

Summary of SC89097, *Steven C. Larabee and Frances C. Larabee v. Buddy Eichler and Dorothy Eichler*

Appeal from the circuit court of Benton County, the Honorable John W. (Bill) Sims.

Attorneys: The Larabees were represented by J. Eric Mitchell of Johns Lilleston & Mitchell LLC in Clinton, and the Eichlers were represented by James Owen Kjar of Shipley & Kjar LLC in Warsaw.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A trial court granted summary judgment to sellers of two parcels of land in a suit against them for misrepresentation. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri reverses the trial court's decision and remands the case for further proceedings. As to one lot, the Court finds that the statute of limitations did not start running against the buyers until they had actual notice of the fraud. The deeds did not give them notice, as they described the parcels as lots of a subdivision, despite prior recorded instruments that excluded the lots from the subdivision, and one of the sellers was a trustee of the subdivision and allowed the buyers to enjoy the rights and privileges of the subdivision for several years. As to the second lot, the Court finds the buyers' appraisal sufficiently shows a drop in value between the property as represented and the property in reality, creating a genuine issue for trial.

Facts: Buddy and Dorothy Eichler were the owners and developers of the Sterett Creek Village subdivision in Benton County. Buddy Eichler also served as a trustee of the subdivision's trusteeship from 1986 through 2004. The Eichlers made oral and written representations to Steven and Frances Larabee that they owned lots in the subdivision and that surrounding undeveloped parcels of land they also owned were or would be subject to the rights and privileges of the subdivision's trusteeship, including restrictive covenants. In reliance on these representations, the Larabees bought two lots in the subdivision from the Eichlers: Lot 403 in April 1998 and Lot 402 two years later. The Larabees built and lived in a home on Lot 403 and, until 2004, were billed and paid assessments and well-hookup fees to the trusteeship, were allowed to attend and vote in the trusteeship's annual meetings, and enjoyed the use of the subdivision's swimming pool and pavilion. After the Eichlers began placing brush piles and a mobile home camper on a parcel of land adjoining the Larabees' property, the Larabees sued to enforce the trusteeship's restrictive covenants and, thereby, to require the Eichlers to remove the brush and the camper. The trial court dismissed the suit, finding the Larabees' property was not within the trusteeship's boundaries, and in March 2004, the Larabees sued the Eichlers for misrepresentation. The trial court granted summary judgment in the Eichlers' favor, and the Larabees appeal.

REVERSED AND REMANDED.

Court en banc holds: (1) The trial court erred in granting the Eichlers summary judgment on Count I, which relates to the 1998 agreement for Lot 403. An action for fraud must be discovered within 10 years of the facts constituting the fraud, and once it is discovered, section 516.120(5), RSMo 2000, requires an action to be brought within five years. A cause of action for fraud accrues at the time the defrauded party discovered or, in the exercise of due diligence, should have discovered the fraud. Generally, where the facts constituting the fraud appear on the face of a recorded deed, the record of the deed gives constructive notice of the fraud, setting in motion the statute of limitations. The facts appearing in the real estate records bind the Larabees as to any innocent third party, but the Eichlers are the sellers and not a third party, and they are not allowed unbridled license to misrepresent prior real estate recordings. Here, the deeds given to the Larabees identified “Lot 403, Sterett Creek Village” and “Lot 402, Sterett Creek Village” despite the fact that the trust indenture previously filed in the real estate records did not describe the village in a way to include those two lots. Further, as a trustee, Buddy Eichler purported to stand in a fiduciary relationship to the Larabees and continued as such so long as they were billed for trusteeship expenses and enjoyed trusteeship privileges. The statute of limitations did not start running against the Larabees until they obtained actual notice of the fraud.

(2) The trial court erred in granting the Eichlers summary judgment on Count II, which relates to the 2000 agreement for Lot 402. The Larabees allege they bought Lot 402 for \$11,000 and it is now worthless. In Missouri, the “benefit of the bargain” rule provides that the appropriate measure of damages in a fraudulent misrepresentation case is the difference between the fair market value of the property received and its value if it had been as represented, measured at the time of the transaction. For purposes of summary judgment, the Larabees’ appraisal – which estimated damages at approximately \$17,000 based on a 40-percent drop in the lot’s value because it does not enjoy the rights and privileges of being in Sterett Creek Village – provides sufficient evidence of a difference between the fair market value of the property received and the property as it had been represented. As such, it creates a genuine issue for trial.