

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001141-MR

RONNIE RAWLINGS AND VICKIE RAWLINGS

APPELLANTS

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 04-CI-00276

NOBLE LEE SMITH

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: THOMPSON AND WINE, JUDGES; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: Ronnie and Vickie Rawlings appeal from the Bourbon Circuit Court's summary judgment. After our review of the facts and the record, we affirm.

The Rawlings filed an action naming Smith as the defendant. They alleged Smith fraudulently misrepresented the condition of a building they purchased from him

¹ Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

because he concealed the fact that any use of the second floor was impossible. The second floor of the building was not sufficiently attached to the lower portion of the building. Additionally, the second floor was added to the building and fire hazard material was left in place and was partially covered by the second floor addition.

Smith is a licensed real estate agent. One prospective buyer toured the building and noticed the structural problems and the fire hazard. He decided he did not want to purchase the property. Both of the problems were also disclosed in the public records of the building inspector's office of the city of Paris, Kentucky. The Rawlings viewed the property on multiple occasions. The contract for sale disclosed that the owners were licensed real estate agents and offered the property "as is." There was no warranty declaring fitness for any particular use.

The test for summary judgment is whether there is no genuine issue as to any material fact. Kentucky Rules of Civil Procedure (CR) 56.03. The record must be viewed in a light most favorable to the party opposing the motion and all doubts are to be resolved in his favor. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky.App. 1996). Our role in an appeal of a summary judgment is to determine whether or not the trial court correctly determined that there were no genuine issues of material fact and if the movant was entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991).

The general rule in a real estate transaction is that the buyer takes the property subject to any existing physical conditions. One exception to that general rule

however is where the defective condition is not observable. *Ferguson v. Cussins*, 713 S.W.2d 5 (Ky.App. 1986). There was testimony that Smith knew the second floor was not usable and withheld that information from the Rawlings.

The record is clear and the trial court correctly found that the defects were readily observable and not hidden. A prior prospective buyer noted both problems while inspecting the property. Both problems were recorded in the public records of the building inspector. The Rawlings visited the property and inspected it several times prior to the sale. The fact that they were unable to note the defects when others could, or when a visit to the building inspector's office would have disclosed them, does not make them hidden. There was no fraudulent misrepresentation.

From those facts, it is clear that even when taken in the light most favorable to the Rawlings, Smith was entitled to a judgment as a matter of law. There were no genuine issues of material fact for the court to decide. Summary judgment was appropriate and we affirm the decision of the Bourbon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

H. Wayne Roberts
Lexington, Kentucky

BRIEF FOR APPELLEE:

Guy F. Ormsby, Jr.
Paris, Kentucky