OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

THOMAS DUNCAN AND LISA DUNCAN,	)	No. ED109582
Appellants,	)	Appeal from the Circuit Court of St. Charles County
v.	)	Cause No. 1711-CC01148
SAVANNAH, LLC D/B/A BERKSHIRE HATHAWAY HOME SERVICES, et al.,	)	Honorable Michael J. Fargas
Respondents.	)	Filed: November 23, 2021

Thomas Duncan and Lisa Duncan (Buyers) appeal the trial court's summary judgment in favor of Savannah, LLC d/b/a Berkshire Hathaway Home Services and Teresa Wernimont (Wernimont) (collectively, Respondents) on their claims for a violation of the Missouri Merchandising Practice Act (MMPA) and negligent misrepresentation regarding statements Wernimont made and alleged omissions of material fact during the purchase of Buyers' home (the Property). Specifically, Buyers argue Wernimont had a duty to disclose facts regarding water drainage and sump pump issues of which a neighboring property owner informed her, and that Respondents are liable for misrepresentations in the seller's disclosure statement.

REVERSED AND REMANDED.

Division Two Holds: We find the trial court overlooked portions of Buyers' claims about which there exist material issues of fact that precluded summary judgment. Specifically, a factual dispute exists over whether the facts of water drainage contained in the neighbor's letter indicated that water drainage problems, flooding, or sump pump issues existed or may affect the Property. As such, a factual dispute exists regarding whether Wernimont had a duty to disclose the issues the neighbor raised or a duty to ensure the Sellers amended their disclosure statement. Thus, summary judgment was inappropriate.

Opinion by: Gary M. Gaertner, Jr., P.J.,
James M. Dowd, J., and Thomas C. Clark II, J., concur.

Attorneys for Appellants: Michael K. Daming, Evelyn I. Sims
Attorneys for Respondents: John P. Rahoy, Teresa M. Young

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