

Recent Contract Cases Uphold the Caveat Emptor Rule in New York State – Let the Buyer Beware!

COUNSEL'S CORNER

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WHITE PLAINS—Recent cases in New York continue the long tradition of holding that after delivery of the deed, i.e. closing, there is little a buyer can do to enforce prior contractual rights on the purchase of real property.

Similarly, the concept of buyer beware has also recently been upheld with respect to conditions discovered after transfer of a piece of real property.

The Court, in *Novelty Crystal Corp. v. PSA Institutional Partners* upheld the concept that after closing the buyer has little remedy for a breach of the contract requiring that the premises be delivered in “vacant and clean” condition. In that case there was evidently little dispute that the premises was not delivered in the required condition as to cleanliness.

The buyer, the Plaintiff in that case, was required to incur the substantial cost of cleaning the premises and removing various pieces of property that had been left in the premises.

The Appellate Division Second Department, which is the Appellate Court for Westchester County (among others), held that the closing and transfer of the deed essentially extinguished the contractual obligation to deliver the premises in vacant and clean condition. Any claim the buyer might have had as to the conditions of delivery did not “survive” the closing.

The Court, therefore, dismissed the claim and the buyer was left to pay for the damages

itself. The Court herein upheld the Seller’s defense that after closing there was no basis for suit. The purchaser was required to take action prior to closing or to refuse to close based on the breach in failing to deliver the premises clean and vacant.

Another Example

Another Court in *Peter Simone v. Homecheck, et al.*, 2007 NY Slip Op 06224 [42 AD3d 518], held that numerous structural and material defects in a home purchased by the Plaintiffs could not constitute a basis for action or damages by the buyer.

The Court held that unless the seller actively concealed any conditions and actively made representations in the

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contract of sale, no claim was available to the purchaser. The Court held that mere silence upon the part of a Seller was not adequate to make a claim for damages later found.

Further, the Court found that making an untrue statement on the property condition disclosure statement required under New York State Law was, in effect, not concealment, but, rather that a thwarting of the buyer’s effort to discover conditions was necessary in order to impose liability upon the Seller.

Thus, anyone who thought that the “disclosure statement” gave protection to a purchaser should be on notice that “it isn’t necessarily so.”

The Court in that case did uphold the idea of a fraudulent representation cause of action based on the property condition disclosure report but dismissed the breach of contract claim on the basis that the contract did not contain the representations in question, the contract merged any prior representations, and that the closing extinguished any claims based on the contract.

As in the above matter, the Court held that the closing precluded any contract claim by the purchaser.

The Seller’s Responsibility

In one case the Court did hold the Seller responsible. In the case of *Calvente v. Levy*, an Appellate Term (9th and 10th Judicial Districts – Westchester) case, even though there was an “as is” clause in the contract of sale, the Court deemed the “Property Disclosure Statement” as being read into the “as is” clause and thus required the Seller to disclose the fact that there has been a

leakage of water in the basement, holding that “upon defendant’s willful failure to disclose the prior flooding prob-

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lem, plaintiff was entitled to recover actual damages.”

This case, however, seems at odds with a later case from a higher court (*Simone*, cited above).

consider that the basic premise is that “buyer must beware” and that Purchaser’s counsel should be careful to assure protection along those lines.

Prudential Rand Realty Merges With Kahn Inc. Realtors

NEW CITY—Prudential Rand Realty and Prudential Rand Commercial Services recently announced a merger with Kahn Inc., Realtors of Newburgh.

Kahn has operated a real estate business in Newburgh for more than 40 years.

As part of the transaction, Prudential Rand will vacate its location in New Windsor and move into the 4,700 square-foot Kahn Realtors office at 100 Stony Brook Court off Route 17K in Newburgh. Beverly Peryea will manage the combined residential office that will have 50 agents, including Kahn’s former staff of 12. Harold Kahn will join Prudential Rand Commercial Services as an associate broker, officials said.

“Harold Kahn is an icon in the real estate industry, so we are excited to partner with a

company with a great reputation for expertise and service,” said Matt Rand, managing partner of Prudential Rand Realty and Prudential Rand Commercial Services. “This merger positions us as a leader in the Newburgh and New Windsor real estate markets, and enables us to take full advantage of the wealth of commercial development opportunities around Stewart Airport.”

Kahn founded his real estate company in Newburgh in 1967. He has maintained a successful business in both the residential and commercial sectors, spokesmen said. Kahn has been in his current location since 1985. In the late 1980’s, his Stony Brook Office Park – eight individually owned, Colonial Williamsburg-style office

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