

Putnam v. Jerlamar Assoc. & Capp (directed verdict)

DISTRICT COURT

DIRECTED VERDICT: Claimed effects of gravel pit on residence in subdivision . . . Knisely.

In 2009 Rodney Putnam viewed lots in Grizzly Creek Subdivision, developed by Jerlamar Associates. He purchased a lot for \$75,000 and contracted for a home for a total package of approximately \$250,000, which was completed in 1/10 by Capp Const. A year later he claimed that he noticed that the Biggersta sand & gravel pit owned by JTL (later by Knife River) became active 3/4 mile to the east. He claimed that it was lit up all night, was noisy & smelly, and produced dust in the subdivision. He believed that its anticipated de-watering operation would dry up his wells. He initially sued for return of his purchase price plus \$50,000 improvements. He sold his home in 2013 for \$262,000, so he claimed a loss in value on the sale plus his improvements. He claimed that Jerlamar had a duty to disclose the gravel pit and that with a 30-year mining permit, JTL could expand the mine up to his backyard as it owned the adjoining property, ruining his ability to enjoy the property and destroying its value. He claimed that he assumed that the adjoining land was farm land when he purchased.

Jerlamar contended that Putnam was informed before he purchased of the sand & gravel operation and that it could operate for 30 years on the adjoining property, and that he sued no loss since his sale was voluntary and at a price he accepted.

Judge Knisely granted summary judgment on constructive fraud on the basis that the gravel pit was open & obvious. Defendants moved for a directed verdict at the close of Putnam's evidence the 2nd day of trial. As for negligent misrepresentation, Jerlamar contended that Putnam admitted that he asserted a failure to disclose, but as a matter of law the claim required an affirmative false representation. As for breach of the implied covenant of good faith & fair dealing, it contended that Putnam had not sued for breach of an express contract provision, nor did he assert such a breach. Knisely directed verdict and dismissed. Individual Defendant Jerry Capp moved for a directed verdict on the ground that Putnam's evidence showed only corporate acts, and Knisely granted his motion as well.

Plaintiff's expert: Realtor Tom Llewelyn, Billings.

Defendants' experts (none deposed or testified): Realtor Myles Egan, Billings; Hydrologist Thomas Osborne, Billings.

Demand, \$50,000; offer, 0. No mediator.

Putnam v. Jerlamar Associates and Capp, Yellowstone DV-13-166, 1/6/15.

Margaret Reader (Wittich Ogburn), Bozeman, for Putnam; Randall Nelson (Nelson Law Firm), Billings, for Defendants (Mountain West Farm Bureau Mutual Ins.).