INDIANA SUPREME COURT

Joseph Wysocki and M. Carmen Wysocki v. Barbara A. Johnson and William T. Johnson, both Individually and as Trustees of the Barbara A. Johnson Living Trust dated 12-17-1996

No. 45S03-1407-CT-459 · No. 45S03-1407-CT-459 · Decided October 15, 2014

SUMMARY

The Indiana Supreme Court affirmed a judgment awarding compensatory damages to homebuyers based on common-law fraudulent misrepresentation but denying attorney fees, costs, and exemplary damages under Indiana's Crime Victims Relief Act. The Court held that a trial court may choose common-law tort liability over quasi-criminal CVRA liability when plaintiffs plead alternative theories of recovery. It also clarified that CVRA liability does not require criminal charges or a conviction and requires proof of the predicate offense by a preponderance of the evidence.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Rush, Chief Justice; Dickson, Justice; Rucker, Justice; David, Justice; Massa, Justice
JURISDICTION	Indiana
DECIDED	October 15, 2014
DOCKET	45S03-1407-CT-459
DISPOSITION	affirmed
PROCEDURAL POSTURE	On transfer from the Indiana Court of Appeals, the Wysockis challenged the trial court's refusal to award attorney fees, costs, and exemplary damages under the Crime Victims Relief Act after awarding compensatory damages for common-law fraudulent misrepresentation.
STANDARD OF REVIEW	Because the parties proceeded under Indiana Trial Rule 52(A), the court applied a two-tiered review: it affirmed when the evidence supported the findings and the findings supported the judgment, and set aside findings or judgment only if clearly erroneous.
PRECEDENTIAL VALUE	published
PARTIES	Joseph Wysocki, M. Carmen Wysocki v. Barbara A. Johnson, William T. Johnson, individually and as trustees of the Barbara A. Johnson

Living Trust dated 12-17-1996

TOPICS

fraud · real estate · remedies · statutory interpretation · appellate procedure

PRACTICE AREAS

torts · real estate · remedies · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether a trial court has discretion to award compensatory damages for common-law fraudulent misrepresentation while declining to impose quasi-criminal liability, attorney fees, costs, and exemplary damages under the Crime Victims Relief Act when the complaint pleads alternative theories of relief.
2. Whether a CVRA claim requires a criminal charge or conviction, or proof beyond a reasonable doubt, before civil recovery may be awarded.
3. Whether a knowing misrepresentation on a residential real estate disclosure form automatically requires CVRA liability.

HOLDINGS

1. When a complaint pleads common-law tort liability and CVRA liability as alternative theories, the trial court has discretion to impose ordinary tort liability while declining to impose quasi-criminal CVRA liability, even if the facts could support the predicate criminal offense.
2. A CVRA claimant need not show that the defendant was criminally charged or convicted and need only prove each element of the underlying criminal offense by a preponderance of the evidence.
3. A knowing misrepresentation on a residential real estate disclosure form does not automatically require CVRA liability; the trial court may decline CVRA relief when the plaintiff pleads alternative theories and the court elects to impose common-law tort liability instead.

KEY QUOTATIONS

> *"CVRA liability is civil, not criminal, and does not require criminal charges or proof beyond reasonable doubt."* (at 7-8)

> *"A knowing misrepresentation on a Sales Disclosure Form is an intentional tort. But not every intentional tort is necessarily "so heinous as to require exemplary damages," Citizens Nat. Bank, 637 N.E.2d at 195, or as to warrant quasi-criminal CVRA liability at all."* (at 8)

FACTUAL BACKGROUND

The Johnsons sold the Wysockis a home in 2006 after Barbara Johnson signed a residential real estate disclosure form stating that there were no building-code violations, unpermitted work, or structural, moisture, water, or roof problems. After the purchase, the Wysockis discovered water leaks, structural defects in the porches, and substandard electrical wiring to the swimming pool, requiring repairs and estimates totaling $13,805.95. The trial court found that the Johnsons had actual knowledge of the defects and awarded compensatory damages for common-law fraudulent misrepresentation, but declined to impose additional liability under the Crime Victims Relief Act.

PROCEDURAL HISTORY

The Lake Superior Court awarded the Wysockis $13,805.95 in compensatory damages based on fraudulent misrepresentation but denied attorney fees, costs, and exemplary damages under the CVRA. The Court of Appeals initially reversed, but the Indiana Supreme Court previously affirmed in part and remanded for findings regarding the Johnsons' actual knowledge of the defects. On remand, the trial court found actual knowledge and reaffirmed its judgment; the Court of Appeals affirmed, and the Indiana Supreme Court granted transfer and affirmed for different reasons.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Wysocki, 990 N.E.2d 456, 460-61, 465-67 (Ind. 2013)
- Wysocki v. Johnson, 4 N.E.3d 1218, 1222-23 (Ind. Ct. App. 2014)
- Vanderwier v. Baker, 937 N.E.2d 396, 400-01 (Ind. Ct. App. 2010)
- Marion Cnty. Auditor v. Sawmill Creek, LLC, 964 N.E.2d 213, 216 (Ind. 2012)
- Stonger v. Sorrell, 776 N.E.2d 353, 358 (Ind. 2002)
- Woodruff v. Ind. Family & Soc. Servs. Admin., 964 N.E.2d 784, 790 (Ind. 2012), cert. denied, 133 S. Ct. 233 (2012)
- Browning v. Walters, 616 N.E.2d 1040, 1045-46 (Ind. Ct. App. 1993), adhered to on reh'g, 620 N.E.2d 28 (Ind. Ct. App. 1993)
- White v. Ind. Realty Assocs. II, 555 N.E.2d 454, 456, 458 (Ind. 1990)
- Schrenger v. Caesars Ind., 825 N.E.2d 879, 884 (Ind. Ct. App. 2005), trans. denied
- Ballard v. Harman, 737 N.E.2d 411, 418 n.5 (Ind. Ct. App. 2000)
- Burgett v. Haynes, 572 N.E.2d 1296, 1298 (Ind. Ct. App. 1991)
- Citizens Nat. Bank of Evansville v. Johnson, 637 N.E.2d 191, 195 (Ind. Ct. App. 1994)
- Klinker v. First Merchants Bank, N.A., 964 N.E.2d 190, 193 (Ind. 2012)
- Obremski v. Henderson, 497 N.E.2d 909, 911 (Ind. 1986)