

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID M. MEEKS,
Appellant,

vs.

ESTATE OF FLORENCE SKURSKI,
D/B/A ANDY SKURSKI REALTY; AND
STEPHANIE L. HILL, AN
INDIVIDUAL,
Respondents.

No. 48696

FILED

JUL 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property case. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Respondent Stephanie L. Hill, a real estate agent, represented appellant David M. Meeks in the purchase of his first house. Respondent Florence Skurski, d/b/a Andy Skurski Realty, was Meeks' broker.¹

Before escrow closed, Meeks was informed by the seller that constructional defects in the house had been repaired by the builder and appeared to be resolved. After Meeks purchased and moved into the house, however, he discovered that the defects had not been repaired, and new defects appeared. Meeks then filed a district court complaint against the seller, the seller's agent and broker, the appraiser, Hill, and Skurski, alleging various causes of action, most of which were disposed of before trial and are not now at issue. A jury trial was held against Hill and Skurski on Meeks' third cause of action (negligence) and to determine

¹Skurski died during the litigation and her estate was substituted as a defendant in her place.

damages against the seller, upon whom liability had been imposed.² After Meeks' case in chief, the district court entered a directed verdict in favor of Hill and Skurski. Thereafter, the jury awarded him \$100,000 in damages from the seller. Meeks has appealed, challenging the directed verdict entered in favor of Hill and Skurski.

On appeal, Meeks argues that the district court erred in directing a verdict in favor of Hill and Skurski because the Seller's Real Property Disclosure form ("SRPD") put Hill on notice that there had been a constructional defect claim, giving rise to a duty on Hill's part to inform Meeks of his NRS 40.688 right to obtain the constructional defect documents.³ Although Meeks concedes that Hill and Skurski themselves had no duty to disclose under NRS 40.688, he argues that Hill had a statutory duty under NRS 645.252(1)(a) to make him aware of "[a]ny material and relevant facts, data or information" about the property that she knew or reasonably should have known. He also argues that Skurski had a duty to ensure that Hill was properly trained and understood the relevant laws and regulations. Meeks points out that, at trial, his expert witness opined that Hill had breached the standard of care defined in NRS 645.257(3) when she failed to ask for further disclosures after being presented with an SRPD form indicating that the property had been involved in a constructional defect action. As a result of Hill's and Skurski's failure to perform their statutory duties, Meeks contends that he

²Apparently, even though only the negligence claim advanced to trial, Meeks was allowed to advance a statutory theory of recovery under NRS 645.257.

³NRS 40.688 requires the claimant to disclose to a prospective purchaser certain constructional defect information before selling a residence that has been the subject of a Chapter 40 claim.

is entitled under NRS 645.257(1) to recover the actual damages proximately caused by those breaches.

Hill, on the other hand, points out that she owes only those duties set forth in the statute,⁴ and she contends that she acted with the requisite standard of care in performing her statutory duties because, under NRS 645.257(3), she is not charged with knowing the NRS Chapter 40 constructional defect disclosure requirements.

We review de novo an NRCP 50(a)(1) directed verdict by viewing the evidence and inferences in the light most favorable to the non-moving party.⁵

NRS 645.252(1)(a) requires a real estate licensee to disclose to each party in a real estate transaction, as soon as practicable, any material and relevant facts, data or information that the licensee knows, or with reasonable care and diligence should have known, concerning the property in the transaction. Nothing in that statute, however, requires a licensee to inform a buyer of his NRS 40.688 right to obtain information regarding constructional defects, or to herself obtain that information. Whether a licensee has a duty to disclose NRS 40.688 information is governed by NRS 645.257(3), which provides that the standard of care owed by a licensee is that of a reasonably prudent licensee and is measured by the degree of knowledge required to be obtained under NRS 645.343 and NRS 645.345. Neither NRS 645.343 nor NRS 645.345, nor the relevant Nevada Administrative Code provisions, require knowledge of

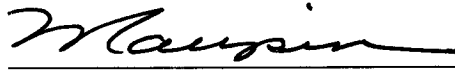
⁴See NRS 645.251 (explaining that a real estate licensee is not required to comply with common law principles in carrying out her statutory duties).

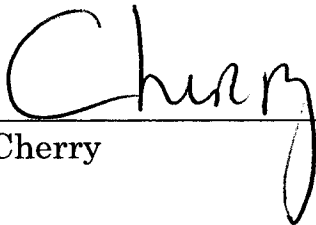
⁵Nelson v. Heer, 123 Nev. ___, ___, 163 P.3d 420, 425 (2007).


NRS 40.688's constructional defect disclosure requirements.⁶ Although constructional defects might be material and relevant facts requiring disclosure under NRS 645.252(1)(a), the buyer's disclosure rights under NRS 40.688 are not matters that a licensee is charged with knowing.⁷ Thus, no statutory duty exists under NRS 645.252(1)(a) for a licensee to inform the buyer of his NRS Chapter 40 disclosure rights.

As Hill had no statutory duty to inform Meeks of his NRS 40.688 right to obtain the seller's constructional defect documents, we conclude that the district court properly entered its directed verdict in favor of Hill and Skurski. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁶See NAC 645.435(2)(b) (establishing salesmen's original licensing requirements); NAC 645.4442 (relating to first-year licensees' course requirements); NAC 645.575 (relating to continuing education standards); NAC 645.450 (setting continuing education course standards); NAC 645.210 (recognizing that salesmen may have different examinations from brokers).

⁷This is not to say that NRS Chapter 40 may never implicate a licensee's disclosure requirements under NRS 645.252(1)(a). Here, however, Meeks was aware of the prior constructional defect problems. Therefore, to the extent that NRS 645.252(1)(a) imposes upon a licensee a duty to disclose constructional defect information that the licensee knows or reasonably should know, there was no breach of that duty in this case.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Larry J. Cohen, Settlement Judge
Bell and Young, Ltd.
Robert W. Lueck
Eighth District Court Clerk