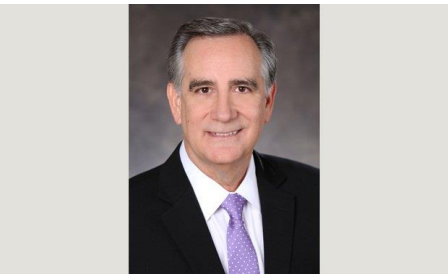
Daily Business Review

Caveat Emptor Still Dictates in Florida's Courts for Real Estate Buyers

By **Oscar R. Rivera** | May 19, 2021



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The doctrine of caveat emptor holding that buyers are solely responsible for checking the quality and suitability of goods before purchase is one of the earliest legal principles that many young students are taught. As Florida's Fourth District Court of Appeal recently reaffirmed, it still holds true in the state for real estate buyers who seek to have their property acquisitions nullified by the courts due to alleged misrepresentations and hidden defects.

In *Florida Holding 4800 v. Lauderhill Mall Investment*, Florida Holding purchased a commercial property from Lauderhill Mall, then sued the seller for alleged misrepresentations and concealments of its physical condition. The trial court entered final summary judgment in favor of the seller, concluding that the buyer's claims were all expressly contradicted by the purchase and sale agreement that the parties had executed.

In the buyer's subsequent appeal, the Fourth DCA panel found that the sale agreement stipulated it was an "as is" sale, using language that is standard for the industry. It noted that the seller made absolutely no warranties, representations or covenants to the buyer regarding the condition of the property, and the buyer acknowledged that it was purchasing the property in its "as is" condition and based solely on its own inspection, investigation and evaluation.

The appellate panel's unanimous opinion uses all-caps emphasis for the following passages from the agreement:

"[BUYER] HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO … MADE OR FURNISHED BY SELLER … [BUYER], UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER … FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH [BUYER] MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER … AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS … AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY."

The ruling also notes that the agreement permitted the buyer to inspect the property and, if it was unsatisfied with its condition following inspection, to cancel the contract. Indeed, the buyer took full advantage of this provision and hired an engineer to inspect the property. The appellate opinion includes a footnote noting that the buyer also sued its engineer, which was probably the correct cause of action.

Buyer's Allegations

The buyer's allegations referenced roof leaks, HVAC failures and mold growth, and it based its suit on breaches of implied covenant of good faith and fair dealing, fraud in the inducement, negligent misrepresentation, negligence, and unjust enrichment. The complaint also originally included a rescission count to nullify the sale, but a second footnote explains that the property had been assigned to a third party and foreclosed during this litigation, so the buyer later essentially conceded that its rescission count was no longer viable.

All the counts were based on its allegations that the seller misrepresented and actively concealed the property's physical condition, and it represented that the roof was well maintained and had no history of leaks, and the HVAC system never had issues and was fully serviceable.

During the ensuing trial, the buyer responded to the seller's motion for summary judgment based on the provisions of the sale agreement with an affidavit from the seller's own former property manager, who attested that the seller "undertook efforts to actively conceal an old, decaying, damaged, and actively leaking roof by covering the damaged areas of the roof to hide the leaking condition."

The trial court ultimately was not swayed, and it relied on the language of the sale agreement to conclude the buyer's claims were adequately covered or expressly contradicted and thus not actionable. Its ruling granting the seller's motion for final summary judgment also pointed out that the buyer was to conduct its own inspection of the property, and it had presented no evidence that the seller prevented those inspections.

The appellate panel addressed all the buyer's claims in its opinion. It found the contract contained provisions that the seller did not guarantee any income or

profits, and the buyer was not relying on the seller's expertise or representations. After a delayed business opening after the purchase, it notes that the buyer quickly sold what had become an unprofitable business and sued the seller for fraud, basing the claim on the seller's agent neglecting to disclose that it could lose money in the startup period and that the seller had been involved in failed laundromats.

'As Is' Means 'As Is'

Consistent with the Fourth DCA's prior opinion in a case from 2005 and multiple other appellate rulings, the panel writes that even if the seller made oral representations regarding the property's physical condition, the agreement's "as is" clause expressly contradicted those representations and clearly negates any claims for damages, including the fraud claim.

As to whether the exemptions to the doctrine of caveat emptor apply in this case, the court found that even with the property manager's affidavit attesting to the seller's efforts to actively conceal the roof's condition, the buyer did not allege the seller's actions prevented it from conducting a thorough inspection of the property, or that but for the seller's conduct it would have discovered the roof defect.

Ultimately, without establishing an exception to caveat emptor, the opinion found that the buyer was bound by the agreement's express language that it was purchasing the property "based solely on buyer's own inspection, investigation and evaluation," the seller had made no representations as to the property's condition, and even if it did the buyer was not relying upon such representations. "By these very terms, Buyer waived any claim of fraud on the undisputed material facts in this case," the opinion concludes.

This decision is in line with Florida case law that has been established for decades. Indeed, the provisions from the sale agreement in this ruling and others along the

same lines have proved crucial in continuing the well-established doctrine of caveat emptor.

The buyer in this case, which apparently had already lost money in its failed venture, will now also probably lose additional substantial sums by being forced to pay for the attorney fees and costs for both the circuit and appellate cases for the prevailing-party seller, as well as of course for its own legal counsel. The expensive lesson for this real estate buyer comes free of charge for all others in the state: For sellers, include detailed, well-drafted exculpation language in your agreements. For buyers, do your due diligence and inspect the property with quality inspectors since you are assuming the risk in an as-is contract, and do not try to blame the seller when the inspectors you engage miss obvious defects in the condition of the property.

Oscar R. Rivera *heads the real estate practice group at the South Florida law firm of Siegfried Rivera. He has more than 40 years of real estate law experience and has represented buyers and sellers in transactions totaling more than a combined $5 billion.* ***www.SiegfriedRivera.com****, 305-442-3334.*

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