

**Summary of SC94074, *Shawn Stevens v. Markirk Construction Inc. and Kirk Jones***

Appeal from the Jackson County circuit court, Judge Marco Roldan

Argued and submitted October 2, 2014; opinion issued February 3, 2015

**Attorneys:** Stevens was represented by Margaret D. Lineberry of the Lineberry Law Firm PC in Kansas City, (816) 805-5239. Markirk and Jones were represented by Patrick A. Bousquet, David R. Buchanan and Derek H. Mackay of Brown & James PC in Kansas City, (816) 472-0800.

*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 property owner appeals a judgment that the developer who sold him the property had not represented that there would be no flooding on the lot at a time when the developer knew the representation to be untrue. In a 7-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri holds that the trial court did not err and affirms the judgment. Because the alleged representation that the lot “would not flood” refers to future events rather than existing conditions, the trial court correctly instructed the jury that it had to find the developer knew the statement was false at the time he made it to find him liable for fraudulent misrepresentation. Judge Thomas E. Mountjoy, presiding judge of the 31st Judicial Circuit (Greene County), sat in this case by special designation in lieu of Chief Justice Mary R. Russell.

**Facts:** Prior to purchasing a subdivision lot from Markirk Construction, Shawn Stevens alleges he was assured by Markirk’s president, Kirk Jones, that the lot in question had no flooding problems and that Markirk would address water problems that arose in the future. Stevens claims that the water problems on the lot are, in fact, so severe that he has not been able to use his backyard for any reasonable purpose. He sued Markirk and Jones, alleging fraudulent misrepresentation in the negotiation and sale of the lot. At the jury trial, Stevens’ proposed jury instruction stated that Jones represented the lot “would not flood” and that, if it did, he would take care of any problems. Stevens argued that to find Jones liable, the jury only was required to determine that the statement that the property “would not flood” was made without knowledge of its truth or falsity. The trial court disagreed and found that the statements that the property “would not flood” and that, if it did, Jones would fix any problems, both referred to future events. As a result, Missouri law requires proof of actual knowledge of falsity at the time each statement was made. The jury was instructed accordingly, and it found in favor of Markirk and Jones on the fraudulent misrepresentation claim. Stevens appeals.

**AFFIRMED.**

**Court en banc holds:** The trial court did not err in instructing the jury on the more stringent standard of actual knowledge that the representation was false at the time it was made. Stevens contends that his chosen phrasing “would not flood” was intended as shorthand for the assurance he claims he received that the lot was designed and graded such that it had no flooding problems at the time of sale. In its ordinary usage and in the context of the representations submitted, however, “would not flood” is a representation as to future events. Missouri case law about

fraudulent misrepresentation and the model jury instruction derived from that law are clear that, for representations concerning future events, the jury must be instructed that the defendant knew the statement was false at the time it was made. Lack of knowledge as to the statement's truth or falsity is insufficient.