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Condo buyers lose $1M ruling

Case remanded for trial three years after hearing in Court of Appeals

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Maryland's top court has overturned a $1 million award to about 25 condominium resale purchasers in Port Deposit who claimed the property management company and condo association violated state laws by providing them operating budgets at closing that did not disclose potential future assessments for repairs.

In its decision, the **Court of Appeals** said the Consumer Protection and Condominium acts require managers and associations to disclose only known assessments, not future fees that are merely contemplated.

But, in a victory for resale purchasers, the court also said managers and associations must disclose at closing what they know about latent, potential property damage — even if the condominium has not been cited for a health or building code violation.

The high court's decision, which sends the case back to the circuit court for trial, came more than 3½ years after it heard arguments on April 4, 2008.

The **Cecil County Circuit Court** ruled in 2007 that **MRA Property Management** Inc. and the association's failure to disclose violated the Consumer Protection Act and the Maryland Condominium Act. It entered the $1 million award since the parties had stipulated to that amount if the court ruled for the buyers.

The Court of Appeals said the purchasers could still prevail if they can show that MRA and the **Association of Unit Owners of Tomes Landing Condominiums** Inc. failed to disclose what they knew about potential moisture damage in the condominium complex's walls.

Stacie F. Dubnow, the resale purchasers' attorney, said the task of litigating a case that has essentially been in appellate limbo for more than four years is challenging but not insurmountable.

"There's a lot of work to be done," Dubnow said, adding that she must "essentially relearn the case."

The work includes retrieving documents and other trial exhibits, lining up expert witnesses again and reconnecting with clients whose memories of their purchases, made from 2000 to

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2004, might not be as sharp as they were then.

"We'll have to refresh their memories with their depositions and the documents relevant to their purchase," said Dubnow, of **Freishtat, Mullen & Dubnow** LLC in Hunt Valley.

"That's part of what it is to be a lawyer," she added. "You can't always anticipate how long cases are going to take to resolve. You have to roll with the punches and do your best."

Dubnow said she is confident of her prospects at trial given what she described as the high court's message that condo managers and associations "better be careful when they're presenting information to prospective buyers. Once you make a statement, that statement better be true and not misleading."

No bright line

An attorney for condominium managers and associations said the ruling reminds them that they owe legal duties to owners and resale purchasers.

"They're not expected to be lawyers ... but they are expected to know when there is an issue that requires advice from qualified professionals," said Thomas Schild, who was not involved in the case. "Boards need to get qualified advisers."

He added that managers and associations should take note of the court's holding that they must disclose potential property damage, even if not alleged or cited as a code violation. The court's failure to set a "bright line rule" on the level of potential damage that must be disclosed will compel managers and boards to make more-qualified statements in resale documents, as they try to account for every possible leak, he added.

"In theory a dwelling is supposed to be watertight," said Schild, of **Thomas Schild Law Group** LLC in Rockville. "I don't know any building that's watertight."

Attorney Steven E. Leder, who represented MRA and the association, did not return telephone messages seeking comment on the court's decision last week. But in discussing the case last summer, Leder said MRA and the condominium association completed the repairs.

"The community has gone ahead and renovated the properties and they're beautiful," said Leder, founder of the **Leder Law Group** in Baltimore. "We're just waiting to find out who's going to pay for the renovation that's already taken place."

Special assessment surprise

In their lawsuit, the resale purchasers of the 23 condominium units between January 2000 and October 2004 said they were surprised when MRA and the association told them in December 2004 of a special assessment of about $37,000 each to prevent structural problems caused by water and moisture penetration.

The potential special assessment had not been disclosed in documents

given to them at closing, they said. The documents stated the condominium had "no known [code] violations" and made no reference to any looming water issues, they added.

MRA management and the association countered that they had no legal duty to provide that information to resale purchasers in the Tomes Landing community on the banks of the Susquehanna River in Port Deposit.

The circuit court granted summary judgment to the property owners, finding the failure to disclose had the "capacity, tendency and effect of misleading" the purchasers and constituted "an unfair or deceptive trade practice" in violation of the CPA.

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MRA Management and the association sought review by the **Court of Special Appeals**. But before the intermediate court heard the case, the Court of Appeals chose to hear it.

Its decision Tuesday noted the Maryland **General Assembly** changed the condominium law in 1982 to require managers and associations to disclose "approved" assessments and not just those that had been "proposed."

"The legislative history makes it clear that this disclosure obligation does not extend to contemplated and/or proposed expenditures," retired Judge Joseph F. Murphy Jr. wrote for the high court.

But he said the Condominium Act requires the disclosure of any potential health or building code violation, regardless of whether the state has charged a violation.

At trial, the purchasers will be allowed to present evidence that the representation of no known code violations was made "with either actual knowledge of its falsity, or willful blindness as to its truth," Murphy wrote.

Dubnow, the purchasers' attorney, said she will be able to meet that standard of proof because MRA Management and the condo did not disclose water seepage found in common walls.

"There was so much information about the problem ... that they were on notice that there was a likelihood that there were building code violations," Dubnow said. "You can't just bury your head in the sand and pretend there are not."

Judge Lynne A. Battaglia, in dissent, said the Consumer Protection Act does not apply to condo associations because they are not involved "in the sale of consumer realty."

"Although the bylaws create contractual duties among the council of unit owners and the unit owners, the duties do not extend to a prospective buyer; there simply does not exist a privity between the council of unit owners and the buyer of a unit," Battaglia wrote.

Judge Glenn T. Harrell Jr. joined Battaglia's dissent.