

2006 WL 4515311 (Nev. Dist. Ct.)

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WEST'S JURY VERDICTS - NEVADA REPORTS

Home-Buyer's Claim of Construction Defects Results in \$553K Verdict

District Court of Nevada, Fifth Judicial District, Nye County.

Morris v. Somers

Type of Case:

Real Property • Purchase-Sale
Contracts • Warranty
Contracts • Breach
Construction Defects • Mold
Fraud & Misrepresentation • Failure to Disclose
Professional Malpractice • Real Estate Broker/Agent
Vicarious Liability

Specific Liability: Sellers' failure to disclose mold damage to home caused damage to buyers

General Injury: Monetary damages

Jurisdiction:

State: Nevada
County: Nye

Case Name: Ronald Morris and Lynn Morris v. Pat Somers, individually and as an employee/agent of Re/Max Vision; Angie Saltzman, individually and as an employee/agent of Realty Executives; Roger Saltzman, individually and as an employee/agent of Realty Executives; RICH, Uhl, as an agent/broker of Re/Max Vision; Van Dishong, as an agent/owner of Re/Max Vision; V&A Dishong, Inc. d/b/a Re/Max Vision, a Nevada corporation; Cheryl Smith, as an agent/broker of Realty Executives; Charles J. Moore, as an agent/broker/owner of Realty Executives; FJM Corporation d/b/a Realty Executives of Nevada, a Nevada corporation; Doe individuals V-XX and Roe business and government entities III-XX

Docket/File Number: CV20109

Verdict: Plaintiff, \$552,501.00

Verdict Range: \$500,000 - 999,999

Verdict Date: June 16, 2006

Judge: Robert W. Lane

Attorneys:

Plaintiff: Neal K. Hyman, Law Offices of Neal Hyman, Henderson, Nev.

Defendants (Saltzman, Moore, Smith and Realty Executives of Nevada): Jean A. Weil, Weil & Drage, Las Vegas, Nev. Defendants (Somers, Uhl, Dishong and Re/Max Vision): Philip S. Gerson, Rawlings, Olson, Cannon, Gormley & Desruisseaux, Las Vegas, Nev.

Trial Type: Jury**Experts:**

Plaintiff: Jan Brussel, construction defect expert, Brussel Construction and Management, Inc., Las Vegas, Nev.; Pamela Kinkade, appraiser, Kinkade Appraisal, Las Vegas, Nev.; Shirley Rappaport, realtor, Tower Realty & Development, Las Vegas, Nev.

Defendant (Somers): Vickie England, CRS, real estate broker/agent, Award Realty, Las Vegas, Nev.; Jerry Lawrence, construction defect expert, Building Construction Consulting, Las Vegas, Nev. Defendant (Saltzman): J.C. Melvin, real estate corporate broker, Keller Williams, The Marketplace, Henderson, Nev.

Breakdown of Award:

\$150,000.00 to plaintiff Ronald Morris for failure to disclose (\$50,000 trebled per NRS 113.150) against defendant Somers

\$75,000.00 to plaintiff Ronald Morris for negligent and intentional misrepresentation against defendant Somers

\$50,000.00 to plaintiff Ronald Morris for breach of good faith and fair dealing against defendant Somers

\$50,000.00 to plaintiff Ronald Morris for negligence (construction defect) against defendant Somers

\$25,000.00 to plaintiff Ronald Morris for breach of contract (construction defect) against defendant Somers

\$25,000.00 to plaintiff Ronald Morris for fraud against defendant Somers

\$25,000.00 to plaintiff Ronald Morris for fraudulent inducement against defendant Somers

\$25,000.00 to plaintiff Ronald Morris for breach of contract against defendant Somers

\$23,750.00 to plaintiff Ronald Morris for negligence (real estate) against defendant Somers

\$23,750.00 to plaintiff Ronald Morris for negligence per se (real estate) against defendant Somers

\$10,000.00 to plaintiff Ronald Morris for breach of warranty (construction defect) against defendant Somers

\$1.00 to plaintiff Ronald Morris for punitive damages against defendant Somers

\$70,000.00 to plaintiff Ronald Morris against defendant Angie Saltzman

\$0 to plaintiff Ronald Morris against defendant Roger Saltzman

Summary of Facts:

In December 2002 Pat Somers sold a single family home to Ronald Morris for \$235,000. The home was built by Somers and was approximately 5,000 square feet on 1.2 acres. Morris said that while Somers lived in the home, water leaks led to mold growth in the home and claimed Somers made faulty repairs to the home. Morris also claimed Somers failed to disclose the defects and damage when she sold him the house.

According to Morris, rain water leaked into the home within 44 days of him moving into the home and caused water and mold damage.

Morris filed a lawsuit, alleging Somers, who acted as her own real estate agent through Re/Max Vision, failed to disclose the construction defects in the home. Morris also sued his real estate agents, Angie and Roger Saltzman, alleging they should have recommended further inspections to him. Morris claimed damages for construction defect (NRS Chapter 40), the seller's failure to disclose (NRS Chapter 113) and the real estate agents' failure to

disclose (NRS Chapter 645).

According to Morris' attorney Somers contended no building codes al, applied when the house was constructed, since Pahrump had no building requirements. Morris contended that a house must be built to uniform codes and industry standards.

According to Morris, he made several settlement offers prior to trial, ranging from \$230,000 to \$150,000 to Somers and ranging from \$230,000 to \$100,000 to the Saltzmans. Somers and Re/Max Vision offered to settle for \$40,000, and the Saltzmans and Realty Executives offered to settle for \$10,100. Other settlement negotiations were confidential.

Plaintiff Lynn Morris was dismissed for lack of standing by the court before trial. During a six-week trial in June 2006, Rich Uhl, Van Dishong, V&A Dishong, Inc. d/b/a Re/Max vision, Charles J. Moore and FJMP Corp. d/b/a Realty Executive of Nevada were dismissed on a Rule 50 motion after the conclusion of the plaintiff's case. The plaintiff's claims for intentional tort against the Saltzmans were also dismissed.

After trial, a jury awarded \$552,501 damages to Morris, including a \$70,000 award against Angie Saltzman. The Saltzmans entered a settlement with Morris before the court entered judgment. Morris said he prevailed on his post-trial motions, except his claims for negligent and intentional misrepresentation amounting to \$75,000 against defendant Somers were dismissed. The court entered an amended judgment against Somers in the amount of \$715,620 in October 2006, including \$163,000 attorney fees, \$49,968 costs and \$95,150 prejudgment interest.

Somers appealed from the judgment. Morris cross-appealed, contending Lynn Morris was improperly dismissed, the real estate brokers and companies were wrongfully dismissed because they were vicariously liable for the act of their agent, and his misrepresentation claim was wrongfully dismissed. The parties settled at a mandatory settlement conference.

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