresentation allegations, and the jury ruled in favor of the Buyers, awarding them the costs for repairing the septic tank and also the costs for connecting to the city sewer system. The Sellers, the Brokerage, and the Salesperson appealed.

The Court of Appeals of North Carolina reversed the jury award and sent the case back to the trial court for entry of judgment in favor of the Salesperson. The court first considered whether the trial court improperly denied the motion for a directed verdict in favor of the defendants on the negligent misrepresentation allegations. To allege negligent misrepresentation, a party must show he/she justifiably relied upon information to his/her detriment that was prepared without reasonable care by one who owed a duty of care.

The court ruled that the trial court should have entered a directed verdict in favor of the Brokerage, Sellers, and the Salesperson because the Buyers did not rely upon information prepared by them. The information that the Buyers received from the Buyer's Representative was a modified version of the MLS information, with the modified version not including the disclaimer and also stating that the listing had been prepared by the Buyer's Representative. Other cases in North Carolina have held that a party cannot be liable for negligent representation when the other party relied upon information actually prepared by third parties because third party preparation of information should alert the other party of the need to question the reliability of the information.

In this case, the omission of the disclaimer was a material change in the MLS listing, as the disclaimer would have alerted the Buyers of the need to double check the listing information. Because the Buyers relied upon an altered listing prepared by the Buyer's Representative, the court reversed the trial court and ruled in favor of the Salesperson, the Brokerage, and the Sellers.

One judge dissented in the case, arguing that the listing broker had negligently entered erroneous information into the MLS and so the jury verdict should be upheld.

Crawford v. Mintz, Jr., 653 S.E.2d 222 (N.C. Ct. App. 2007).

Editor's Note: Special thanks to Jerry Panz, CEO of the Wilmington Regional Association of REALTORS[®], for alerting NAR Legal Affairs to this decision.