

Daily Development for Monday, August 30, 2010

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An Ira Meislik contribution (edited by you know who):

BROKERS; DUTY TO WARN: Even though a broker's duty to warn of hazardous conditions at a property is not limited to instances where a broker is holding an open house for potential buyers, where a broker arranges for a rental, but the renters had ample time to inspect the property themselves to find any dangerous conditions, the broker will not be liable for injuries resulting from the dangerous condition at the property.

Reyes v. Egner, 201 N.J. 417, 991 A.2d 216 (2010); April 8, 2010.

A renter entered into a short term lease agreement for a house at the Jersey Shore. She intended to occupy it, along with her family, for a vacation over the Labor Day weekend. The house had an elevated rear deck adjacent to the master bedroom. The deck was accessible through a sliding glass door in the master bedroom which led to a small wooden platform on the top of the deck. The platform was about seven inches below the door frame, and there was another six and one-half inch drop from the platform to the deck. There were no handrails attached to the platform or the deck.

On their ninth day at the house, the renter's father, for the first time, opened the sliding glass door to go out onto the deck. He fell down the stairs and permanently injured his back. The father then sued the property owners and the broker for negligence, breach of implied warranty of habitability, and violations of the Consumer Fraud Act. The lower court found that, as a matter of law, neither the home owners nor the broker had a duty to conduct a reasonable inspection of the property for hazardous conditions before renting it out. The father appealed.

The Appellate Division affirmed summary judgment for the broker, and remanded as to the homeowners.

With respect to the broker liability issue, the Appellate Division noted that a prior New Jersey Supreme Court case, Hopkins v. Fox & Lazo Realtors, imposed a duty of care upon real estate agents conducting open houses to attract potential home buyers to inspect the property and warn about reasonably discoverable dangerous conditions. In Hopkins, the Supreme Court extended a duty of care to broker based on a fairness inquiry that balanced four factors: (1) the nature of the parties' relationship; (2) the nature and foreseeability of the risk; (3) the existence of an opportunity to inspect and warn; and (4) the public policy behind the duty. The Court imposed a duty of care upon brokers to protect invited visitors to open houses because the nature and duration of their visit would not afford them the opportunity to recognize the dangerous conditions for themselves.

However, the Appellate Division refused to extend the duty to warn to brokers that facilitate short term leases of summer rental property. The Appellate Division deferred to the Supreme Court to determine whether or not the Hopkins duty to warn should be extended to short-term rentals.

The Supreme Court granted certification. The Court was deadlocked, and therefore the Appellate Division decision was affirmed. The Court's refusal to extend the Hopkins duty to warn was not based on the Court's conviction that the duty be limited to instances where a broker is holding an open house for potential buyers. Rather, the Court's decision not to extend the duty to warn was limited to the facts of this case. The Court found no obligation to warn in this case because the renters were in the house for nine days before the accident occurred. Therefore, they had ample time to inspect the property for themselves to find any dangerous conditions.

The dissenting justices rejected the Court's finding that there was no duty to warn because the renters had ample opportunity to inspect the property. They noted that the renters' opportunity to discover the defects on their own raised an issue as to whether or not they were comparatively negligent, not whether or not the broker had a duty to warn them about the deck.

Editor's Comment: For a discussion of the landlord liability issue on this one, see the DD for 3/9/09 on the DIRT website. The court stated a new rule that short term landlords have a duty of reasonable care to discover and disclose defects not reasonably discoverable by tenant. It appears that the landlord in fact knew of the somewhat special nature of the stairs here, and the court triable issues on the questions of whether landlord should have known of the danger and whether the tenant should have discovered it during their week on the premises before the accident occurred. \

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