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Torts - Fraud and Deceit-Inspection by Vendee as Bar to Recovery

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TORTS–FRAUD AND DECEIT–INSPECTION BY VENDEE AS BAR TO RECOVERY

Vendor owned a large, old house heated by a steam, coal-fired furnace. An explosion in the furnace caused serious damage to it, which was, however, not apparent to a layman. The price of the residence, which had been listed for sale prior to the explosion, was appreciably reduced inasmuch as vendor informed her broker of some trouble with the furnace and also of her physical inability to keep it operating. During an inspection of the house the vendee noted that the house was cold and asked the agent if there was anything wrong with the furnace. He was informed that there was nothing wrong with the furnace, that it was in good shape although something was wrong with the controls, and that the reason the house was cold was the physical inability of vendor to fill the hopper. Vendee testified that vendor also told him personally that there was nothing wrong with the furnace. He looked inside the furnace, which was full of ashes and soot, and then made an offer and signed the resulting contract. A few days later vendee obtained the key to the house and had the furnace examined by an expert, who after a superficial examination advised that the controls could be repaired at a nominal expense. Vendee then performed his part of the contract. Soon thereafter while having the furnace cleaned, vendee discovered for the first time a large crack in the furnace. This action resulted with a jury verdict in favor of vendee for damages. On appeal, *held,* reversed and final judgment for vendor. Where vendee was given opportunity to make full and complete examination of true condition of furnace, vendee cannot claim that misrepresentation induced him to purchase the house. *Poe* v. *Voss,* 196 Va. 821, 86 S.E.2d 47 (1955). (Eggleston and Miller, JJ., were not present; Buchanan and Smith, JJ., dissented.)

The Court said that the obvious condition of the furnace and the agent's statements, even if the vendee's version be accepted (which the jury did), were sufficient to excite the suspicions of a reasonable, prudent man, and they did, for vendee asked for and was given opportunity to examine the furnace. Under these circumstances it was the vendee's duty to take ad-

vantage of the opportunity and ascertain the true condition of the premises and having failed to do so he cannot now avail himself of the alleged misrepresentations. It is said that the law gives no remedy for voluntary negligence in failing to make inquiry regarding the true status of affairs,[1] and if a purchaser does not rely on the representations of the seller but seeks information from other sources, the law will often impute to him all the knowledge necessary to a proper understanding of the facts.[2] Although the guilty party to a contract obtained by false representations cannot rely upon the fact that the party defrauded might have learned the trouble by proper inquiry, yet, if the party defrauded institutes inquiry for himself and ascertains the trouble, or if the means of knowledge are pointed out to him and an opportunity is given to make the necessary investigation and he thereby acquires some information concerning the actual facts, he cannot rely upon the falsity of such representations.[3] However, when the seller has made a false representation which from its nature might induce the buyer to enter into the contract on the faith of it, it will be inferred that the buyer was thereby induced to contract. To remove this inference the seller must prove either that the buyer had knowledge of facts which showed the representations to be untrue or that he expressly stated in terms or showed by his conduct that he did not rely upon the representations, but acted on his own judgment. Furthermore, the vendee is not deprived of his right to relief merely because he had the means of discovering that the representation was false.[4] The law is well-settled that if one represents as true that which is really false in such a way as to induce a reasonable man to believe it, and the representation is meant to be acted on, and he to whom the representation was made, believing it to be true, acts on it, and in consequence thereof sustains damage—there is such fraud as will support an action for deceit at law.[5] Evidently the jury did not believe that the parties were on equal footing or that the vendee had ascertained the truth or that the means of knowledge were pointed out to him, but rather the jury thought that the vendor had induced the vendee to buy by

[1] Costello v. Larsen, 182 Va. 567, 29 S.E.2d 856 (1944).
[2] Grim v. Byrd, 32 Gratt. (73 Va.) 293 (1879).
[3] West End Co. v. Clairbourne, 87 Va. 734, 34 S.E. 900 (1900).
[4] Wilson v. Carpenter, 91 Va. 183, 21 S.E. 243 (1895).
[5] Jefferson Standard Life Ins. Co. v. Hedrick, 181 Va. 824, 27 S.E.2d 198 (1943).

a false misrepresentation upon which vendee relied and awarded damages to the vendee accordingly.

It has been repeatedly held that a verdict fairly rendered ought not to be interfered with by the court unless manifest wrong and injustice have been done or unless the verdict is plainly not warranted by the evidence.[6] The jury's findings should not be disturbed even though if the Court of Appeals had been the trier of the facts it would not have so found.[7] A verdict for the plaintiff approved by the trial court requires the appellate court in its review of the case to look only to so much of the evidence as is favorable to the plaintiff,[8] and such a verdict cannot be disturbed unless it is wholly without evidence to support it or is so plainly wrong as to leave no doubt upon the subject.[9] The trial court, which has heard the witnesses testify, is in a better position to pass on the weight to be attached to their testimony than the appellate court, and the action of the trial court in declining to interfere with the findings of the jury is entitled to weight in the appellate court.[10] The credibility of the witnesses, the weight of evidence and conflicting inferences therefrom were questions for the jury, and the trial court having entered judgment upon the verdict for plaintiff, it could not be said that the judgment or verdict was plainly wrong or without evidence to support it.[11] A verdict based on credible evidence and sustained by the trial court, must be sustained by the Court of Appeals[12] and where a party litigant comes to the Court of Appeals fortified by the verdict of a jury, approved by the trial court, he occupies the strongest position known to the law.[13] Appellate courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable,[14] and upon review the court should view the case in effect as upon a demurrer to the evidence.[15] In the instant case it appears that the decision in the

[6] Rauch & Co. v. Graham Mfg. Corp., 145 Va. 681, 134 S.E. 692 (1926).
[7] Smith v. Commonwealth, 185 Va. 800, 40 S.E.2d 273 (1946).
[8] Woodmen of the World Life Ins. Soc. v. Grant, 185 Va. 288, 38 S.E.2d 450 (1946).
[9] United States Fidelity Co. v. Country Club, 129 Va. 306, 105 S.E. 686 (1921).
[10] Kritselis v. Petty, 129 Va. 175, 105 S.E. 536 (1921).
[11] Director General v. Gordon, 134 Va. 381, 114 S.E. 668 (1922).
[12] Johnson v. Kincheloe, 164 Va. 370, 180 S.E. 540 (1935).
[13] Neal v. Spencer, 181 Va. 668, 26 S.E.2d 70 (1943).
[14] Burrell v. Burrell, 193 Va. 594, 70 S.E.2d 316 (1952).
[15] Olds v. Woods, 196 Va. 960, 86 S.E.2d 32 (1955).

trial court was reversed solely because the vendee had an opportunity to examine the furnace even though he did not discover its malfunction until after performance of the contract and regardless of the fact that the vendor induced the sale by a misrepresentation as to the condition of the furnace.

The Court also seems to stress heavily the significance of the fact that an expert was brought in by vendee to look at the furnace although this was done after the contract was signed. If, however, the vendee learned of the defects from his expert, he was not thereby barred from asserting fraud by the vendor but still had the right to elect to take the property under the contract and bring his action for the alleged deceit.[16]

The weight of authority in the United States upholds the view that contributory negligence is no defense when the defendant has intentionally misrepresented facts in order to induce the plaintiff to enter into a business transaction. This view is in line with the general legal principle that contributory negligence is no defense to an intentional tort. The fact that the plaintiff might have discovered the truth upon investigation is not a defense available to a deceitful defendant.[17] It seems that the decision in this case is contra to the majority view and not in keeping with the progress the law has steadily made in the general field of protection of the bona fide purchaser and the curtailment of sharp practices. It is conceivable that much abuse will be fostered by this strict interpretation of a well-established legal principle. How can any well-meaning and honest buyer rely on any representation by his vendor if he has seen the subject matter? Take a hypothetical case in which the vendee asks the vendor whether the roof leaks and vendor assures vendee that it does not, while in reality it is a virtual colander. On the basis of the rule expressed in the *Poe* case the vendee is barred to assert fraud on the part of vendor if he has seen the roof on a clear day. Evidently the Court would feel that

[16] Wilson v. Hundley, 96 Va. 96, 30 S.E. 492 (1898).
[17] Lewis v. Jewell, 151 Mass. 345, 24 N.E. 52, 21 Am.St.Rep. 454 (1890); Fargo Gas and Coke Co. v. Fargo Gas and Electric Co., 4 N.D. 219, 59 N.W. 1066, 37 L.R.A. 593 (1894); Handy v. Waldren, 18 R.I. 567, 29 A. 143, 49 Am.St.Rep. 794 (1894), 19 R.I. 618, 35 A. 884 (1896); Halsel v. First National Bank of Muskogee, 48 Okla. 535, 150 P. 489, 1916 L.R.A. 1697 (1915); McCarthy v. Reid, 237 Mass. 371, 129 N.E. 675, 12 A.L.R. 1000 (1924); Ferguson v. Koch, 204 Cal.2d. 342, 268 P. 342, 58 A.L.R. 176 (1928); Seeger v. Odle, 18 Cal.2d 409, 115 P.2d 977, 136 A.L.R. 1291 (1941).

the parties are on equal terms in this case, as it is analogous in my opinion to the case under comment. It would be preferable if the definition of equal footing should include an awareness by both parties of all the material facts available so that any subsequent transaction between them would be limited only by their personal judgment.

The doctrine of caveat emptor has mellowed with age and as a principle should be valid only in the absence of fraudulent misrepresentation. As long ago as 1899 it was said that the rule of caveat emptor is not founded on the highest standards of morals and that it is no longer a shield and protection to the deliberate frauds and cheats of sharpers.[18] Everyone still admires a hard bargain but only if it is free of fraud. No rogue should enjoy his ill-gotten plunder for the simple reason that his victim is by chance a fool.[19] There is a great difference between offering a house for sale "as is" and making a sale based on and induced by misrepresentation and fraud, regardless of the layman's casual observations soothed by his vendor's assurances. Progressive, prosperous enterprises do not resort to this type of sale. This fact further lulls an unsuspecting public into a false sense of financial security.

It is submitted that a more equitable result would have been reached in this three-to-two decision if the Court had adopted as its own the dissenting opinion written by Mr. Justice Buchanan.

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[18] Strand v. Griffith, 97 F. 854 (8th Cir. 1899).
[19] Chamberlin v. Fuller, 59 Vt. 247, 9 A. 832 (1887).