

Yes, Your Honor,
I Did Disclose



Learn about 6
appellate court
decisions and how
they impact you!



4 CE Education

1

Rich Cederberg

**Your instructor is not a
Lawyer! He has received
lots of help preparing for
this this class, but he is
not a lawyer!**

2

NMAR General Counsel

For the NMAR Legal Hot Line ...

Ashley Strauss-Martin

(877) 699-7266
(505) 821-1583

Mon-Fri 9:00 AM - 5:00 AM

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NMAR General Counsel

Please remember – she is NMAR’s legal counsel, there to serve its members, but she is not your attorney.

In other words, there is no attorney/client privilege.

4

Our Purpose

5

Today’s Mission

First

... Review disclosure requirements for real estate brokers.

Second

... Learn about what the Courts have said about disclosure and behavior.

Third

... Understand how we are required to conduct ourselves in the practice of real estate.

6

But It Is NOT

The purpose of today's class to try to understand agency.

7

But It Is

The purpose of today's class to understand how to behave!

8

License Law Regarding Agency Changed in 2000

License law says that there is no agency unless agency is specifically created in writing. However, courts impose behavior standards on you & me.
“Common law” says that being a licensed real estate broker or salesperson is special and leads to required ***behavior*** standards.

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DISCLOSURE

Disclose, Disclose, Disclose!
(unless you're not supposed to)

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DISCLOSURE REQUIREMENTS

- **NMREC Rules – Broker Duties**
- **Federal Statutes**
- **New Mexico Statutes**
- **Code of Ethics**
- **Case Law**
 - *(we'll get to that later)*

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BROKER DUTIES

- **“Brokers shall disclose the applicable set of broker duties”**
- **“Brokers shall perform all duties established for brokers by the commission.**

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BROKER DUTIES

- ▣ **A. Brokers owe the following duties to *prospective* buyers, sellers, landlords (owners) and tenants:**
- ▣ **B. Brokers owe the following Broker Duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services:**
- ▣ **C. Brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:**
- ▣ **D. Brokers owe the following professional obligations to other brokers;**

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BROKER DUTIES A

- ▣ **Potential conflict of interest**
 - **Any other written agreement the broker has in the transaction.**
 - **Any written brokerage relationship with any other parties to the transaction.**

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BROKER DUTIES A

- ▣ **Potential conflict of interest**
 - **Any material interest of a business, personal or family nature.**
 - **Any written agreement the broker has with a licensed Transaction Coordinator providing service related to the transaction.**

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BROKER DUTIES A

- ▣ **Adverse material facts *actually known* by the broker about**
 - **Property**
 - *(... caution ... common law goes much further)*
 - **Transaction**
 - **Financial ability of the parties**

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BROKER DUTIES B

- **Brokerage Relationship Options**
 - **Dual Agency**
 - **Exclusive Agency**
 - **Transaction Broker**

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OTHER REQUIRED DISCLOSURES

- **Federal Law**
 - Lead Based Paint Addendum.**
 - LBP Renovation, Repair and Painting Program disclosure.**

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OTHER REQUIRED DISCLOSURES

New Mexico Law (Statutes)

- Estimated Property Tax Levy
 - Public Improvement District
 - Homeowners Association
- ### NM Environmental Dept. (Regulation)
- Clandestine Drug Laboratory

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NOT Required to Disclose

**Data about group homes or from a sex offender registry.
Personal information about your client.**

20

NOT Required to Disclose

Caution ...wonder how the courts might address that one...

21

NOT Required to Disclose

**Real Estate Disclosure Act:
47.13.2**

- ▣ **Site of a natural death**
- ▣ **Homicide, suicide, assault, sexual assault or other felony**
- ▣ **Human immunodeficiency virus**
- ▣ **AIDS**

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Do NOT Disclose

- ▣ **Confidential information**
- ▣ **Learned in a prior agency role**
 - **Unless consent is given**
 - **Or it's required by law**

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Do NOT Disclose

- Listing Broker is NOT required to disclose**
- **Seller will accept lower than list**
 - **Seller will agree to financing terms**
 - **Seller's motivation for selling**
 - **Any other info seller has asked to remain confidential**

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Do NOT Disclose

Buyer's Broker is NOT required to disclose

- Buyer will pay more than offered
- Buyer's motivation for buying
- Any other info buyer has requested in writing to remain confidential unless disclosure is required by law.

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SELLERS REQUIREMENT TO DISCLOSE

- No statute that dictates a seller must disclose adverse material facts.
- No law says they must complete a Property Disclosure.
- Requirement to disclose comes from case law.

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SELLERS REQUIREMENT TO DISCLOSE

“Actionable fraud is found if a party to a transaction knows of material facts, has a duty to disclose, and remains silent.”

27

SELLERS REQUIREMENT TO DISCLOSE

“Duty to disclose may arise if there is knowledge that the other party to a contemplated transaction is acting under a mistaken belief.”

28

SELLERS REQUIREMENT TO DISCLOSE

“Duty to disclose may also arise if one has superior knowledge that is not within the reach of the other party or could not have been discovered by the exercise of reasonable diligence.”

29

SELLERS REQUIREMENT TO DISCLOSE

**“NM Courts have long recognized the claim of fraudulent non-disclosure in real estate transactions.”
Ashley Strauss Martin**

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SELLERS REQUIREMENT TO DISCLOSE

□ And from the NMAR Purchase Agreement.

19. **SELLER'S DUTY TO DISCLOSE.** Seller shall disclose to Buyer any Adverse Material Facts known to them about the Property and shall have an ongoing obligation up until, and including, the Settlement/Signing Date to disclose any newly discovered Adverse Material Facts. In the event that Seller discloses newly discovered Adverse Material Facts after Seller's initial Property Disclosure Statement is delivered, Buyer's Objection Deadline for the newly disclosed Adverse Material Facts shall be three (3) days from Buyer's receipt of the disclosure(s) and the Resolution Deadline shall be six (6) days from Buyer's receipt of the disclosure(s). Failure of Buyer to timely make objections to the newly disclosed Adverse Material Facts shall constitute a waiver of Buyer's right to object or terminate based on that newly disclosed Adverse Material Fact. Notwithstanding the foregoing, Seller shall have NO obligation to inspect the Property for the Buyer's benefit or to repair, correct or otherwise cure known Adverse Material Facts that are disclosed to Buyer or unknown Adverse Material Facts that are discovered by Buyer's inspections. Adverse Material Facts do not include facts exempt from the requirement of disclosure under 47-13-2 NMSA 1978, NMAR Form 1110 – Property Disclosure Statement (Adverse Material Facts).

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SELLERS REQUIREMENT TO DISCLOSE

- But what if the seller fails to disclose?
 - *Then the broker needs to disclose for them!*

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Common Law

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Common Law

An accumulation of appellate court opinions over a period of time

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Creation of Common Law

- ▢ **Case by case basis**
- ▢ **From NM Appellate Courts only**
 - ... NM Court of Appeals, or
 - ... NM Supreme Court
- ▢ **Maybe less than 1% make it to appeal**

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How Do We Get to an Appellate Court?

Court of Appeals

Either party has automatic right to appeal

NM Supreme Court

Has the option to review or not

36

Common Law

The Court's decision is binding throughout the state, and becomes common law

37

What is a Precedent?

Legal principle, created by a court decision, which provides an example or authority for judges deciding similar issues later.

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But Then There Is EVOLUTION

Our profession is constantly changing, and so are our "Standards of Care" and our "Standards of Practice"
And thus, the appellate court may create new "common law"
as we just stand there
Let's think of some examples

39

How Can We Deflect This Danger?

Continuing ed classes
Trade association meetings & presentations
Trade association publications
Networking with others
Reading the newspaper!

40

REC Hearing? Ethics Hearing?

Suppose we made it through these OK ...
Sorry, but forget it ... they usually mean nothing or almost nothing in court
Procedures and standards were different; results usually are non-admissible as "hearsay"

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Definitions

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Fraud

1. **A lie**
2. **Knowingly or recklessly told**
3. **Intending to deceive**
4. **Intending to induce reliance**
5. **And relied upon by a damaged party**

43

Active Fraud

- ▣ **An Intentional misrepresentation**
- ▣ **A false statement about a material fact**
- ▣ **Attempting to conceal a material defect**
- ▣ **Making careless statements w/o regard to accuracy**

44

Passive Fraud

- ▣ **Duty to speak even though the question did not come up.**

45

Constructive Fraud

- 1. Unintentional deception or misrepresentation.
- 2. Obtaining of a legal but unconscientious advantage through an unfair transaction, such as in dealings with the ignorant, poor, or weak.

46

Negligence (an act or an omission)

- When we fail to do something that we are supposed to do
- No intent to deceive

47

Negligent Misrepresentation

When we say something wrong (misrepresent), because we did not do what we were supposed to have done (negligent)

48

Negligent Misrepresentation

(And if we had done the right thing we would have had the right answer!)

49

Conspiracy

A secret plan by a group to do something unlawful or harmful

50

Void vs. Terminated

Void = it never happened

Terminated = it happened but now it has ended

Terminated = rights
Void = no rights

51

Void vs. Terminated

Void = it never happened
(*Annulment?*)

Terminated = it happened but
now it has ended
(*Divorce?*)

Terminated = rights
Void = no rights

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Summary Judgement

- A summary judgement is a judgement entered by a court for one party and against another party summarily, i.e., without a full trial.
- Such a judgement may be issued on the merits of an entire case, or on discrete issues in that case.

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Summary Judgement

- A motion for summary judgement is a request for the court to rule that the other party has no case, because there are no facts at issue.

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Remand

Return a case to a lower court for reconsideration.

55

Case Studies

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About Today's Case Studies

- Range from mid 60's to 2004
- Sometimes we will not learn the final outcome of a specific case
- When an appellate court reverses a lower court, it "remands" the case
- The result really does not matter
- *What matters is what the justices wrote and why, and how you and I can take that forward tomorrow*

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So Please Keep Asking Yourself These Questions

- ▣ Did it matter if the licensees in today's cases had an agency or non-agency relationship?
- ▣ Does it matter if you and I have an agency or non-agency relationship with our clients today?
- ▣ How can we apply what these justices have said to what we do every day in our profession?

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Barber's v. Stryker

- ▣ Conspiracy
- ▣ Fraud
- ▣ Breach of Duties
- ▣ Negligence

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The Big Picture

- ▣ **1966: Mrs. Chisholm owned 18 acres in Las Cruces**
- ▣ **Barber's Super Markets (Horn, owner) wanted to develop a grocery store, needed 4.5 acres**
- ▣ **Barber's tried to buy 4.5 acres**
- ▣ **Barber's wound up buying all 18 acres**

60

The Case Facts

- ▣ 1966: Stryker Rlty, Las Cruces
- ▣ Shahan licensed w/ Stryker
- ▣ Hyatt licensed w/ Stryker
- ▣ Hyatt saw Horn, Horn interested
- ▣ Horn saw 18 acres, interested in 4.5 acres, asked how much \$
- ▣ Hyatt assisted with much info: zoning, traffic, fill dirt, etc.

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Meanwhile, On The Seller's Side of Life

- ▣ Mrs. Chisholm was a FSBO
Stryker did NOT have a listing
- ▣ Hyatt and Stryker did not tell Chisholm about Horn's interest in 4.5 acres of the 18 acres
- ▣ Chisholm sold all 18 acres to Shahan (who was still licensed w/Stryker) ... \$150,000

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Let's Continue With Seller #2 (Licensee Shahan)

- ▣ Shahan agreed to pay Stryker 5% if Stryker sold to Horn
- ▣ Stryker introduced Shahan to Horn as the owner
- ▣ Shahan said, unable to close for 6 months -- "tax problem"
- ▣ Barber's (thru Horn) agreed to buy all 18 acres for \$275,000

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Stryker and Disclosures

- **Stryker did not disclose**
- **1. Shahan licensed w/Stryker**
- **2. Stryker acting as Shahan's broker**
- **3. Shahan had just bought for \$150,000**
- **4. Any prior attempt to get lower price**
- **5. Fair market value**

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Bernalillo County District Court

- **Barber's sued Stryker & Shahan:**
- **(1) conspiracy to commit fraud;**
- **(2) violation of fiduciary duties;**
- **(3) negligence.**

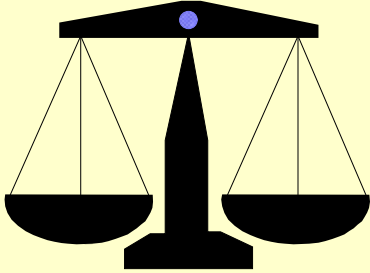
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Bernalillo County District Court

- **Stryker argued:**
- **(1) That Horn had given him instructions to procure the land;**
- **(2) That he never had the 18 acres listed for Chisholm;**
- **(3) That he had no oral or written contract w/Barber's either, was only a "middleman"**

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You're On The Jury!



67

Judge Payne

- ▣ **Ruled in favor of real estate brokers Stryker and Shahan**
- ▣ **No evidence of a conspiracy to defraud Barber's**
- ▣ **Stryker was a "middleman"**
- ▣ **There was no fiduciary between Barber's & Stryker**

68

NM Court of Appeals *(1972 ... 5 years later)*

Judgement Reversed

69

NM Court of Appeals (1972 ... 5 years later)

- **“Constructive fraud”**
- **A breach of legal or equitable duty which is fraudulent because of its tendency to deceive others.**

70

NM Court of Appeals (1972 ... 5 years later)

- **Non-disclosure of material facts when the person charged has a duty to speak under existing circumstances.**

71

Stryker's Role

- **Shahan's offer to pay the 5% commission was an inducement to Stryker to sell to Barber's and made Stryker the agent of Shahan**
- **“... Stryker was employed by Barber's to try to procure....”**

72

**Therefore ... Stryker
Was A Dual Agent**

- **“There is no more effective means of committing a fraud in a case of this kind than to corrupt the buyer’s agent.”**

73

**Therefore ... Stryker
Was A Dual Agent**

- **“Buyer relies upon the judgement and watchful care of his Agent to protect his interests.”**

74

**Therefore ... Stryker
Was A Dual Agent**

- **“An agent cannot serve both parties, because in serving one, he betrays the other.”**
- **“When there is constructive fraud good faith disappears.”**

75

And About Stryker's "Middleman" Claim

- **"Middleman"**
- **Employed for the mere purpose of bringing buyer/seller together**
- **May not advise or negotiate or have anyone rely on his skill or judgement**
- **Therefore, the trial court erred as a matter of law by saying Stryker was a middleman only**

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Final "Fiduciary" Comment

- **Stryker was working for Barber's in procuring the land, and was not a "middleman"**

77

Final "Fiduciary" Comment

- **"Stryker was an agent for Barber's, therefore Stryker had a fiduciary relationship existed between Barber's."**

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Barber's v. Stryker Summary

- ❑ **Constructive Fraud**
- ❑ **Dual Agent**
- ❑ **Middleman**
- ❑ **Fiduciary with Nothing in Writing**

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Amato v. Rathbun

- ❑ **Negligent Misrepresentation**
- ❑ **1976: Amato wanted to buy an investment property**
- ❑ **Amato contacted Rathbun**
- ❑ **They looked at 904 Third St SW, Abq, which needed some "TLC"**

80

And Rathbun Spoke, And Amato Listened

- ❑ **Rathbun said it needed only cosmetic repairs to be a good income-producing property**
- ❑ **May, 1976: Amato bought it**
- ❑ **And shortly thereafter, the property was condemned, closed-down, and then destroyed**

81

Bernalillo County District Court

- Amato sued Rathbun for
- 1) negligent misrepresentation
- 2) fraudulent failure to disclose

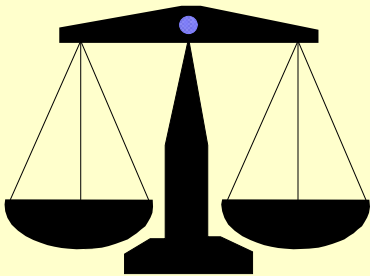
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Bernalillo County District Court

- Rathbun argued:
- (1) Did not know any adverse material facts about the property
- (2) Disclosed everything that she knew
- (3) Held back nothing

83

You're On The Jury!



84

Judge Love

- ❑ Ruled that Rathbun had no actual knowledge of defects in the property
- ❑ Granted summary judgement in favor of real estate broker Rathbun (*no trial was held*)
- ❑ Amato appealed

85

NM Court of Appeals (1982 ... 6 years later)

- ❑ Affirmed that Rathbun had no actual knowledge and therefore was not guilty of fraud
- ❑ **HOWEVER ...**

86

Back To District Court

- ❑ Court of Appeals said Rathbun had a duty beyond her actual knowledge, and therefore
- ❑ Remanded the case regarding *Negligent Misrepresentation*, to determine the standard of care for acquiring & communicating info about the property and whether Rathbun met this test

87

Here Comes More Common Law

- ▣ **“A broker is a fiduciary, in a position of great trust and confidence, and must exercise the utmost good faith.”**
- ▣ **Iriart v. Johnson**

88

Here Comes More Common Law

- ▣ **Lower court ... Rathbun’s only duty was to disclose actual knowledge**
- ▣ **Court of Appeals ... “We disagree.”**

89

“We Disagree” ... And Here’s Why

- ▣ **The court must decide if a broker has a “duty to educate himself on the condition of property for which he intends to arrange a sale”**

90

“We Disagree” ... And Here’s Why

- **“A broker’s duty is not limited to failure to convey information within his actual knowledge.”**
- **Recipient of the information is entitled to receive “care and competence.”**

91

“We Disagree” ... And Here’s Why

- **“Defendants would only place a duty of disclosure on brokers if they have actual knowledge of a defect with the property, no matter how obvious the problem may be. We disagree.”**

92

Negligent Misrepresentation Is

- **“Negligent misrepresentation is when one supplies information for the guidance of others, if one fails to exercise care or competence in obtaining or communicating the information.”**

93

And Oh, Yes, About Your Real Estate License

- Another reason for the broker's duty to exercise reasonable care is "that they are licensed."

94

And Oh, Yes, About Your Real Estate License

- Another reason for the broker's duty to exercise reasonable care is "that they are licensed."
- Further, the license law "is to protect the public against abuses which can occur within the real estate business."

95

And More Common Law This Day

- "Thus, we hold that it is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased."

96

And More Common Law This Day

- But added that such knowledge does not relate to hidden or latent defects

97

But One Big Issue Remained Open

- This was an appeal on summary
- There never had been a trial
- At trial, the plaintiff would need to show that the defendant failed to live up to the standard of care in the community, ...
- And the defendant would need to show that she did indeed live up to this.

98

Easton v. Strassburger

- **Negligence**
- This is a landmark real estate disclosure case
- This is the case that started “should have known”
- It’s a California case, and it swept eastward

99

Background

- ▣ **1976: Strassburger listed his 3000 sq ft home w/pool & guest house for sale w/ Valley Realty**
- ▣ **Simkin and Mourning were co-listers with Valley Realty**
- ▣ **Easton (buyer) was working with another broker**
- ▣ **Easton purchased the house for \$170,000**

100

Case Facts

- ▣ **Simkin and Mourning had noted that the guest house floors were not level**
- ▣ **Shortly after closing, earth movement and slides destroyed a portion of the driveway and caused the foundation of the house to settle, causing additional interior damage**
- ▣ **Expert testimony: house had been built on fill, not properly engineered, and this caused the slides**

101

And While the Rest of the California Market Went Up

- ▣ **Easton's new house ^{RC2}dropped from \$170,000 to \$20,000**
- ▣ **And the cost to repair the damage was estimated at \$213,000**
- ▣ **So he did what any red-blooded buyer would do – he sued.**

102

Superior Court, Contra Costa County

- **Easton sued Strassburger and Valley Realty for negligent misrepresentation**

103

Superior Court, Contra Costa County

- **Valley Realty argued:**
- **(1) That it had no actual knowledge of adverse material facts;**
- **(2) That it had no duty to investigate in order to discover defects for the benefit of the buyer.**

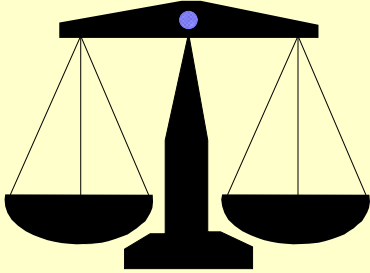
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WHOA !!!!!

- **Complete sidebar here for a moment**
- **Did you get that argument about “*for the benefit of the buyer*”?**
- **Just think about all the times you have seen in MLS, “*Buyer’s broker to verify all ...*”**
- **Does this mean anything?**

105

You're On The Jury!



106

Judge McBride

- ▣ **Ruled in favor of Easton and against five defendants, including real estate broker Valley Realty and the two listing brokers**
- ▣ **Judgement ... \$197,000**
- ▣ **Valley Realty appealed**

107

Calif Court of Appeals *(1984 ... 7 years later)*

- ▣ **Two Major Issues for the Court:**
- ▣ **#1 ... Is a broker negligent if he fails to disclose defects which he should have discovered through reasonable diligence?**
- ▣ **And...**

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And ...

- **#2 ...
Does a broker have a duty to conduct a reasonably competent and diligent inspection of property he has listed for sale in order to discover defects for the benefit of the buyer?**

109

The Crushing Opinion (Part 1)

- **“... we hold that the duty of a real estate broker, representing the seller, to disclose facts ... includes the affirmative duty to conduct a reasonably competent and diligent inspection ... and ...**

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The Crushing Opinion (Part 2)

- **“... and to disclose to prospective purchasers all facts materially affecting the value or desirability of the property that such an investigation would reveal.”**

111

Comments From The Court

- ▣ **Fraudulent concealment**
 - 1) broker must disclose material facts known by him
 - 2) no -- not a factor in this case
- ▣ **Simple negligence**
 - 1) not necessary that the broker had actual knowledge or misrepresented
 - 2) when the broker owes a legal duty to use due care and fails to do so
 - 3) yes -- a factor in this case

112

More Comments From The Court

- ▣ **Even when there is no contract, broker "is clearly under a duty to exercise reasonable care to protect those persons whom the agent is attempting to induce into entering a real estate transaction for the purpose of earning a commission."**

113

The Court and Broker's Duty to Disclose

- ▣ **Broker must disclose facts that are accessible only to him and his principal.**
- ▣ **Why? To protect the buyer from the unethical broker, and to ensure that the buyer is provided sufficient and accurate information**
- ▣ **Broker has a duty to disclose reasonably discoverable defects**

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Why This Duty To Discover?

- ▣ If not, then broker would be “shielded by his ignorance of that which he holds himself out to know.”
- ▣ And this would “reward the unskilled broker for his own incompetence.”
- ▣ And this “would inevitably produce a disincentive for a seller’s broker to make a diligent inspection.”

115

And Here We Go With Our “License” Again

- ▣ A broker is a “licensed person or entity who holds himself out to the public as having particular skills and knowledge in the real estate field.”
- ▣ “Real estate agents hold themselves out to the public as professionals.”
- ▣ “The real estate broker is brought by his calling into a relation of trust and confidence.”

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Easton v. Strassburger Summary

- ▣ **Duty to Inspect / Discover**
- ▣ **Simple Negligence**
- ▣ **Reasonable Care**
- ▣ **Cannot be Shielded by Ignorance**
- ▣ **Being Licensed**

117

So How Comfortable Are You With Disclaimers?

- ▣ Does “Buyer’s broker to verify all ...” afford you any protection?
- ▣ Do any disclaimers in any of our contracts afford us any protection?
- ▣ **No, not if we knew or should have known something, and did not disclose it.**

118

Swallows v. Laney

- ▣ **Breach of Contract**
- ▣ **Breach of Fiduciary**
- ▣ **And**
- ▣ **You will become a Supreme Court Justice in a few minutes**

119

The Big Picture

- ▣ **Laney owned 4 parcels of land in Catron County**
- ▣ **Real estate broker Swallows listed Laney’s land for sale**
- ▣ **Listing expired**
- ▣ **Swallows tried to buy it**

120

Case Facts

- **1980: Swallows listed 3 parcels,**
 - 1. 7 acres w/water rights & house**
 - 2. 19 acres vacant**
 - 3. 48.6 acres w/water rights**
- **10/80: all listing agreements expired**
- **Swallows continued to try to sell**
 - 1. All 3 of the above parcels, plus**
 - 2. 4th parcel (not formally listed)**
- **2/81: Swallows ... interested in 48.6 ac for himself, opened negotiations**

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Case Facts (continued)

- **Swallows continued trying to sell the other parcels for Laney**
- **4/1/81: Broker Swallows wrote Purch Ag / 48.6 acres / \$72,500**
- **4/13/81: Seller Laney accepted, closing set for 4/30/81**
- **Later: postponed to 5/26/81**
- **5/23/81: Laney arrived, *but***

122

Then the Wheels Started To Come Off the Wagon

- **5/26/81: Swallows said, "Not ready."**
- **Laney said, "Forget it – not selling."**
- **Seller Laney unwilling to extend, returned earnest \$\$, decided not to sell the 48.6 ac (w/ its water rights)**
- **After 5/26: Broker Swallows several times tried to close on the 48.6 ac, but Seller Laney said, "No"**

123

Meanwhile ...

- **Broker Swallows and Seller Laney continued a relationship ...**
- **Seller Laney re-listed the other two parcels with Broker Swallows, and**
- **Seller Laney formally listed his 4th parcel with Broker Swallows, and**
- **Swallows eventually sold at least some of this land, and**
- **Broker Swallows rec'd commissions**

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What Else Went On Between These Two?

- **Seller Laney asked about the value of his water rights, and**
- **Broker Swallows: "Don't know."**
- **Also, Broker Swallows never offered info regarding possible potential value if the 48.6 acres were to be sold in segments**
- ***(Not clear if Seller Laney asked)***

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Catron County District Court

- **Swallows – yes, Swallows, the RE Broker – sued Laney – the Seller – for breach of contract**
- **Laney defended: Purchase Agreement had expired**
- **Laney defended: Swallows had breached his fiduciary to Laney with regard to 48.6 acre parcel**

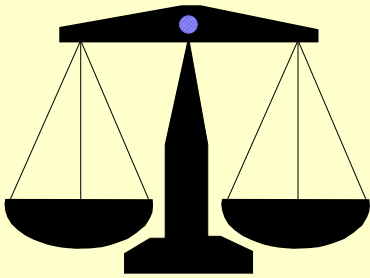
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To Which Broker Swallows Replied

- After the listing agreement expired,
- He no longer owed any fiduciary duties to Laney (the seller)

127

You're On The Jury!



128

Judge Kase

- Ruled in favor of Seller Laney
- (1) Swallows breached his fiduciary duties toward the Laney's, contract was void;
- (2) Ruled that the purchase agreement had expired and that therefore Swallows had no right to seek performance

129

Judge Kase

- ▣ Swallows says district court erred, that no fiduciary duties were owed, so
- ▣ Broker Swallows appealed

130

NM Supreme Court (1984 ... 3 years later)

- ▣ In its opening paragraph, said that the case involves an “important question of first impression in NM”:
- ▣ First impression: *“a case in which a question of interpretation of law is presented which has never arisen before in any reported case.”*

131

NM Supreme Court (1984 ... 3 years later)

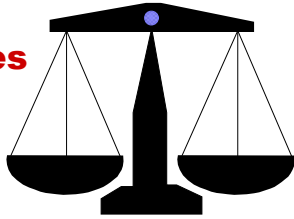
- ▣ Here’s the question:
- ▣ “Whether a fiduciary relationship between a real estate broker or salesperson and his principal may continue to exist under certain circumstances after the expiration of a written listing agreement.”

132

You're Now On The Supreme Court!

Question #1:

- Do a broker's responsibilities continue after expiration?



133

Here Comes The Common Law

- Continuing fiduciary after expiration?
- Maybe
- It depends on other circumstances

134

"Other Circumstances"

1. Course of conduct between licensee and principal
2. Extent to which licensee holds himself out as advisor & confidante
3. Degree of principal's dependence on licensee for advice
4. Sophistication of principal in r.e.
5. Familiarity of principal with value

135

Conclusion

- ▣ Swallows continued to act as Laney's real estate agent
- ▣ Swallows continued to give Laney advice
- ▣ Laney continued to rely on Swallows
- ▣ Swallows has "additional obligation"
- ▣ Otherwise, ...

136

Otherwise ...

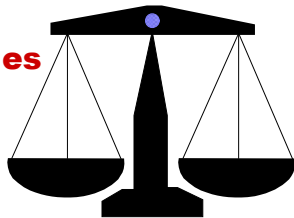
- ▣ "... negotiations might be unequal and the REALTOR'S ideals of fairness, high integrity, and strict moral conduct could be jeopardized."
- ▣ HUH? Where did THAT come from?
- ▣ Our Code of Ethics – the Supreme Court has at times referred to our Code as a "Standard" to which we must adhere in our civil conduct

137

You're Now On The Supreme Court!

▣ Question #2:

Did Swallows breach his duties to the Laney's?



138

Here Comes The Common Law

- ▣ **Buying a client's property**
- ▣ **"Strict adherence to fiduciary duties ... is especially important when the broker ... buys the listed property for himself."**
- ▣ **"The opportunity ... for taking advantage of facts and information ... is great."**

139

So Remember....

- ▣ **When buying before expiration, must disclose all material facts**
- ▣ **Buying after expiration does not -- BY ITSELF -- absolve broker from these duties**

140

Conclusion

- ▣ **Swallows did not disclose all information within his knowledge**
- ▣ **Swallows did not advise Laney of potential value**
- ▣ **Swallows "dodged" the issue of the value of water rights, even though he had listed property for Laney, property that had water rights.**

141

Conclusion

- **Swallows had already been negotiating the sale of the water rights;**
- **Swallows breached his duties**

142

Conclusion

- **“At the same time that Swallows was negotiating to buy the 48.6 acre tract, he was also attempting to sell another piece of property for the Laneys. Under such circumstances Swallow’s negotiations with the Laneys to purchase for his own account the 48.6 acre tract cannot be considered to have been arms-length.**

143

Conclusion

- **Judge cites Amato v Rathburn: “A broker...holds a position of great trust and confidence and must act in utmost good faith.”**

144

Conclusion

- **We believe that the court should consider...the fairness of the price paid for the property by the broker, bearing in mind the fair market value of the property at the time of sale.”**

145

Therefore

- **There was a breach of fiduciary, and**
- **“... the transaction is void as against public policy whether the broker has profited thereby or not.”**

146

Here Comes The Common Law

- **When do we incur those fiduciary duties?**
- **“A fiduciary relationship exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interest of one reposing the confidence.”**

147

But What If It Is Not In Writing?

- ▣ The Statute of Frauds requiring a real estate listing to be in writing? HAH!
- ▣ "... the statute requiring a real estate listing to be in writing was to protect the public against fraud, not to relieve a real estate agent from his duties and obligations."
- ▣ Fiduciary relationship and duties may exist in the absence of a written listing agreement

148

Therefore, Again ...

- ▣ There was a breach of fiduciary, and
- ▣ "... the transaction is void as against public policy whether the broker has profited thereby or not."

149

Oh Yes, Purchase Agreement Had Expired

- ▣ Trial court handled that one with testimony and evidence
- ▣ We're not going to go there
- ▣ Purchase Agreement did provide that "time is of the essence."
- ▣ Contract was no longer enforceable

150

Swallows v. Laney Summary

- ▣ **Fiduciary After Expiration**
- ▣ **Buying a Client's Property**
- ▣ **When We Incur Fiduciary**
- ▣ **Statute of Frauds**
- ▣ **Transaction Void**
- ▣ **Time Is Of the Essence**

151

Gouveia v. Citicorp

- ▣ **Negligent Misrepresentation**
- ▣ **Citicorp owned a house in Rio Rancho**
- ▣ **1982: Weagley listed it**
- ▣ **Gouveia bought it**
- ▣ **It had "a few" (??) defects**

152

Case Facts

- ▣ **Weagley put listing into MLS, wrote, "All in Top Shape."**
- ▣ **Gouveia working with broker Graham, wrote offer**
- ▣ **Offer included "As-Is" language**
- ▣ **Consumer Protection inspected**
- ▣ **Gouveia closed**

153

And Then The Wheels ...
(You know the rest by now)

- ▣ **Rec room lacked a foundation**
- ▣ **Rec room was not and could not be heated**
- ▣ **Rec room had a structurally deficient roof and ceiling**
- ▣ **Wiring & construction did not conform to building code**
- ▣ **Hot tub / spa unusable**

154

**Sandoval County
District Court**

- ▣ **And so Gouveia moved out (4/83) and, of course, sued both brokers and the seller for rescission or negligent misrepresentation**

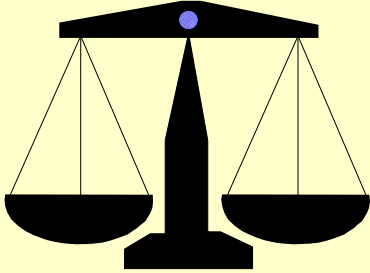
155

**Sandoval County
District Court**

- ▣ **Weagley defended:**
 - (1) **No direct contact with buyer, therefore owed buyer no duty;**
 - (2) **Did disclose actual knowledge;**
 - (3) **Gouveia relied on Consumer Prot**
 - (4) **Purchase agreement had “As-Is”**

156

You're On The Jury!



157

Judge Perez

- ▣ **Ruled in favor of real estate broker Weagley**
- ▣ **Ruled that Weagley had no actual knowledge of defects in the property**
- ▣ **Granted summary judgement for Weagley and Citicorp**

158

NM Court of Appeals *(1984 ... 2 years later)*

- ▣ **Gouveia appealed, claiming that there was a material issue of fact whether Weagley knew or should have known the condition of the property**
- ▣ **Court of Appeals affirmed “no actual knowledge” ... but**
- ▣ **Remanded for Negligent Misrepresentation**

159

Comments From The Court

- **“A listing broker preparing a property description ... should know that [it] will be relied upon, both by other brokers and by prospective purchasers.”**
- **“Listing brokers assume a duty to all those who subsequently rely on their characterizations of the property....”**

160

More Comments From The Court

- **“A listing broker is liable [for negligent misrepresentation] if he fails to exercise reasonable care or competence in obtaining or communicating information.”**

161

And ...

- **“If a broker exercising reasonable care should have had or could have gained actual knowledge of defects in property, he may be held liable for negligent failure to discover and disclose those defects.”**

162

OK -- But What About the Consumer Protection Report?

- ▣ The report from Consumer Protection “does not, however, preclude the Gouveias from also relying on representations made by Weagley.”
- ▣ This report “cannot shield Weagley from liability for known or negligent misrepresentation.”

163

Well, OK -- But Then There Is the “As-Is” Thing

- ▣ *Sorry -- that won't work, either ...*
- ▣ “Although the Agreement contains an ‘as-is’ clause, that would not relieve Weagley as a matter of law from liability”

164

Gouveia v. Citicorp Summary

- ▣ No Actual Knowledge vs. Negligent Misrepresentation
- ▣ Data To Be Relied Upon
- ▣ Reasonable Care in Communicating Information
- ▣ Inspection Company Report
- ▣ “As-Is” Clause

165

So How Comfortable Are You With Disclaimers?

- ▣ Does “Buyer’s broker to verify all ...” afford us any protection?
- ▣ Do any disclaimers in any of our contracts afford us any protection?
- ▣ **No, not if we knew or should have known something, and did not disclose it.**

166

Robertson v. Carmel Builders

- ▣ **Fraud**
- ▣ **Constructive Fraud**
- ▣ **Respondeat Superior**

167

The Big Picture

- ▣ **Seller owned vacant land**
- ▣ **Listed it for sale**
- ▣ **Listing expired**
- ▣ **Buyer tried to buy**
- ▣ **Buyer thought it was listed**
- ▣ **Buyer thought Seller accepted offer**
- ▣ **Seller had not accepted offer**
- ▣ **Buyer spent money, wasted**

168

Robertson v. Carmel Details

- Dec, '94: Seller McGregor listed vacant land for sale with Dixie Babcock, Carmel Builders R E
- Charlie Cookson was Babcock's QB
- Babcock was on 100% commission, paid monthly office or desk fee
- Jun, '95: Listing expired
- Seller told Babcock -- OK to leave sign on property ("**Pocket Listing**")

169

Robertson v. Carmel Details

- Jan, '97: Buyer Robertson's broker (Webster) called Babcock to check listing status and start negotiations
- "Babcock directly told him she had a listing agreement."
- "CBRE never informed Webster that it had no listing agreement."
- Webster (on x-exam): could have contacted sellers directly if Babcock had no listing agreement

170

Robertson v. Carmel Licensee Details

- Cookson (QB) said Babcock was independent contractor
- Babcock paid QB a monthly flat fee
- Cookson did not receive a % of Babcock's commissions
- Cookson was aware of buyer's offer
- Cookson encouraged and aided Babcock in seeking a signed listing
- Babcock kept Cookson up to date

171

Robertson v. Carmel The Beginning of the End

- **Jan, '97: Babcock faxed 3-yr old Seller Disclosure Statement**
... indicated utilities at prop line
... no longer accurate, because Seller had sold an adjacent lot
- **1/21: Babcock asked - still for sale?**
... Seller -- yes, for \$100,000 -- firm
... Buyer signed offer for \$62,500
- **Seller: No! Countered at \$100,000!**
(this was "Counter #1")

172

Robertson v. Carmel Negotiations Continue (???)

- **1/27: Buyer signed counter for \$80,000, to expire 6 pm on 1/29/97**
(this was "Counter #2")
- **Seller did not respond IN WRITING**
- **Seller TOLD Babcock -- \$100,000 -- firm & final**
- **The 6 pm 1/29/97 expiration date passed with no written response from Seller**

173

Robertson v. Carmel Negotiations Continue (???)

- **1/30: Buyer offered \$100,000**
... assuming accuracy of 1994 disclosure statement re utilities, ... and getting dirt work done + financing
- **Buyer contacted atty re utilities**
- **Seller said -- I'm not selling to them, under any conditions, at any price**

174

Robertson v. Carmel Seller's Instructions

- Seller did not sign the \$100,000 offer
- 1/29: Seller “explicitly told Babcock that they did not intend to proceed in any further dealings with Buyer.”
- Meanwhile, according to Webster ... Babcock gave him a “verbal Counteroffer Number 3.”
- Court: “... which Buyer accepted, although ... nothing in writing ...”

175

Robertson v. Carmel Two Different Lives

- **Life at Carmel Builders RE**
 1. Knew Seller considered it “dead”
 2. Continued to try to get a signed listing agreement
- **Life for the Buyer**
 1. Hired an appraiser, and
 2. Contracted for backhoe work, and
 3. Had blueprints drawn
- And Cookson helped the buyer with backhoe work and getting utilities

176

Robertson v. Carmel More Communications

- Apr, '97: Cookson sent letter to Buyer, contingencies needed to be removed in order to close on 5/1/97, and that Seller felt no contract
- 4/30: Webster sent letter to CBRE removing contingencies
- 5/1: Closing ... Buyer attended, but Seller, Babcock & Cookson did not
- Buyer and Seller BOTH unhappy

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Otero County District Court

- **Buyer Robertson sued Seller McGregor and Dixie Babcock and Charlie Cookson, d/b/a Carmel Builders Real Estate, for fraudulent misrepresentation**

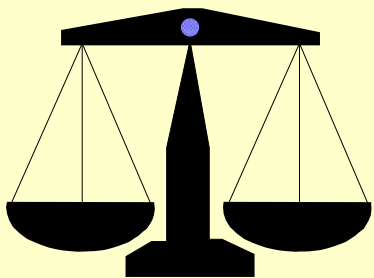
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Upon Which Event

- **Babcock disappeared, and her lawyer withdrew because he couldn't find her**
- **Leaving Cookson in a very lonely (and hot) spot ... and**
- **So he said, hey, I'm only the QB -- Dixie was the problem**

179

You're On The Jury!



180

Judge Jones, Otero County District Court

- Ruled in favor of both Buyer Robertson and Seller McGregor
- Buyer: \$26,362 compensatory
\$20,000 punitive
- Seller: \$27,500 compensatory
\$20,000 punitive
- That's a total of \$93,862
- And said, Cookson, it's all yours
"Respondeat Superior"

181

NM Court of Appeals (2004)

- **On the Issue of Fraud**
- Court first defined fraud as
 1. A false representation
 2. Knowingly or recklessly made
 3. With the intent to deceive
 4. Causing damage
- "Babcock and Cookson had damaged both Buyer and Seller through their intentional misrepresentations."

182

More Details Concerning Fraud

- "...despite having no listing agreement, Babcock represented that the property was listed"
- Seller had said that "negotiations were at an end" and had "no intention of selling...." but
- Babcock & Cookson "continued to negotiate on behalf of Seller and to lead Buyer to believe he had purchased the property."

183

Another Slant on the Definition of Fraud

- *(Going back to last slide ... Seller had informed Babcock that negotiations were at an end, but Babcock continued to negotiate on behalf of seller)*
- **Babcock failed to disclose to Seller that she was not obeying her principal's instructions to stop negotiations**

184

Cookson's Argument And Court's Answer

- **Cookson:** "There was no written agency agreement ... establishing such a duty." [i.e., to inform seller about unauthorized negotiations]
- **Court:**
"This argument misses the point."

185

Why Does It Miss the Point?

- **"An omission, as well as an act, may constitute fraud. When one is under the duty to speak, but remains silent and so fails to disclose a material fact, he may be liable for fraud."**^{RC1}

186

Slide 186

RC1 Rich Cederberg, 3/2/2021

Just a Little Further Clarification

- “ ... a continuing duty to disclose had been triggered by the actions of Babcock and Cookson. Since ... [they] ... continued conducting negotiations,” ... [despite being told to stop] ... “they were under a duty to disclose ... [this] ... to Seller.”

187

WHY?

- “[Cookson and Babcock] ... had a special relationship with Seller, arising not only from that which had already been disclosed, but also from the ‘definite fiduciary’ relationship between the parties, and the Seller’s trust reposed in the agents from previous sales.”
- *And then cited Swallows v. Laney*

188

Remember Chief Justice Federici?

- **When do we incur fiduciary duties?**
- **“A fiduciary relationship exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interest of one reposing the confidence.”**

189

The Final Issue of Respondeat Superior

- “An agent is a person who, by agreement with another called the principal, represents the principal in dealings with third persons or transacts some other business, manages some affair or does some service for the principal, with or without compensation.”

190

The Babcock / Cookson Relationship

- Cookson admitted he was QB
- “Babcock was Cookson’s agent as a matter of law.”
- “A qualifying broker has a duty to supervise activities of associate brokers....”
- When a principal engages a real estate salesperson, “the principal also engages the salesperson’s qualifying broker....”

191

Respondeat Superior Defined

- “Liability of a principal for an agent is grounded on the maxim of **respondeat superior** and is determined by considering whether a tortious act was done while the agent or employee was acting within the scope of that relationship.”

192

Cookson's Argument, and Court's Reply

- **Cookson:**
Babcock was an independent contractor
- **Court:**
“... the manner in which the parties designate a relationship is not controlling.”

193

Robertson v. Carmel Summary

- **“Pocket Listings” or, “Hip-Pocket Listings”**
- **Fraud**
- **Constructive Fraud**
- **Respondeat Superior**

194

Only the Paranoid Survive

**Don't become
a test case**

195

LM Ins. Corp. v. I Do Albuquerque

- Negligence
- Albuquerque Broker "Dave"
- Negligent Referral
- Reasonable Care when making recommendations and referrals
- Transaction Broker v Agent

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The Background

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197

LM Ins. Corp. v. I Do Albuquerque

The Defendant ... signed a listing agreement with Sellers ... to be their transaction broker for the sale of their home, insured by LM Insurance. The Sellers entered into a contract for the sale of the home, but a home inspection revealed problems with portions of the roof. After the Sellers were unable to find a roofer available to address the problems, the Defendant volunteered to "take care of it."

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LM Ins. Corp. v. I Do Albuquerque

The Defendant did his own search for a roofer and vouched for the Roofer, without confirming whether he was licensed or insured as a roofer. The Roofer performed the work negligently, causing a fire that destroyed the home. Plaintiffs filed a complaint for damages against Defendants that included claims for breach of contract and negligence.

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LM Ins. Corp. v. I Do Albuquerque

- After a bench trial, the district court concluded that Defendants owed statutory duties independent of the Listing Agreement regarding the recommendation and procurement of [the Roofer], found Defendants 45 percent at fault, and awarded damages, as well as attorney fees plus prejudgment interest to Plaintiffs.
- Defendants appeal.

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The Appeal

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201

The Appeal

- Defendants argue that:
- 1) they did not owe Plaintiffs a duty of care to investigate whether the Roofer was properly licensed because Defendants did not enter into an agency relationship with Plaintiffs; and
- 2) because the Listing Agreement placed the duty to investigate contractors solely on Plaintiffs.
- We disagree

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Listing Agreement



NEW MEXICO ASSOCIATION OF REALTORS® — 2023 LISTING AGREEMENT — EXCLUSIVE RIGHT TO SELL



1. EXCLUSIVE SERVICES. THE UNDERSIGNED

_____ ("Seller") grants to the undersigned Brokerage Firm _____ ("Brokerage"), the exclusive right to sell the real property described in Paragraph _____. Unless otherwise provided in an amendment hereto, Listing Broker ("Broker") shall act as Seller's Transaction Broker and **NOT as Seller's** _____; therefore, Broker shall owe Seller the Broker Duties set forth on Cover Pages 1 but shall **NOT** owe Seller fiduciary duties. It is the parties' intention to minimize the likelihood that Seller shall be held liable for the acts and omissions of the Broker and to eliminate the possibility that Broker is held liable to Seller under agency law. Broker shall not serve as a property manager under this agreement; if such a relationship is desired, such relationship must be established through a separate agreement between Seller and Broker.

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Service provider recommendations

SERVICE PROVIDER RECOMMENDATIONS. *If Broker(s) recommends a builder, contractor, escrow company, title company, pest control service, [etc]... such recommendation shall be independently investigated and evaluated by Seller or Buyer, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker shall be based solely upon such independent investigation and evaluation.*

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The KEY Question

We must consider New Mexico's legal precedent, statutes, or other principles of law to determine whether transaction brokers - who are not agents and owe no fiduciary duty separately owe a duty of reasonable care regarding the licensing status of contractors they recommend.

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Role of the Transaction Broker

- Transaction brokers provide real estate services without entering into an agency or fiduciary relationship.
- ("The transaction broker relationship is a non-fiduciary relationship.")
- 61-29-2(A)(16)

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No Agency, but...

Even without the existence of an agency relationship, however, transaction brokers are licensees who must perform all duties established by the New Mexico Real Estate Commission.

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Reasonable Care

The Commission established reasonable care as a duty for transaction brokers, defined as "conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior."

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The Standard of Care

- To meet this standard of reasonable care, Defendants must "apply the knowledge, care, and skill of reasonably well-qualified professionals practicing under similar circumstances."
- (Oakey, 2017-NMCA-054)

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Expert Witness Testimony

Defendants' expert witness testified that there is no statute, code, regulation, or standard that requires New Mexico transaction brokers to research the license or insurance status of a potential vendor.

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Expert Witness Testimony

Plaintiffs' expert witness testified to the contrary, explaining that *recommending qualified people who are licensed and insured is a universal standard in the real estate business.*

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Expert Witness Testimony

Plaintiffs' expert additionally testified that the standard of care in the industry was *for a broker who has no information about whether a vendor is licensed to disclose that lack of knowledge and to disclose adverse information.*

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Testimony from the Brokerage

Furthermore, a company representative for Keller Williams testified that the company had an expectation to only recommend vendors who were licensed and insured.

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213

Not Fiduciaries!

Defendants first contend that "by requiring the transaction broker to investigate and evaluate suggested vendors, the district court's ruling circumvents the Legislature and the New Mexico Real Estate Commission Rules by turning every transaction broker into a fiduciary."

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We Disagree

Defendants fail to provide New Mexico authority supporting this contention. Instead, Defendants rely on a federal district court case for the general proposition that the duties owed as a transaction broker are those set forth in statute or regulation.

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Colorado Law

In *Sussman v. Stoner*, the district court for the District of Colorado held that Colorado law did not establish a duty for a transaction broker to inform the seller of the rising value of their property or the advantages of refusing a particular offer."

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Colorado Law

The governing "statute clearly stated that the transaction-broker is not an agent for either party" or "an advocate for the interests of any party."

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Colorado Law

The court therefore reasoned that such a duty would "effectively remove the transaction - broker from his role as intermediary, and put him in the position of advocate for the seller."

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Back to New Mexico

Here, the district court applied the duty of reasonable care established by the Commission's Rules, which does not affect the transaction broker's role as an intermediary.

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Back to New Mexico

The duty to confirm licensing in this case does not provide an advantage to one party over the other in a real estate transaction, as was the case in Sussman.

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Back to New Mexico

Rather, this duty is beneficial to both parties by encouraging the reliance on licensed contractors who will not, presumably, cause damage to the property.

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Back to New Mexico

The purpose of removing fiduciary duties and agency status from transaction brokers is not to eliminate standards of reasonable care, but rather to avoid conflicts of interest that arise when a broker is an agent for both parties to the transaction.

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Back to New Mexico

The lack of an agency relationship does not alter the duty of reasonable care for transaction brokers, and the district court did not err by finding that transaction brokers have a duty of care to disclose the licensing status of contractors they recommend.

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Service Provider Recommendations

- Defendants next contend that the Listing Agreement identified Plaintiffs as the sole party with the duty to investigate and evaluate vendors.
- We disagree that the Listing Agreement's language supports this contention.

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Service Provider Recommendations

The Listing Agreement clearly creates an obligation for Plaintiffs to independently investigate and evaluate a contractor that Defendants recommend, a contractual duty accounted for by the district court's determination that Plaintiffs bore 5 percent of the fault.

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Service Provider Recommendations

The Listing Agreement, however, is silent as to Defendants' duties when recommending contractors; it does not limit Defendants' duty of reasonable care, nor does it change Defendants' duty to disclose the licensing of recommended contractors.

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Service Provider Recommendations

Concluding that the Listing Agreement relieves Defendants of their reasonable care duty established by the Commission Rules would create a new agreement for the parties, which we cannot do.

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Service Provider Recommendations

Absent an ambiguity, a court is bound to interpret and enforce a contract's clear language and cannot create a new agreement for the parties" (internal quotation marks and citation omitted)). We find no error, therefore, in the district court's ruling on this issue.

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228

Service Provider Recommendations

We find no error, therefore, in the district court's ruling on this issue.

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229

Insurance

Licensure to perform roofing work is a reasonable proxy for basic competence on the part of a vendor to perform work . . . safely.

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Insurance

Defendants' expert also testified, and the district court found, that a vendor having insurance provides a remedy for property owners if the vendor causes harm to the property.

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231

Insurance

The parties stipulated that instead Plaintiffs' insurer paid significant sums resulting from the fire caused by the contractor, and Plaintiffs testified that they additionally paid more than \$60,000 out of pocket.

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Insurance

Further, Plaintiffs testified that had they known that the contractor was not licensed or insured, they would not have hired him.

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Insurance

This evidence was supported by the record and was sufficient for the district court, as the factfinder, to reasonably conclude that the fire and Plaintiffs' damages were a natural continuous result from Defendants' recommendation of an unqualified roofer.

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234

The Decision

After considering both lay and expert testimony, the district court found that [the Defendant] breached his professional duty of care in his recommendation and procurement of [the Roofer]. New Mexico law imposes a duty of reasonable care on transaction brokers, and the district court relied on expert and lay testimony to determine that this duty includes disclosing the licensing status for recommended contractors.

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Appellate Court Decision

The District Court Did Not Err in Concluding That Defendants Owed a Duty of Care to Disclose the Licensing Status of Mr. Perez.

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