

COURT OF APPEALS OF TENNESSEE

Gail Gottesman v. Todd Hecker et al.

No. W2025-00966-COA-R3-CV (Tenn. Ct. App. Mar. 31, 2026) · No. W2025-00966-COA-R3-CV · Decided March 31, 2026

SUMMARY

The Tennessee Court of Appeals reviews a summary judgment ruling in a dispute arising from the sale of improved residential real property. The court reverses summary judgment on the buyer’s fraudulent misrepresentation, fraudulent concealment, and Tennessee Residential Property Disclosures Act claims, while affirming summary judgment on the claim under Tennessee Code Annotated § 62-6-103 and other remaining claims. The court remands for further proceedings, denies reassignment to a different trial judge, and denies the sellers’ request for attorney’s fees.

CASE DETAILS

COURT	Court of Appeals of Tennessee
WRITING FOR THE COURT	Thomas R. Frierson, II; Jeffrey Usman; Valerie L. Smith
JURISDICTION	Tennessee Court of Appeals
DECIDED	March 31, 2026
DOCKET	W2025-00966-COA-R3-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The buyer appealed as of right from the Circuit Court for Benton County's final order granting the sellers summary judgment. The Court of Appeals affirmed in part, reversed in part, remanded for further proceedings, denied reassignment to a different judge, and denied the sellers' request for attorney's fees.
STANDARD OF REVIEW	Summary judgment is reviewed de novo with no presumption of correctness. The appellate court makes a fresh determination whether Tennessee Rule of Civil Procedure 56 has been satisfied and views the evidence in the strongest legitimate light in favor of the nonmoving party, allowing all reasonable inferences in that party's favor.
PRECEDENTIAL VALUE	published
PARTIES	Gail Gottesman v. Todd Hecker, Tammy Hecker, Karen Hoff, Robert Ellis

TOPICS

real estate fraudulent inducement contracts standard of review appellate procedure

PRACTICE AREAS

real estate contracts torts construction law appellate procedure

QUESTIONS PRESENTED

1. Whether the Heckers were entitled to summary judgment on Gottesman's claim that the home's construction or sale violated Tennessee Code Annotated section 62-6-103.
2. Whether summary judgment was proper on Gottesman's claim under the Tennessee Residential Property Disclosures Act.
3. Whether genuine issues of material fact precluded summary judgment on Gottesman's fraudulent misrepresentation and fraudulent concealment claims despite the contract's as-is clause.
4. Whether Gottesman's breach of contract and breach of the implied duty of good faith and fair dealing claims survived summary judgment.
5. Whether reassignment to a different trial judge was warranted on remand.
6. Whether the Heckers were entitled to attorney's fees under the contract.

HOLDINGS

1. The Heckers were entitled to summary judgment because the undisputed evidence established that they constructed the residence for personal use, lived in it for several years, and did not construct more than one residence within the statutory two-year period.
2. Summary judgment was improper because genuine issues of material fact existed concerning whether the Heckers knew of significant defects in the home and misrepresented or omitted those defects on the required disclosure form.
3. An as-is clause is not dispositive of fraud or misrepresentation claims when the buyer alleges that the seller fraudulently misrepresented or concealed defects; the clause is only one factor in determining the reasonableness of reliance.
4. Gottesman demonstrated genuine issues of material fact on her fraudulent misrepresentation and fraudulent concealment claims, so summary judgment on those claims was improper.
5. Summary judgment was properly affirmed on the breach of contract and good-faith claims because Gottesman did not identify a specific contractual nonperformance amounting to breach, and a claim for breach of the implied duty of good faith and fair dealing cannot stand without an underlying breach of contract.
6. Reassignment to a different trial judge was not warranted because there was no evidence that the trial judge would fail to follow the appellate court's directions or that reassignment was necessary to maintain the appearance of justice.

KEY QUOTATIONS

“In cases such as this one, where allegations of fraud and misrepresentation are present, an “as-is” clause does not end the inquiry.” (at 14-15)

“We, therefore, shall consider the “as is” clause among other factors in inquiring whether a plaintiff’s reliance on a defendant’s misrepresentation or omission was reasonable.” (at 15)

“Genuine issues of material fact exist concerning whether the Heckers were aware of significant defects in the Home at the time they signed the Disclosure Form and whether they misrepresented the Home’s condition.” (at 13)

FACTUAL BACKGROUND

Gail Gottesman purchased an improved residential property from Todd and Tammy Hecker in February 2024. The Heckers had constructed and lived in the home for several years, and the sales contract contained an as-is provision; the Heckers also provided a residential property disclosure form stating that they were unaware of defects in several components of the property. Gottesman alleged that the property had numerous serious defects, including roof, structural, plumbing, electrical, septic, siding, foundation, and drainage problems, and presented evidence disputing the Heckers' assertion that all known defects had been disclosed.

PROCEDURAL HISTORY

Gail Gottesman sued the sellers and other defendants after purchasing an improved residential property, alleging fraudulent misrepresentations, fraudulent concealment, violations of the Tennessee Residential Property Disclosures Act, breach of contract, breach of the duty of good faith and fair dealing, negligence, and related claims. The trial court granted the Heckers summary judgment based principally on an as-is clause, the buyer's opportunity to inspect, and its conclusion that the property had been legally constructed; it denied attorney's fees and certified the judgment as final. Gottesman timely appealed. The Court of Appeals reversed summary judgment on the statutory disclosure, fraudulent misrepresentation, and fraudulent concealment claims, affirmed summary judgment on the remaining claims, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further consideration of Gottesman's claims under the Tennessee Residential Property Disclosures Act, fraudulent misrepresentation, and fraudulent concealment, and for consideration of her motion to compel and any other necessary discovery issues. The trial court must proceed consistently with the appellate opinion. Summary judgment on the remaining claims remains affirmed.

CASES CITED

- Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc., 131 S.W.3d 457, 464 (Tenn. Ct. App. 2003)
- Patel v. Bayliff, 121 S.W.3d 347, 353-354 (Tenn. Ct. App. 2003)

- Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 250, 264-265 (Tenn. 2015)
- Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc., 395 S.W.3d 653, 671 (Tenn. 2013)
- Kinsler v. Berkline, LLC, 320 S.W.3d 796, 799 (Tenn. 2010)
- Smith v. UHS of Lakeside, Inc., 439 S.W.3d 303, 316 (Tenn. 2014)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)
- Dunn v. Vukodinovich, 700 S.W.3d 64, 86 (Tenn. Ct. App. 2023)
- Isaacs v. Bokor, 566 S.W.2d 532, 537 (Tenn. 1978)
- Odom v. Oliver, 310 S.W.3d 344, 350-351 (Tenn. Ct. App. 2009)
- Ingram v. Cendant Mobility Fin. Corp., 215 S.W.3d 367, 374 (Tenn. Ct. App. 2006)
- Jaffe v. Bolton, 817 S.W.2d 19, 25 (Tenn. Ct. App. 1991)
- Edmondson v. Coates, 1992 WL 108717, at *10-11 (Tenn. Ct. App. May 22, 1992)
- Godwin Aircraft, Inc. v. Houston, 851 S.W.2d 816, 822 (Tenn. Ct. App. 1992)
- Pitz v. Woodruff, No. M2003-01849-COA-R3-CV, 2004 WL 2951979, at *9 (Tenn. Ct. App. Dec. 29, 2004)
- Metropolitan Gov't of Nashville & Davidson County v. McKinney, 852 S.W.2d 233, 237 (Tenn. Ct. App. 1992)
- Graham v. First Am. Nat'l Bank, 594 S.W.2d 723, 725 (Tenn. 1979)
- McPherson v. Shea Ear Clinic, No. W2006-01936-COA-R3-CV, 2007 WL 1237718, at *9 (Tenn. Ct. App. Apr. 27, 2007)
- Briggs & Stratton Power Prods. Grp., LLC v. Osram Sylvania, Inc., No. W2016-01799-COA-R3-CV, 2017 WL 5992361, at *11 (Tenn. Ct. App. Dec. 4, 2017)
- Wright v. Wacker-Chemie AG, No. 1:13-LC-331, 2014 WL 3810584, at *10 (E.D. Tenn. Aug. 1, 2014)
- C & W Asset Acquisition, LLC v. Oggs, 230 S.W.3d 671, 676-677 (Tenn. Ct. App. 2007)
- ARC LifeMed, Inc. v. AMC-Tenn., Inc., 183 S.W.3d 1, 26 (Tenn. 2005)
- Cadence Bank, N.A. v. The Alpha Tr., 473 S.W.3d 756, 772-773 (Tenn. Ct. App. 2015)
- Jones v. LeMoyne-Owen College, 308 S.W.3d 894, 907 (Tenn. 2009)
- SecurAmerica Bus. Credit v. Schledwitz, No. W2012-02605-COA-R3-CV, 2014 WL 1266121, at *33-34 (Tenn. Ct. App. Mar. 28, 2014)
- Berry v. Mortg. Elec. Registration Sys., No. W2013-00474-COA-R3-CV, 2013 WL 5634472, at *7 (Tenn. Ct. App. Oct. 15, 2013)
- Solomon v. First Am. Nat'l Bank of Nashville, 774 S.W.2d 935, 945 (Tenn. Ct. App. 1989)
- Duke v. Browning-Ferris Indus. of Tenn., Inc., No. W2005-00146-COA-R3-CV, 2006 WL 1491547, at *9 (Tenn. Ct. App. May 31, 2006)
- Gipson v. Taylor, No. 01A01-9811-CH-00611, 1999 WL 652259, at *5 (Tenn. Ct. App. Aug. 27, 1999)
- Rudd v. Rudd, No. W2011-01007-COA-R3CV, 2011 WL 6777030, at *7 (Tenn. Ct. App. Dec. 22, 2011)
- Culbertson v. Culbertson, 455 S.W.3d 107, 157-158 (Tenn. Ct. App. 2014)
- Biggs v. Town of Nolensville, No. M2021-00397-COA-R3-CV, 2022 WL 41117, at *6 (Tenn. Ct. App. Jan. 5, 2022)
- Mahoney v. Loma Alta Prop. Owners Ass'n, Inc., 84 So. 3d 907, 919 (Ala. Civ. App. 2011)

- United States v. Tucker, 404 U.S. 443, 452 (1972)

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