Homeowners’ Lawsuit Dismissed against Sunset Manor Developer

by

James R. Keller

This article appeared in *St. Louis Construction News and Real Estate*, p. 20-21, January-February 2010.

The Eastern District Court of Appeals for Missouri recently affirmed the dismissal of the lawsuit by various Sunset Manor homeowners against the developer after the developer terminated the project. The decision left the homeowners with no compensation for a neighborhood that contained partially abandoned homes and diminished property values. The case is *Stein v. Novus Equities Company*, 284 S.W.3d 597 (Mo. App. E.D. 2009).

The dispute captured national attention and fueled a growing controversy in recent years over a city’s sponsorship of private development for private profit by use of tax increment financing to subsidize the cost of the project and the power of eminent domain. The Missouri Supreme Court recently denied an application to review the appeal, making the decision final.

The project started in 2004 when the City of Sunset Hills issued a request for proposals for the redevelopment of the Sunset Hills Manor, an established neighborhood consisting of several blocks of homes adjacent to Interstate 44 and Lindbergh Boulevard. Novus Equities Company (“Novus”) submitted a proposal and a request for financial assistance through tax increment financing (“TIF”).

The City required that Novus submit a financial feasibility and a cost benefit analysis to Peckam Guyton Albers & Viets, Inc. (“PGAV”), a consulting firm for the City. Novus proposed that the Manor be redeveloped as a life-style shopping center with the anchor tenant to be Bass Pro Shops.

The City passed an ordinance designating Novus as the developer and authorized a TIF. Novus entered into written option contracts directly with numerous property owners to purchase their homes. The plaintiffs in this lawsuit, however, were property owners with whom Novus did not have contracts to purchase their properties. Novus planned to acquire their properties through the power of eminent domain authorized by the City.

Novus did not update the City or PGAV with changes it was making to the development. For example, plaintiffs alleged that Novus knew but failed to disclose to PGAV and the City that Bass Pro Shops would not be the anchor tenant and that Novus had solicited May Department Stores to anchor a smaller store.

After Novus' president Jonathan Browne stated that Novus was going to exercise its options to purchase the properties, many of those property owners began "stripping and salvaging materials from their homes." *Id.* at 601. Plaintiffs alleged that this caused all properties in the neighborhood to depreciate in value.

Shortly thereafter, Novus notified everyone that the bank had "pulled the financing" for the purchase of the properties. Plaintiffs alleged that Novus knew that it never had the necessary funding in place to purchase these homes or to acquire plaintiffs' homes through eminent domain. The development never proceeded.

Plaintiffs sued Browne and Novus seeking compensation for the alleged diminished value of their homes and neighborhood. They sued for fraudulent misrepresentation, negligent misrepresentation, injurious falsehood and negligence.

Plaintiffs' claims for fraudulent misrepresentation and negligent misrepresentation had one fatal missing element. Plaintiffs did not sufficiently allege that they relied on any misleading statements from Novus or Brown that caused their property values to decrease. Reliance is a key element to support these claims.

Plaintiffs attempted to claim reliance by stating that they did not have any access to other information besides that presented from defendants which would have alerted them that defendants' statements were not accurate regarding the financial means to go forward with the project. This is not reliance, according to the court.

Plaintiffs also claimed injurious falsehood. This requires an allegation that defendants intentionally published false statements about plaintiffs that directly or proximately harmed plaintiffs.

Plaintiffs asked the court to expand a cause of action for injurious falsehood to include a situation where Novus is liable for the publication of false statements about something other than the plaintiff or plaintiffs' property. The Eastern District declined to do so.

Plaintiffs also sued for negligence. Negligence requires an allegation that Novus directly or indirectly supplied PGAV, the City and the owners of the property in the Manor with information that was false and that Novus had a duty to provide truthful and accurate information.

The Eastern District concluded that plaintiffs did not provide any legal authority supporting the proposition that a defendant in a negligence cause of action has a legal duty to disclose information because of its superior knowledge even if such knowledge is not within the fair and reasonable reach of the plaintiffs. Accordingly, plaintiffs could not maintain this cause of action either.

The homeowners were left with their homes but no lawsuit.

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator.