

STATE OF MICHIGAN
COURT OF APPEALS

LOIS A. GILES,

Plaintiff-Appellee,

v

ANNA E. MARR,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 194729

Cheboygan Circuit Court

LC No. 94-004085-CH

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

After a bench trial, the trial court entered an order granting rescission of plaintiff's purchase of a house from defendant and defendant's deceased husband. To effectuate the judgment of rescission, the trial court awarded plaintiff \$56,900, which was the amount that she paid for the property, plus \$4,141.05 that she had expended for repairs, plus interest at the statutory rate from the time of the filing of the complaint in this matter, and costs. Upon payment of this amount, defendant was to receive a deed to the property by which plaintiff was to convey any and all interest that she had in the property to defendant. Defendant now appeals as of right. We affirm.

Defendant first argues that the trial court erred in finding that she committed silent fraud. The trial court's findings of fact in an equity action can be set aside only if they are clearly erroneous. *Attorney General v Lake States Wood Preserving, Inc*, 199 Mich App 149, 155; 501 NW2d 213 (1993). However, where a finding is derived from an erroneous application of law to fact, we are not limited to review for clear error. *Id.*

The doctrine of "silent fraud" has been traced as far back as 1886:

A fraud arising from the suppression of the truth is as prejudicial as that which springs from the assertion of a falsehood, and courts have not hesitated to sustain recoveries where the truth has been suppressed with the intent to defraud. [*Lorenzo v Noel*, 206 Mich App 682, 684; 522 NW2d 724 (1994), quoting *Tompkins v Hollister*, 60 Mich 470, 483; 27 NW 651 (1886).]

Under the doctrine of silent fraud, a seller of real property may be held liable to a buyer for failing to disclose material defects in the property or its title.¹ *McMullen v Joldersma*, 174 Mich App 207, 212; 435 NW2d 428 (1988). The elements of fraud or silent fraud are: (1) a material representation which is false; (2) known by defendant to be false, or made recklessly without knowledge of its truth or falsity; (3) that defendant intended plaintiff to rely upon the representation; (4) that, in fact, plaintiff acted in reliance upon it; and (5) thereby suffered injury. *Id.* In order for the suppression of information to constitute silent fraud there must be a legal or equitable duty of disclosure. *US Fidelity & Guarantee Co v Black*, 412 Mich 99, 125; 313 NW2d 77 (1981). The Michigan Supreme Court has held that the evidence supported a finding that a defendant vendor of real property committed fraud when

knowing the actual situation that existed with reference to the property, answered plaintiffs' inquiries as to the facts in such manner as to reasonably induce the latter to believe that there was in fact no danger to the property that they were purchasing. [*Groening v Opsata*, 323 Mich 73, 79; 34 NW2d 560 (1948).]

In the present case, the house had a history of water problems, dating back to before defendant and her husband bought the house. A former owner of the house and an employee from the bank that had sold the house to defendant and her husband both testified to the severity of the water damage that had been present when defendant and her husband bought the house. A number of photographs taken before this purchase depicted the extensiveness of the problem. Two expert contractor/builders found results of water damage and signs of rotting, and one of them was of the opinion that the house should have been demolished instead of remodeled. Defendant herself testified that when she and her husband purchased the house it was "a disaster" and that, among other repairs, a new ceiling was put in and the water leaks were fixed. Defendant claimed that, before selling the house to plaintiff, she had told plaintiff that they had had problems with the house but did not describe the specific type of problems. Plaintiff denied that defendant had told her of any prior problems and stated that she had no knowledge of any problems at all. Furthermore, plaintiff testified that she had noticed some water marks on the upstairs ceilings, and had asked defendant's husband about them. He replied that he knew nothing about them and had never had a problem with them. This evidence supports a finding that plaintiff made a direct inquiry regarding the presence of water spots, defendant failed to disclose fully the material facts within her knowledge related to the condition, and plaintiff detrimentally relied on the resulting misdirection. The extent of the water problems with the house and the severe rotting that was evident when defendant and her husband bought the house render implausible defendant's belief that the problems could have been fixed without extensive and costly structural repairs to the house. Therefore, defendant had a duty to disclose to plaintiff the extent of the past damage.

Defendant next argues that the trial court erred in awarding a money judgment to plaintiff after having awarded rescission. We disagree. If a plaintiff seeks the remedy of rescission, she may recover what she has paid, "and also recover damages for losses sustained as a direct result of the misrepresentation." *Mock v Duke*, 20 Mich App 453, 455; 174 NW2d 161 (1969). Rescission involves a restoration of the status quo as to both parties. *Adams v E M Burke Homes, Inc*, 14 Mich App 578, 583; 166 NW2d 34 (1968). The purpose of rescinding a contract is not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to restore

the parties to the relative positions which they would have occupied if no contract had ever been made. *Vowels v Arthur Murray Studios*, 12 Mich App 359, 363; 163 NW2d 35 (1968).

Here, plaintiff asked for rescission of the sale of the property, including a recovery of the purchase price, with interest, and additional expenses she incurred. The Court ordered defendant to repay the purchase price of \$57,000, plus interest. The court also awarded plaintiff \$4,141.05 in additional damages caused by defendant's silent fraud. The court further ordered that upon payment of that amount, defendant would receive a deed to the property conveying any and all interest plaintiff had in the property. Plaintiff did not seek a double recovery as defendant suggests. Rather, the judgment merely restored the status quo.

Affirmed.

/s/ Maura D. Corrigan

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

¹ This Court recently addressed the issue of silent fraud in real estate transactions in *M & D, Inc v W B McConkey*, ___ Mich App ___ (Docket No 175201, issued 11/14/97). This opinion was vacated in an unpublished order entered November 26, 1997, and a special panel was convened to address a conflict between *M & D* and this Court's earlier decision in *Shimmons v Mortgage Corp of America*, 206 Mich App 27; 520; 520 NW2d 670 (1994). However, because these cases involve the duty to disclose hidden defects when the documents of the sale transaction contain explicit statements disclaiming seller representations and warranties about the condition of the property, and there was no fraudulent concealment of the condition, they are inapplicable to the present case and do not affect our analysis.