

**NOT DESIGNATED FOR PUBLICATION**

**ELISE BELLARD** \* **NO. 2002-CA-0971**  
**VERSUS** \* **COURT OF APPEAL**  
**ORKIN EXTERMINATING** \* **FOURTH CIRCUIT**  
**COMPANY, INC., D. M.**  
**GREENUP & ASSOCIATES,** \* **STATE OF LOUISIANA**  
**INC., RODNEY M. GREENUP** \*  
**AND ANTHONY J. PEPPERONE** \*  
\*  
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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 94-8098, DIVISION "C-6"  
Honorable Roland L. Belsome, Judge  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,  
Judge Patricia Rivet Murray)

**WALTZER, J., CONCURS IN PART AND DISSENTS IN PART  
WITH REASONS**

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(LATTER & BLUM, INC).

**AFFIRMED AND REMANDED.**

This suit arises out of a sale of immovable property. The plaintiff-purchaser, Elise Bellard, sued the seller, Anthony Peperone; the two real estate agents involved in the transaction; and the two agents' respective real estate companies. Following a bifurcated trial limited to liability, a judgment was rendered against both real estate companies and one of the agents. From that judgment, one of the companies, Latter & Blum, Inc., appeals. For the reasons that follow, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Ms. Bellard contacted a real estate agent, Rodney Greenup of D.M. Greenup & Associates, Inc., to assist her in finding a house to buy. Ultimately, she selected a house located at 5524 Elysian Fields Avenue in New Orleans, which was listed for sale through Latter & Blum. The purchase agreement, dated May 14, 1993, expressly required as a condition of the sale that the seller, Mr. Peperone, provide a termite certificate, guaranteeing the property was free from termites, before or at the act of sale. Apparently, Ms. Bellard insisted on getting a termite certificate as a condition of the sale because several years earlier the house had been infested with termites.

It is undisputed that no termite certificate was produced at the act of sale, which was held on June 1, 1993. The act of sale was attended by Latter & Blum's agent, Karl Poret; D.M. Greenup's agent, Mr. Greenup; the seller, Mr. Peperone; and the buyer, Ms. Bellard. Instead of a termite certificate, Mr. Peperone presented Ms. Bellard with a termite renewal certificate. That renewal certificate was a report issued by Orkin stating that it had inspected the property in 1993 and found no infestations. Thereafter, Ms. Bellard discovered an active termite infestation. This suit followed.

Following a bench trial limited to liability, the trial court entered

judgment against D.M. Greenup, Latter & Blum, and Mr. Koret. The trial court found that both Mr. Greenup and Mr. Poret were negligent in failing to disclose that the termite certificate condition of the purchase agreement was not met and thus were liable to Ms. Bellard for her damages. The court further found that the real estate companies were vicariously liable for their agents' acts and omissions.

On appeal, Latter & Blum assigns three errors: (i) the trial court incorrectly held that Latter & Blum breached its duty to plaintiff, (ii) the trial court failed to address the effect of the "as is" waiver, and (iii) the judgment fails to quantify the fault of any responsible party. We affirm.

### **DISCUSSION**

A purchaser's remedy against a real estate broker or agent is limited to damages for fraud or negligent misrepresentation. The jurisprudence holds that a real estate broker or agent owes a specific duty to communicate accurate information to the seller and the purchaser and that a breach of that duty gives rise to a tort claim for negligent misrepresentation. *Watkins v. Karr*, 97-771, p. 4 (La. App. 5 Cir. 5/27/98), 716 So. 2d 399, 401 (citing *Osborne v. Ladner*, 96-0863 (La. App. 1 Cir. 2/14/97), 691 So. 2d 1245)).

Ms. Bellard argues that both real estate agents had a duty to inform her that the termite renewal certificate did not satisfy the requirement of the purchase agreement and that such renewal certificate did not provide the same legal protections as a termite certificate. She argues that such a duty arises from the mandate that real estate agents provide accurate information to buyers and sellers and from the “customs and practices of real estate brokers in general.” *Mallet v. Maggio*, 503 So. 2d 37, 38 (La. App. 1 Cir. 1986). She further argues that *Mallet* establishes a duty on the part of both real estate agents to advise her correctly regarding the distinction between a termite certificate and a renewal certificate.

Agreeing with Ms. Bellard, the trial court found both agents were negligent in failing to disclose that the termite certificate condition was not met, giving the following written reasons:

There is conflicting testimony to whether or not Ms. Bellard was informed that a termite certificate was not produced prior to or at the act of sale. It is the opinion of this Court that even though Ms. Bellard’s agent, Rodney Greenup was aware that the renewal certificate was not a termite certificate he did not disclose this information to her. Since this was Ms. Bellard’s first experience purchasing a home she relied on the expertise of her agent.

. . . Even as a seller’s agents [Mr. Greenup and Mr. Poret] owed a duty to Ms. Bellard to communicate accurate information or be held liable for negligent misrepresentation.

Mr. Poret testified that at the time the act of sale was passed on 5524 Elysian Fields Avenue he had been a real estate agent for approximately two (2) years. However, he claims he was unable to identify a termite certificate and was unaware that the renewal certificate presented at the act of sale was insufficient to fulfill the conditions of the Purchase Agreement. This Court does not find it unreasonable to hold a licensed real estate agent responsible for recognizing documents customarily used in the course of real estate transactions. Mr. Poret's inability to recognize a termite certificate at the act of sale does not absolve him from negligent misrepresentation.

Based on the record, we find no error in the trial court's factual finding that neither real estate agent disclosed to Ms. Bellard the deficiency resulting from the seller giving a renewal certificate at the act of sale.

As to Mr. Greenup, the trial court found he had actual knowledge of the deficiency, yet failed to disclose it. Although Mr. Greenup testified that when the seller produced the renewal certificate inspection report at the act of sale he immediately noticed the deficiency and informed Ms. Bellard of the risks, Ms. Bellard testified that no one informed her of the deficiency and that she believed the renewal certificate satisfied the condition of the purchase agreement. The trial court resolved the conflicting testimony on this point in favor of Ms. Bellard, finding that she asked Mr. Greenup about the nature of the certificate presented by the seller and that Mr. Greenup failed to provide accurate information to her about it. It is well settled that such credibility calls are governed by the manifest error standard. We find

no manifest error in that factual finding.

As to Mr. Poret, the trial court found his “inability to recognize a termite certificate at the act of sale does not absolve him from negligent misrepresentation.” We agree. Although he testified that he was unaware that the document the seller presented was not the required termite certificate and admitted that he did not examine the document to ensure that it satisfied the condition of the purchase agreement, Mr. Poret was substantially involved in discussions with Ms. Bellard regarding the sale and had a duty to supply her with correct information. He breached this duty by failing to inform her that the renewal certificate was not the type of certificate required as a condition of the sale. Mr. Poret’s lack of actual knowledge that the renewal certificate was not the required termite certificate required as a condition of the sale is of no moment. He was privy to the document, and his experience as a licensed real estate agent should have led him to recognize the deficiency. It follows then, as the trial court implicitly found, he had constructive knowledge of the deficiency.

Given that both agents had a legal duty to provide accurate information to Ms. Bellard and given that both agents had knowledge (actual or constructive) of the deficiency, we affirm the trial court’s finding that both agents “were negligent in their failure to disclose and are liable to Ms.

Bellard for her damages.”

As to Latter & Blum’s argument regarding the “as is” waiver, we find that waiver irrelevant to the negligent misrepresentation claim before us. The waiver pertains to the physical conditions of the property; this case pertains to a legal condition of the purchase agreement.

Finally, Latter & Blum argues that the trial court erred in failing to quantify fault. Although this argument could have merit if the trial court had fully tried this case, we find it unnecessary to decide this issue given that the trial of this matter was bifurcated and that the issue of damages has not yet been determined.

### **DECREE**

For the foregoing reasons, we affirm the trial court’s decision on liability and remand for further proceedings.

**AFFIRMED AND REMANDED.**