

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ENRICO PERRELLI, JR.,

Appellant,

v.

Case No. 5D18-3960

ROBERT FAILLA,

Appellee.

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Opinion filed February 7, 2020

Appeal from the Circuit Court
for Hernando County,
Donald E. Scaglione, Judge.

Brendan R. Riley, of Stewart & Riley, New
Port Richey, for Appellant.

Jason A. Lubliner, of Meirose & Lubliner,
P.A., Tampa, for Appellee.

PER CURIAM.

Enrico Perrelli, Jr. (“Appellant”) appeals the final judgment entered by the trial court in favor of Robert Failla (“Appellee”) on his fraudulent non-disclosure and breach of contract claims. The final judgment was entered after a bench trial following three partial summary judgments—all of which form the basis for this appeal. We affirm the first partial

summary judgment without discussion, but reverse the second and third, finding that a genuine issue of material fact exists.¹

In reviewing the partial summary judgments, this court must consider the evidence contained in the record in the light most favorable to the nonmoving party. See Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985). “A movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. But once he tenders competent evidence to support his motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue.” Contardi as Next Friend of B.C. v. Fun Town, LLC, 280 So. 3d 1114, 1116–17 (Fla. 5th DCA 2019).

To prove his fraudulent non-disclosure and breach of contract claims, Appellee was required to demonstrate Appellant’s knowledge of the alleged defects in the property. See Johnson v. Davis, 480 So. 2d 625, 629 (Fla. 1985); Atlantica One, LLC v. Adragna, 177 So. 3d 89, 91–92 (Fla. 5th DCA 2015). However, Appellee submitted no evidence indicating that Appellant had actual knowledge of the issue with the plumbing and drainage of the master bath. In fact, the summary judgment evidence on this issue supports a conclusion that Appellant lacked knowledge of this defect, even though he admitted to knowing that there were no operable hydro massage jets. Thus, a genuine issue of material fact exists as to Appellant’s knowledge of the issue with the plumbing and drainage of the master bath, which precluded the entry of partial summary judgment as to this alleged defect.²

¹ We reject Appellee’s argument that the lack of a hearing transcript precludes our review in this appeal. See Gonzalez v. Chase Home Fin. LLC, 37 So. 3d 955, 958–59 (Fla. 3d DCA 2010).

² We affirm the partial summary judgments in all other respects.

Accordingly, we reverse the second and third partial summary judgments. We also reverse the final judgment as it was based, in part, on the liability determination in the partial summary judgments, and remand for further proceedings.

AFFIRMED in part; REVERSED in part; and REMANDED for further proceedings consistent with this opinion.

EVANDER, C.J., HARRIS and GROSSHANS, JJ., concur.