

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEY MANAGEMENT, INC., A NEVADA
CORPORATION,

Appellant,

vs.

JOHN PAZZAGLI AND MARCELLE
PAZZAGLI, CO-TRUSTEES OF THE
PAZZAGLI FAMILY LIVING TRUST
DATED APRIL 1, 1996,

Respondents.

No. 37777

FILED

NOV 05 2002

CLERK OF THE SUPREME COURT
J. R. [Signature]

ORDER OF AFFIRMANCE

Doug and Barbara Klein, acting through their corporation, Key Management, Inc., appeal the district court's judgment in favor of respondents John and Marcelle Pazzagli, in their capacities as representatives of the Pazzagli Living Trust, in a failure to disclose defects case. The district court ruled that the Kleins did not sufficiently establish that the Pazzaglis were aware of the alleged defects and that the Kleins bore some of the responsibility for any post-sale surprises because they failed to have the house inspected before purchasing it. We conclude that substantial evidence supports the district court's ruling.¹

NRS 113.100(1) requires a seller of residential property to disclose any "defect," meaning any "condition that materially affects the value or use of residential property in an adverse manner." NRS 113.140

¹Trident Construction v. West Electric, 105 Nev. 423, 425-426, 776 P.2d 1239, 1241-1242 (1989) (holding that a district court's findings of fact and conclusions of law, even where predicated upon conflicting evidence, will be upheld if supported by substantial evidence, and will not be set aside unless clearly erroneous).

requires the seller to disclose all defects of which the seller is aware. Although the seller's disclosure is the primary focus of the disclosure statutes, the statutes do not "relieve[] a buyer or prospective buyer of the duty to exercise reasonable care to protect himself."² This court has stated that the buyers in a real estate transaction are "charged with all knowledge that they actually had, as well as any knowledge that would have been discovered by reasonable inquiry."³

With these legal principles in mind, we now turn to the evidence presented regarding the parties' respective duties and actions relating to the Kleins' four primary claims: 1) water/flooding in the basement; 2) the electrical system; 3) improvements made without permits; and 4) the shared sewer line.

First, the Kleins contend that the Pazzaglis knew of the water problems and that they concealed evidence of water seepage by closing off the crawl space under the home from view. However, the Kleins failed to prove that the Pazzaglis knew of the water problems and intentionally concealed them. Moreover, the Kleins were made aware of possible water damage before the transaction closed and nonetheless declined to have the property subjected to a professional structural inspection, which would have revealed the water problem. Accordingly, we conclude that substantial evidence supports the district court's findings that the Kleins failed to prove that the Pazzaglis had knowledge of the water problems

²NRS 113.140(3).

³Mackintosh v. Jack Matthews & Co., 109 Nev. 628, 634, 855 P.2d 549, 553 (1993).

and that the Kleins bore significant fault for failing to properly inspect for water damage.

Second, the Kleins contend that the Pazzaglis created electrical code problems in the home that they should have reasonably known created a dangerous situation. However, the Kleins failed to demonstrate that the Pazzaglis knew that the wiring job was a "defect." Furthermore, the Kleins once again failed to conduct a professional inspection of the home that would have revealed the wiring problem. We conclude that the Kleins' failure to prove that the Pazzaglis were aware of the electrical problems, coupled with the Kleins' failure to inspect, provides substantial evidence to support the district court's finding in favor of the Pazzaglis on this issue.

Third, the Kleins contend that the Pazzaglis failed to disclose certain improvements that were made without first obtaining the necessary permits. However, the previous owner of the Pazzaglis' house did, in fact, disclose that improvements were made without proper permits, and the Kleins failed to assert which of these defects should have been specifically re-disclosed. Additionally, the Kleins failed to show that the other improvements were either made without proper permits or in violation of building codes of which the Pazzaglis had knowledge. Thus, we conclude that substantial evidence supports the district court's finding that the Pazzaglis were unaware that the improvements were a "defect."


Fourth, the Kleins contend that the Pazzaglis failed to disclose that the property shared a private sewer line with a neighbor. The Pazzaglis claimed to know nothing about the shared sewer line, and the Kleins failed to demonstrate that the Pazzaglis had knowledge of it.

Therefore, we conclude that substantial evidence supports the district court's finding in favor of the Pazzaglis on this issue.

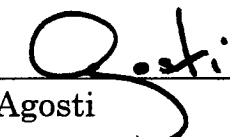
Although the Kleins contend that the district court erred in its application of the real property disclosure statutes by utilizing the common-law elements for failure to disclose, the district court's citation to the common-law fraud elements in analyzing the claim did not affect its ultimate ruling. The district court based its decision primarily on the lack of evidence to support the Pazzaglis' awareness of the defects, an element of an action under NRS 113.150 as well as common-law fraud. Thus, we conclude that any error the district court may have made in failing to distinguish the claims is harmless.⁴

Having concluded that the district court's judgment is supported by substantial evidence, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

⁴See SIIS v. Romero, 110 Nev. 739, 741-742, 877 P.2d 541, 542 (noting that any error resulting from the district court's alleged application of the incorrect standard of review in a workers' compensation proceeding was harmless when the error did not change the outcome).

cc: Hon. Jerome Polaha, District Judge
John C. Hope Jr.
Steve E. Wenzel
Washoe District Court Clerk