

## DISTRICT COURT

VERDICT: Defense, house defects (basement cracks) ... directed verdict on mold respiratory claim ... claims not barred by time or failure to have inspection.

In 7/98 Craig & Karen Steinbeisser purchased a home from Rod & Ellen Lorenz in a Sidney subdivision known to have problems with soil, drinking water, and foundation settling. Lorenzes listed it through Beagle Properties with broker Betty McGuire. Beagle agent Marvlee Fink showed the house to Steinbeissers. McGuire and Fink were dual agents. Steinbeissers took possession in 9/98 and a month later began experiencing water entering the basement bedroom of their daughter Tiffany. In 4/01 a fire broke out in Tiffany's bedroom after she left a candle unattended. Steinbeissers admitted that water entered the basement at least 4-8 times between the first event and the fire. During fire restoration work 2 cracks were discovered in the foundation which allowed water to enter the basement. One appeared to have been filled with a black patching material.

Lorenzes had the house built in 1976. In 1977 Rod repaired 2 hairline cracks in the foundation which had allowed in a small amount of moisture, and in 1978 he repaired another crack. He contended that he had verbally disclosed these repairs to Steinbeissers and that the cracks did not leak in the 20 years between the last repair of 1978 and the sale in 1998. Lorenzes left the Disclosure Statement form blank and did not state on it that these prior foundation problems had occurred in 1977-1978, assertedly because McGuire told him that because the repairs had been made 20 years earlier and there had been no further problem they were not required to disclose them on the form. Steinbeissers waived their right to have an inspection prior to the sale.

Steinbeissers sued Lorenzes, Beagle, and Fink alleging that the foundation was defective and that the cracks were concealed or not disclosed at the time of sale. They asserted negligent misrepresentation, negligence, and breach of contract for violation of the implied covenant of good faith & fair dealing. Tiffany asserted negligence based on claimed respiratory problems from mold in the basement. Judge Simonton directed verdict on this cause based on lack of medical causation evidence. Steinbeissers claimed that no problems with the foundation had ever been disclosed to them and that Lorenzes were required to disclose the 1977 and 1978 repairs on the Disclosure Statement because they constituted adverse material facts as defined by Montana law. They claimed damages for being forced to move the house from the old foundation, because it was unrepairable, onto a new foundation at a different location.

Lorenzes denied liability and affirmatively asserted that the statute of limitations barred the claim because, while the cracks were covered by paneling and sheetrock, a reasonable person was on inquiry notice given the repeated events of water entering the basement. They asserted that Steinbeissers had waived their rights or were estopped because they did not have an inspection. They contended that the claimed damages were excessive because moving the house was unnecessary given that the cracks were not of structural concern and could be inexpensively repaired.

A Sidney jury found that Steinbeissers' claims were not barred by the statute of limitations or by waiver or estoppel by declining to have the home inspected. It found that Steinbeissers did not prove by a preponderance of the evidence that Lorenzes made negligent misrepresentations about the home or failed to disclose any adverse material fact. It found that neither Lorenzes, Beagle Properties, nor Fink breached any contract with Steinbeissers by violating the implied covenant of good faith & fair dealing. Although not required to since its previous answers were "no," the jury found that none of the claimed wrongful acts caused damages to Steinbeissers. It found that none of the Defendants was negligent. It found that Steinbeissers did not prove by a preponderance of the evidence that they are entitled to collect damages against Defendants.

Plaintiffs' expert: Shirley Nelson, Antelope (real estate).

Defendants Lorenzes' experts: Jim Schilke, Billings (structural engineer); Dr. Maciej Tomaszewski, Billings (allergies/immunology).

Defendants Fink and Beagle Properties' expert: Zane Sullivan, Missoula (real estate).

Demand, \$115,000; offer, \$20,000. Jury request, \$148,000; jury suggestion, 0. Mark Parker, mediator.

Jury deliberated 2 hours 5th day.

Steinbeisser v. Lorenz, Fink, and Beagle Properties, Richland DV 04-33, 4/27/07.

Gary Jackson, Sidney, and Thomas Gaffney (O'Toole & O'Toole), Plentywood, for Steinbeissers; Jared Dahle (Nelson & Dahle), Billings, for Lorenzes (Mountain West Farm Bureau Mutual Ins.); William Wagner (Garlington, Lohn & Robinson), Missoula, for Fink and Beagle (Kemper Ins./XL Select Professional).