

STATE OF MICHIGAN  
COURT OF APPEALS

---

JOHN T. HUSINKA and KRISTINA R.  
HUSINKA,

UNPUBLISHED  
February 28, 2006

Plaintiffs-Appellees,

v

No. 263826  
Wayne Circuit Court  
LC No. 04-437916-AV

REAL ESTATE UNLIMITED, INC., and HARRY  
CASSIDY,

Defendants/Cross Defendants-  
Appellants,

and

SANDRA L. BUSS,

Defendant/Cross Plaintiff-Appellant.

---

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

BORRELLO, P.J. (*dissenting*).

I would affirm the decision of the trial court in this matter because there was sufficient evidence that plaintiffs' reliance on defendants' false representations in the advertising brochure was reasonable to submit the issue to the trier of fact.

The majority contends that plaintiffs' reliance was unreasonable because plaintiffs' home inspector advised plaintiffs to inquire further about the warranty and its transferability and because the list ticket referred to the basement as waterproofed, but did not mention a warranty. However, it is undisputed that defendants lied to plaintiffs in the initial advertising brochure, which stated that the basement had been waterproofed and that there was a warranty that could be transferred. Defendants never explicitly withdrew this fabrication; therefore, notwithstanding the inspector's advice and the absence of warranty language in the list ticket, plaintiffs could have actually and reasonably relied on the advertising brochure's claim that the home possessed an "unfinished basement waterproofed with a transferable warranty." Viewing the evidence in a light most favorable to plaintiffs, there is a question of fact regarding whether plaintiffs' reliance on such misrepresentations was reasonable.

I also dissent because of the boldness of the defendants' fabrication in the advertising brochure, which was posted on the For Sale sign on the property and which was presented to all prospective buyers. We are not dealing here with a situation where a realtor or a home owner exaggerated or understated a condition of the home. In this case, the realtor and the seller printed an outright lie which they never redacted. Such unethical and devious conduct need be examined in light of all the surrounding circumstances of this case. To allow defendants in this case to print an outright lie and escape liability is tantamount to a miscarriage of justice.

For these reasons, I respectfully dissent from the opinion of the majority.

/s/ Stephen L. Borrello