

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 22nd *day of* July, 2011.

Aldon A. Turner, et al., Appellants,

against Record No. 101239
Circuit Court No. CL07-3623

Rolly Bay, et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Virginia
Beach.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is error in the
judgment of the circuit court.

Rolly and Christina Bay (the Bays) sought, among other things,
rescission of a contract for the sale of real estate they entered
into with Aldon A. Turner and Kathy L. Thompson (collectively, the
defendants) on the ground that the defendants had engaged in fraud.
The Bays claimed the defendants "actively concealed" defects in the
real estate relating to mold.

After considering the evidence, the circuit court found that
the house contained mold prior to the Bays' purchase of the real
property and that the defendants had painted over the mold "to
throw [the Bays] off [their] guard and divert [them] from making
the inquiries and examination which a prudent [person] ought to
make." The circuit court ordered rescission of the contract and
restitution in the amount of \$83,515.00. On appeal, the defendants

argue, among other things, that the circuit court erred by refusing to apply the doctrine of caveat emptor.

Pursuant to that doctrine, "the burden is upon a purchaser of real property to discover defects." Van Deusen v. Snead, 247 Va. 324, 329, 441 S.E.2d 207, 210 (1994). "[T]he doctrine of caveat emptor require[s] the purchaser to discover defects in the property which a reasonable inspection would have disclosed, unless the sellers did or said anything to 'divert [the purchasers] from making the inquiries and examination which a prudent man ought to make.'" Norris v. Mitchell, 255 Va. 235, 241, 495 S.E.2d 809, 812-13 (1998) (quoting Horner v. Ahern, 207 Va. 860, 864, 153 S.E.2d 216, 219 (1967)) (second alteration in original). However, if the buyer obtains "information which would excite the suspicions of a reasonably prudent person" upon inspecting the property or inquiring of the seller, the buyer "must discover for himself the true condition of the premises," even if efforts at fraudulent concealment have been taken. Armentrout v. French, 220 Va. 458, 466, 258 S.E.2d 519, 524 (1979). When a buyer is made aware of a material fact and "undertakes an examination of the facts for himself, he is charged with all the knowledge which he might have obtained had he pursued the inquiry diligently to the end." Watson v. Avon St. Bus. Ctr., Inc., 226 Va. 614, 619, 311 S.E.2d 795, 798-99 (1984).

In this case, it is undisputed that the Bays' home inspector found standing water and a mold line in the house's crawlspace and notified the Bays of his discoveries. Moreover, the home inspector told the Bays that he could not finish his inspection until the

standing water was remedied and instructed them to call him when that had been completed. Thus, assuming acts of concealment by the defendants, the Bays nevertheless obtained information alerting them to a problem and were required to "discover for [themselves] the true condition of the premises." Armentrout, 220 Va. at 466, 258 S.E.2d at 524. Once aware of these material facts, the Bays were "charged with all the knowledge which [they] might have obtained had [they] pursued the inquiry diligently to the end." Watson, 226 Va. at 619, 311 S.E.2d at 798-99.

Because the Bays failed to discover the true condition of the house after being notified of a water and mold problem in the house's crawlspace, the circuit court erred in refusing to apply the doctrine of caveat emptor, and in granting rescission of the real estate sales contract and restitution. The Bays' failure to pursue a diligent inquiry regarding the crawlspace is noteworthy given their expert witness' conclusion that the mold later found in the attic originated in the crawlspace.

For these reasons, the judgment of the circuit court is reversed and final judgment is entered for the appellants.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L. Hanning

Clerk