

SUPREME COURT OF WASHINGTON

Ross v. Kirner

162 Wash. 2d 493 (2007) · Decided December 13, 2007

SUMMARY

The Washington Supreme Court held that the merger doctrine does not bar a negligent misrepresentation claim arising from a real estate purchase and sale agreement. The court concluded that the evidence did not establish negligent misrepresentation as a matter of law because genuine issues of material fact remained, including reliance. It affirmed reinstatement of the claim and remanded for further proceedings, while denying attorney fees to the seller.

CASE DETAILS

COURT	Supreme Court of Washington
JURISDICTION	Washington
DECIDED	December 13, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	John Kirner petitioned for review after the Washington Court of Appeals reversed the trial court's summary judgment dismissing Fred Ross's negligent misrepresentation claim. The Supreme Court affirmed reinstatement of the claim but rejected the Court of Appeals' conclusion that Kirner had committed negligent misrepresentation as a matter of law.
STANDARD OF REVIEW	Summary judgment is reviewed by viewing the evidence and reasonable inferences in the light most favorable to the nonmoving parties. The court determines whether undisputed evidence establishes the claim as a matter of law.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	John Kirner v. Fred Ross, Ticor Title Insurance Company

TOPICS

- real estate
- torts
- contracts
- title disputes

PRACTICE AREAS

- Real estate
- Torts
- Contracts
- Insurance

QUESTIONS PRESENTED

1. Whether the merger doctrine barred Ross's negligent misrepresentation claim based on the purchase and sale agreement and subsequent deed.
2. Whether the evidence established as a matter of law that Kirner committed actionable negligent misrepresentation.
3. Whether Kirner was entitled to attorney fees as the substantially prevailing party on review.

HOLDINGS

1. The merger doctrine does not bar an action based on fraud or misrepresentation, including Ross's negligent misrepresentation claim.
2. The evidence did not establish as a matter of law that Kirner committed actionable negligent misrepresentation. Whether he did so presents genuine issues of material fact for trial.
3. Kirner was not entitled to attorney fees in the Supreme Court because he was not the substantially prevailing party.

KEY QUOTATIONS

“A plaintiff claiming negligent misrepresentation must prove by clear, cogent, and convincing evidence that (1) the defendant supplied information for the guidance of others in their business transactions that was false, (2) the defendant knew or should have known that the information was supplied to guide the plaintiff in his business transactions, (3) the defendant was negligent in obtaining or communicating the false information, (4) the plaintiff relied on the false information, (5) the plaintiff’s reliance was reasonable, and (6) the false information proximately caused the plaintiff damages.” (at 499-500)

FACTUAL BACKGROUND

Kirner agreed to sell Ross real property in Clallam County. Kirner knew of additional easements he had previously deeded to his son but did not disclose them when the purchase and sale agreement was executed. A later survey recorded additional easements, and the proposed deed referred to them without specifically highlighting the change or including the survey; the transaction closed, Ross improved the property, and later learned of the easements.

PROCEDURAL HISTORY

Ross sued Kirner, Clallam Title, and Ticor Title Insurance Company after learning of easements affecting property he purchased from Kirner. Ross arbitrated his claims against Ticor, settled with Clallam Title, and amended his claims against Kirner; Ticor, as Ross's subrogee, also asserted claims against Kirner. The trial court granted Kirner summary judgment based on the merger doctrine and awarded him attorney fees. The Court of Appeals reversed and remanded, and the Supreme Court granted Kirner's petition for review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings consistent with the opinion, including resolution at trial of the genuine issues of material fact concerning negligent misrepresentation.

CASES CITED

- Black v. Evergreen Land Developers, Inc., 75 Wn.2d 241, 248, 450 P.2d 470 (1969)
- Davis v. Lee, 52 Wash. 330, 335, 100 P. 752 (1909)
- Snyder v. Roberts, 45 Wn.2d 865, 871, 278 P.2d 348 (1955)
- Becker v. Lagerquist Bros., Inc., 55 Wn.2d 425, 428, 348 P.2d 423 (1960)
- Michak v. Transnation Title Insurance Co., 148 Wn.2d 788, 798-99, 64 P.3d 22 (2003)
- Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 389, 858 P.2d 245 (1993)
- Lawyers Title Ins. Corp. v. Baik, 147 Wn.2d 536, 545, 55 P.3d 619 (2002)
- Havens v. C&D Plastics, Inc., 124 Wn.2d 158, 180-81, 876 P.2d 435 (1994)
- Trimble v. Wash. State Univ., 140 Wn.2d 88, 97-98, 993 P.2d 259 (2000)
- ESCA Corp. v. KPMG Peat Marwick, 135 Wn.2d 820, 826-27, 959 P.2d 651 (1998)
- Condor Enters., Inc. v. Boise Cascade Corp., 71 Wn. App. 48, 52-53, 856 P.2d 713 (1993)
- Amtruck Factors v. Int'l Forest Prods., 59 Wn. App. 8, 18, 795 P.2d 742 (1990)
- Flint v. Owl Land & Inv. Co., 122 Wash. 401, 402-03, 210 P. 811 (1922)
- Nelson v. Title Trust Co., 52 Wash. 258, 259-62, 100 P. 730 (1909)
- Osborn v. Mason County, 157 Wn.2d 18, 22, 134 P.3d 197 (2006)
- Ross v. Ticor Title Ins. Co., 135 Wn. App. 182, 192, 143 P.3d 885 (2006)