

SUPREME COURT OF SOUTH DAKOTA

Saiz v. Horn, 2003 SD 94

668 N.W.2d 332 (2003) · No. No. 22570 · Decided August 6, 2003

SUMMARY

The Supreme Court of South Dakota held that a buyer's real estate agent owed the buyers a duty of ordinary care and a fiduciary duty, including informing them that the seller was legally required to provide a property condition disclosure statement. The court also held that the buyers' claims were not barred by the six-year statute of limitations because the agent's representation continued until closing. The summary judgment ruling for the agent was reversed and the case was remanded for trial.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Dakota                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Konenkamp, Justice; Gilbertson, Chief Justice; Sabers, Justice; Zinter, Justice; Meierhenry, Justice                                                                                                                                                                |
| JURISDICTION          | South Dakota                                                                                                                                                                                                                                                        |
| DECIDED               | August 6, 2003                                                                                                                                                                                                                                                      |
| DOCKET                | No. 22570                                                                                                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Homebuyers appealed from an order granting the defendant realtor's motion for judgment on the pleadings and summary judgment in an action alleging breach of agency and fiduciary duties.                                                                           |
| STANDARD OF REVIEW    | The Supreme Court applies the same test as the trial court, examines the record for genuine disputes of material fact, resolves disputed facts in favor of the nonmoving party, and determines whether the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE    | Published South Dakota Supreme Court opinion; precedential                                                                                                                                                                                                          |
| PARTIES               | Craig Saiz, Patty Saiz v. Rod Horn, d/b/a Horn Real Estate                                                                                                                                                                                                          |

TOPICS

- real estate
- duty of care
- summary judgment
- statute of limitations
- statutory interpretation

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether a real estate agent representing buyers has a duty to inform them that the seller is legally required to provide a residential property-condition disclosure statement.
2. Whether the buyers' claims were barred by the six-year statute of limitations in SDCL 15-2-13(1).

## HOLDINGS

1. A real estate agent representing buyers owes a duty of ordinary care and a fiduciary duty to advise the buyers about the rules and procedures involved in the transaction, including the seller's statutory duty to provide a property-condition disclosure statement. Although SDCL 43-4-38 places the duty to furnish the statement on the seller, it does not eliminate the buyer's agent's duty to inform the buyers of that statutory requirement.
2. The six-year statute of limitations did not bar the Saizes' claim because the limitations period began when Horn's representation ended at closing on August 25, 1995, rather than when the buyers made their written offer on June 12, 1995.

## KEY QUOTATIONS

*“Because realtors representing buyers have a duty of ordinary care toward their clients, which includes the duty to disclose statutorily mandated procedures for home sales, we conclude that the realtor here had an obligation to inform his clients of the seller's responsibility to provide a disclosure statement.”* (668 N.W.2d at 333-34)

*“Not unlike the requirement of other professionals to inform their clients, real estate agents are expected to advise their principals on the rules and procedures involved in a real estate transaction.”* (668 N.W.2d at 336)

*“Because even a late disclosure can alert buyers to problems that may cause the purchase agreement to be modified or terminated, Horn's obligation to advise his clients continued until the closing date.”* (668 N.W.2d at 337)

## FACTUAL BACKGROUND

In 1995, Craig and Patty Saiz, who had no prior experience buying a house, agreed that Rod Horn would represent them as their real estate agent in purchasing a Belle Fourche home. The seller had previously completed a property-condition disclosure statement identifying water penetration and cracking, but the Saizes never received a disclosure statement and Horn did not advise them that the seller was legally required to provide one. After the purchase, the Saizes discovered extensive structural problems, including inadequate foundation support, water intrusion, cracking, and a sink hole, and they filed suit in 2001.

## PROCEDURAL HISTORY

The Saizes sued Horn after discovering substantial defects in the home they purchased and learning that the seller had previously completed a disclosure statement revealing water penetration and cracking. The circuit court granted judgment for Horn, ruling that he owed no duty to inform the buyers of the seller's statutory disclosure obligation and that the claim was barred by the six-year statute of limitations. The South Dakota Supreme Court reversed and remanded for trial.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The case was remanded for trial.

#### CASES CITED

- Fisher v. Kahler, 2002 SD 30, 641 N.W.2d 122
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202, 212 (1986)
- Sorrels v. Queen of Peace Hosp., 1999 SD 133, 601 N.W.2d 606
- Tipton v. Town of Tabor, 1997 SD 96, 567 N.W.2d 351
- Hurney v. Lock, 308 N.W.2d 764, 768-69 (S.D. 1981)
- Witt v. John Blomquist, Inc., 249 Minn. 32, 34, 81 N.W.2d 265, 266 (1957)
- Lake City Flouring Mill Co. v. McVean, 32 Minn. 301, 20 N.W. 233 (1884)