

[J-154-98]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ALBERT M. BORTZ	:	23 W.D. Appeal Docket 1998
	:	
v.	:	Appeal from the Superior Court at No.
	:	1854 PGH 96 dated July 14, 1997,
PATRICK J. NOON AND VIRGINIA R.	:	reargument denied September 25, 1997
NOON, COLDWELL BANKER REAL	:	affirming in part and reversing in part the
ESTATE, A PENNSYLVANIA	:	Decree of the Court of Common Pleas of
CORPORATION, AND SUBURBAN	:	Allegheny County, Civil Division, at No.
SETTLEMENT SERVICES, INC., A	:	GD88-12569 dated September 6, 1996.
PENNSYLVANIA CORPORATION	:	
v.	:	
	:	
J.J. NOLTE, AN INDIVIDUAL	:	
	:	
APPEAL OF: COLDWELL BANKER	:	
REAL ESTATE, INC.	:	ARGUED: September 14, 1998

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: April 22, 1999

I agree with the majority that the factual findings made by the trial court in this case do not support imposition of liability upon Coldwell Banker and therefore concur in the result. I am unable, however, to subscribe to the majority's broad holding that, absent a contractual relationship, a real estate broker has no legal duty to verify factual representations made to a purchaser. In the typical residential real estate transaction, the selling broker, having a pecuniary interest in the consummation of a sale, frequently cultivates reliance by the purchaser upon its professional expertise, representing itself as an accurate source of vital information. See generally P. Murray, The Real Estate Broker and the Buyer: Negligence and the Duty to Investigate, VILL. L. REV. 939, 984 (Sep. 1987).

It would seem unjust to permit brokers to profit from such arrangements, yet escape any accountability to the purchaser for negligent conduct for the sole reason that their relationship with the buyer is not based in contract. Indeed, as the majority acknowledges, many jurisdictions authorize a cause of action for negligent misrepresentation against a real estate broker without requiring a demonstration of privity. See, e.g., Mahler v. Keenan Real Estate, Inc., 876 P.2d 609, 616-17 (Kan. 1994). See generally Restatement (Second) of Torts §552 (providing that one who, in the course of his business, profession or employment supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information); Annotation, “Real-Estate Broker’s Liability to Purchaser for Misrepresentation or Nondisclosure of Physical Defects in Property Sold,” 46 A.L.R.4th 546 (Supp. 1998); PROSSER & KEATON ON THE LAW OF TORTS, §107, at 746 (5th ed. 1984)(stating that “[n]o doubt virtually all courts today would recognize the existence of some situations where the nature of a representor’s activity or a pre-existing relationship between the representor and the representee or the two factors together will constitute the basis for the imposition of a duty to exercise reasonable care to avoid harm from reasonable and expectable reliance on what is said at least about certain matters related to the subject matter of the transaction”).

Thus, I would not foreclose a cause of action against a broker that negligently provides false material information to a purchaser, represents such information to be true, and induces the purchaser to rely upon the information to his detriment.