

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001001-MR

EARL BOWMAN AND  
LILLIAN BOWMAN

APPELLANTS

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE WILLIAM F. STEWART, JUDGE  
ACTION NO. 97-CI-00474

BRIGHT BUILT HOMES

APPELLEE

OPINION

AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND COMBS, JUDGES.

BARBER, JUDGE: Appellants, Earl and Lillian Bowman, seek review of an Order of the Shelby Circuit Court dismissing their claims against the Appellee, Bright Built Homes ("Bright"). The trial court found that there was no evidence of latent structural defects in the property; that the Bowmans had accepted all observable defects by accepting the deed; and that the statute of limitations had begun to run at or near the time of occupancy

in 1992. The trial court concluded that the Bowmans' claims were barred by the statute of limitations, the complaint having been filed on November 19, 1997. Finding no error, we affirm.

We refer to the record only as necessary to resolve the issues before us. On appeal, the Bowmans contend that the trial court erred, because the statute of limitations did not begin to run until May 17, 1997, the date they first were advised of several latent structural defects. The Bowmans explain that is the date the first draft of a report was issued by Arlis McMahon, their "forensic construction inspector."

Bright responds that "latent structural defects" are those not observable to an unsophisticated home buyer; therefore, testimony would be required to establish the existence of any such defects, citing *Real Estate Marketing v. Franz*,<sup>1</sup> and *Crawley v. Terhune*.<sup>2</sup> Bright asserts that the trial court was correct in finding that there was no evidence of latent structural defects, and draws our attention to the disclaimer in Arlis McMahon's report. The disclaimer provides:

This report is intended to be a visual report of the on site facts as they were found to be at the time of investigation, photographing or viewing.

. . . .

**MultiLine Service Company, its investigators, inspectors, etc. are:**

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<sup>1</sup> Ky., 885 S.W.2d 921 (1994).

<sup>2</sup> Ky., 437 S.W.2d 743 (1969).

**A. not licensed to do any engineering** of any type. Any reference, inference, deduction, quotes or supposition, etc. written herein or elsewhere or verbal to any degree regarding engineering should be considered merely as a lay persons [sic] deduction based upon past experience and should be confirmed by a licensed engineer. (Emphasis original).

Bright contends the trial court correctly concluded it was entitled to judgment, as a matter of law, because McMahon's report is "void of any finding that would support the existence of a latent structural defect." We have carefully reviewed the record, and Bright's argument is well taken.

Accordingly, we affirm the April 8, 2002 Order of the Shelby Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

William R. Wilson  
Shepherdsville, Kentucky

BRIEF FOR APPELLEE:

Dennis R. McGlincy  
Louisville, Kentucky