IN THE SUPREME COURT OF FLORIDA

KIRK A. WOODSON,

Petitioner,

vs.

WILMA MARTIN and MacLEAN REALTY, INC., a Florida corporation,

Respondents.

Case No. 87,057

FILED
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ON CERTIFIED QUESTION FROM
THE SECOND DISTRICT COURT OF APPEAL

PETITIONER'S INITIAL BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

INTRODUCTION

Petitioner, Kirk A. Woodson, the Plaintiff below, is referred to as "Woodson".

Respondent, Wilma Martin, a Defendant below, is referred to as "Martin".

Respondent, MacLean Realty, Inc., a Defendant below, is referred to as "MacLean Realty".

References to the Record on Appeal are designated by the prefix "R".

References to the attached Appendix are designated by the prefix "App.".

References to the Transcript of Proceedings previously filed with the Second District are referred to as "Tx.".

STATEMENT OF THE CASE AND FACTS

1. RESPONDENT'S FRAUDULENT MISREPRESENTATIONS INDUCED THE SALE OF THE HOUSE WITHOUT AN INSPECTION

Woodson met with Martin, a realtor employed by MacLean Realty, Inc. to be shown a residential property built and sold by Defendants, Michael and Julie Shea. (App. 1). This property was listed by MacLean Realty, Inc. (App. 1). Martin was the contact agent for the Sheas, who had briefly lived in the home. (App. 1-3).

At this first meeting, Martin handed Woodson a fact sheet she authored that stated "This brand new Parkland Estate home features quality construction and finishing touches throughout." (App. 1, 20). Respondents' Multiple Listing Service ("MLS") listing made a similar representation of "Brand new first rate brick construction beautiful moldings throughout". (R. 203). No other property listed on that page of MLS listings had any assurance about the quality of construction. (R. 203; App. 4).

As she showed the house, Martin explained in detail how she had come to know the builders, Michael and Julie Shea, how she had observed and evaluated the house with special interest during its entire construction, and how she had significant expertise in evaluating the quality of residential construction. (App. 1-3). Martin went on to extol the quality of construction throughout the house and other virtues of the house. (App. 1-3). Martin offered her own expert opinion of the extremely high quality of its construction above and beyond other similarly high priced residential properties. (App. 1-2).

Martin's particular representations are more fully detailed in the affidavit of Kirk Woodson attached as an appendix hereto and in the highly detailed factual allegations of the Second Amended Complaint. (R. 147-216).[1] (Woodson verified the allegations in the Second Amended Complaint in his Affidavit at App. 17).

Woodson's affidavit details a course of meetings between Dr. Woodson and his wife, Carolyn, Wilma Martin, and the Sheas in which Martin repeatedly emphasized her expertise in construction, her long experience as a realtor of high priced homes in the south Tampa area, and her particular interest in this house since the very beginning of its construction due to a close working and personal relationship with the Sheas going back to Julie Shea's childhood. (App. 1-6).

Respondent Martin deliberately and carefully invited Woodson's confidence in her judgment by her remarks boasting of the number of important clients that depended upon her judgment in selecting a home, the reliability of her information, and that she had earned a reputation for the highest integrity that she would never risk by making representations about a property she could not fully support. (R. 173-174, §49; App. 15-16).

Martin used this invited confidence to convince Woodson that Martin herself knew the best home inspectors for the south Tampa area and would take it upon herself to provide names of reliable and conscientious inspectors to Woodson for the purpose of

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[1] The particular allegations of the Second Amended Complaint which detail the Martin misrepresentations are found at Sections 17-34, 36-37(a), 49(a-n).

conducting the home inspection he and his wife were requesting. (App. 6, 12).

Martin further represented that if there had been any problems with the house, she would have known about them and would reveal them to Woodson as she had been a frequent guest in the house and had baby-sat for the Sheas. (App. 1-3). Martin specifically assured Woodson that she would have been advised of any problems with the house. (App. 3). After being directly questioned about what appeared to be a possible water stain on the ceiling of the upstairs master bedroom, Martin delayed responding by promising to investigate the concern. (App. 5). Later, Martin affirmatively represented that the water stain was not the result of a roof leak, but was the result of champagne that was splashed on the ceiling during a celebration between Mr. and Mrs. Shea sometime before. (App. 18; R. 156 §19; R. 176-178). She represented that the roof had never had any leakage problems and that the stain was not the result of any water damage. (R. 156 §19; R. 176-178). The conviction with which she made these statements and her purported qualifications induced Woodson to rely on these statements. (App. 4).

In the course of these events, Ms. Martin repeatedly demanded substantial additional deposits of money in escrow or, she said, the deal would fall apart. (App. 15).

As alleged in Paragraph 37(a) of the Second Amended Complaint, Martin delivered what purported to be an appraisal of the property

by an appraisal firm known as W. H. Copeland & Sons, Inc. to Woodson. (R. 168, 204-212). Martin represented that the appraisal's determined value for the property, $500,000.00, was what the house was worth. (R. 168, 174; App. 14, 17). This representation was false in that the defects in the house and inferior quality of construction render it worth far less than the purchase price of $475,000.00. (R. 181; Tx. 44-47).

After receiving the appraisal, Woodson's wife, Carolyn, again requested that an inspection be performed. (App. 5). In response to Carolyn Woodson's request, Martin advised that no inspection was necessary as she had furnished Woodson the appraisal report showing the house to be worth $500,000.00, and had given them the MLS listing and the MacLean Realty fact sheet which she had personally authored. (App. 7-8). Martin represented that she had no intention of selling a property that she did not feel was accurately represented in her fact sheets. (App. 7-8). Martin assured Carolyn Woodson that she had a sterling reputation in town and that the Woodsons could rely on anything that Martin and MacLean Realty represented about the house. (App. 7-8; R.203, 815, 816)

Woodson relied on Martin's professed expert endorsement of the appraisal value of the property as its true value. (App. 15-16). He relied on Martin's representations that the $475,000.00 contract price was below true market value solely because of the Sheas being caught in a building recession's financial squeeze. (App. 6). He believed Martin to the extent he made the substantial additional

deposits requested because Woodson believed he was getting a substantial bargain on the property. (App. 13-14).

As the closing date neared, Woodson and his wife again pressed Martin and her fellow associate realtor at MacLean Realty, Phyllis Asti, for the names of qualified home inspectors to check the property. (App. 13). Martin and Asti delayed the inspection by offering a number of excuses over a period of several weeks. (App. 13). Martin coupled her excuses with glowing reassurances of the quality and excellent condition of the property, of her own integrity and ability to offer these expert opinions as justification for urging that Woodson forego further efforts to obtain an independent inspector. (App. 15-16). Martin repeatedly emphasized her roots, reputation and standing in the wealthy South Tampa community in her meetings with Woodson and his wife. (App. 7-8, 15-16).

On one occasion when Woodson, a newcomer to the South Tampa community, insisted on an inspection of the residence, Martin accused Woodson and his wife of suggesting that she was a liar (about the quality and condition of the property), in an effort to convince him not to conduct an inspection. (R. 173-174, 49).

Woodson made the additional deposits demanded of him. (App. 14). His original $10,000.00 escrow deposit grew to approximately $30,000.00. (App. 14).

Just days before the closing Martin advised Woodson that the time allowed in the contract for such inspection had now lapsed and added that if Woodson did not go through with the closing, his

entire escrow account would be forfeited to her and her clients under the terms of the contract. (App. 15; R. 808-810). Woodson closed on the property, again relying on Martin's representations about the quality of its construction. (App. 16-19).

After the closing papers were signed, Woodson and his wife overheard an argument between the Sheas and Mrs. Shea's father, Mr. Harris Mullin. (App. 16). The bits the Woodsons could hear consisted of Mr. Mullin demanding that his daughter and son-in-law tell the Woodsons about "problems" they had with the house. (App. 16). The Sheas told Mr. Mullin to be quiet and that everything was taken care of. (App. 17). Upon hearing this discussion, the Woodsons asked Martin what the problems were that the Sheas were referring to. (App. 17). Martin responded by saying "the house is yours, you will find out soon enough". (App. 17).

2. THE HOUSE CONTAINED A NUMBER OF CONCEALED DEFECTS

The representations about the high quality construction of the house and its excellent condition were false. (App. 17-19). The house suffered from a number of latent defects in construction. (see generally §63 of the Second Amended Complaint; R. 184-187, R. 813-815 and App. 17-19).

A. WATER DAMAGE

One of the most serious concerns was discovery of extensive, progressive and continuing water damage. (App. 17-19). The damage was caused by roof leaks that had twice been previously repaired by the Sheas and from improper brick construction. (App. 18). The

defective brickwork and lack of flashing caused the expensive wood frame windows to rot. (App. 18-19). The rotten window wood had been painted to conceal the rot before Woodson was shown the house. (App. 18-19). The hardwood floors on the first floor progressively buckled as a result of water pooling between that floor and the concrete slab foundation. (App. 17). The pooling of water ultimately caused continuing and persistent infestations of the house by pests. (App. 18).

B. STRUCTURAL DAMAGE

The ceiling in the master bedroom of the residence buckled just a few months after purchase of the house. The buckling of the ceiling occurred because the brick chimney had been installed with its weight resting on otherwise unsupported roof trusses that apparently bowed under the weight, which produced several progressive and concentric splits and a wide separation of the ceiling plaster in the master bedroom ceiling. (App. 18). The condition of the ceiling caused Woodson and his spouse to fear that the ceiling and the chimney would collapse. (App. 17).

C. DEFECTIVE MASONRY WORK

Defective masonry work on the outside included a lack of any flashing in the brickwork above the windows to divert water away from the windows and the wood frame of the building. (App. 17). This allowed passage of water into and along the interior wooden windows and wood framework of the house, eventually collecting between the slab foundation and the wood first floor of the

residence. (App. 17-19). These serious water problems from substandard construction caused premature wood rot and deterioration, and loss of structural integrity. (R. 321-416; 585-774)

Woodson had obligated himself to pay $475,000.00 for a house with these and more problems. (R. 171; 178-180; 184-187). The misrepresentations that induced him into entering into this transaction were made almost exclusively by Martin, acting on behalf of Maclean Realty. (See App. 1-16).

3. PROCEEDINGS BEFORE THE TRIAL COURT

A multi-count Complaint was filed naming Martin, MacLean Realty, Michael and Julie Shea, and Woodson's own realtor, Paul B. Jackson, as Defendants. (R. 147-216). Fortune Bank later became a party but settled all claims involving it. (R. 147-216).

MacLean Realty moved for summary judgment under the Economic Loss Rule. The motion was heard by The Honorable Guy W. Spicola. At the hearing, Judge Spicola ruled that based upon language in the Florida Supreme Court's recently decided Casa Clara Condominium Association, Inc. vs. Charlie Toppino and Sons, Inc.,[2] all tort claims, including fraud in the inducement, were barred by operation of the economic loss doctrine. (Tx. 18-21, 27-36, 53).

Judge Spicola did not set forth the basis for his ruling in his order on the motion or the summary judgment itself, but the

[2] Casa Clara Condominium Association, Inc. v. Charlie Toppino and Sons, Inc., 620 So.2d 1244 (Fla. 1993).

transcript of the hearing discloses his legal basis. Judge Spicola described the Casa Clara decision as follows:

> Casa Clara the greatest thing in the world to reduce attorney's fees and multi-count claims and counterclaims and cross-claims. And lawyers on the clock shall suffer henceforth, says Casa Clara, and computers shall be reprogrammed and word processors reprogrammed and all the law offices of the state because of the Casa Clara hallelujah from the Judge's side. (Tx. 19)....
>
> I am familiar with all of those. Alright. The Supreme Court may have gone too far but they have gone far enough for me to grant summary judgment on Count One. (Tx. 36)

Judge Spicola ruled that Casa Clara was a complete shield to tort liability, even for intentional torts such as fraud in the inducement. (Tx. 18-21, 27-36, 53). He granted the motion for summary judgment on Count One of the Second Amended Complaint and entered Summary Judgment accordingly. (Tx. 36). An appeal timely followed.

The Second DCA affirmed the trial court's decision per curiam. Following a rehearing en banc, the Second DCA affirmed the trial court and certified the following question as a question of great public importance:

> **Is a buyer of residential property (the appellant) prevented by the "economic loss rule" from recovering damages for fraud in the inducement against the real estate agent and its individual agent (the appellees) representing the sellers?**

The majority answered this question in the affirmative. Woodson v. Martin, 663 So.2d 1327 (Fla. 2d DCA 1995). Six of fourteen judges below dissented, in two opinions.

To the undersigned's knowledge, Woodson is the first opinion from Florida, or any other state court, to hold that a claim for fraud in the inducement is barred by the Economic Loss Rule. Since Woodson was decided, two Florida district courts have ruled contrary to Woodson and held that fraud in the inducement is an exception to the Economic Loss Rule. (These cases are discussed in Section I.B. below).

INTRODUCTION

ISSUE ON APPEAL

IS A BUYER OF RESIDENTIAL PROPERTY PREVENTED BY THE "ECONOMIC LOSS RULE" FROM RECOVERING DAMAGES FOR FRAUD IN THE INDUCEMENT AGAINST THE REAL ESTATE AGENT AND ITS INDIVIDUAL AGENT REPRESENTING THE SELLERS?

SUMMARY OF ARGUMENT

Prior to Woodson, neither the Florida Supreme Court, nor any other court in this state, had ever held that a claim for fraud in the inducement was barred by the Economic Loss Rule. Federal courts interpreting Florida law have consistently ruled that such claims are not covered by the Economic Loss Rule. To the undersigned's knowledge, every state which has previously determined this issue has ruled that fraud in the inducement is not barred by the Economic Loss Rule.

This Court previously ruled, in Johnson v. Davis, that the buyer of residential property has a cause of action for fraud in the inducement against the seller, if the seller induced the sale by fraudulently concealing defects in the property. This duty has been applied to real estate agents and brokers. The Second

District's opinion in Woodson ignored this Court's precedent in Johnson v. Davis.

When a realtor uses fraud to induce the sale of property, the realtor violates its independent statutory duties under Florida Statute §475.25, and its duty under Florida Statute Chapter §501.201. These violations of a realtor's independent statutory duties give rise to an independent tort claim for fraud in the inducement under the independent tort doctrine.

The trial court in this case also erred by dismissing this case as a matter of law because a claim for fraud in the inducement seeking extra-contractual damages cannot be dismissed as a matter of law based upon the Economic Loss Rule.

Florida law has never allowed the victim of fraudulent misrepresentation to be bound by a contract which was entered into fraudulently. If this Court allowed perpetrators of fraud to use the Economic Loss Rule as a shield from liability, the potential for abuse would be significant.

ARGUMENT

A BUYER OF RESIDENTIAL PROPERTY IS NOT PREVENTED BY THE ECONOMIC LOSS RULE FROM RECOVERING DAMAGES FOR FRAUD IN THE INDUCEMENT AGAINST THE REAL ESTATE AGENT AND THE INDIVIDUAL AGENT REPRESENTING THE SELLERS

I. THERE IS NO PRECEDENT TO SUPPORT THE EXPANSION OF THE ECONOMIC LOSS RULE TO BAR CLAIMS FOR FRAUD IN THE INDUCEMENT

A. THE FLORIDA SUPREME COURT HAS ONLY APPLIED THE ECONOMIC LOSS RULE TO NEGLIGENCE AND STRICT LIABILITY CLAIMS

This Court has never applied the economic loss rule to a claim for fraud in the inducement. This Court has applied the rule only

to negligence and strict liability claims. Airport Rent-A-Car v. Prevost Car, Inc., 20 FLW (S) 276 (Fla. 1995) (negligence and strict liability); Casa Clara v. Toppino, 588 So.2d 631 (Fla. 1993) (negligence); AFM Corp v. Southern Bell, 515 So.2d 180 (Fla. 1987) (negligence); Florida Power & Light Co. v. Westinghouse, 510 So.2d 899 (Fla. 1987) (negligence); Moyer v. Graham, 285 So.2d 397 (Fla. 1973) (professional negligence).

In Woodson, the Second District interpreted dicta in Casa Clara as an indication that this Court would apply the Economic Loss Rule to claims for fraud in the inducement. Specifically, the Woodson court referred to this Court's statement that disappointed economic expectations are protected by contract law rather than "tort law". Woodson v. Martin, 663 So.2d 1327, 1328 (Fla. 2d DCA 1995). Nowhere in Casa Clara, however, did this Court indicate that it intended to abrogate fraud in the inducement as a cause of action in Florida. This is significant because this Court has long recognized a cause of action for fraud in the inducement between contracting parties. Wheeler v. Baars, 15 So. 584, 588-589 (Fla. 1894); Huffstetler v. Our Home Life Ins. Co., 65 So. 1 (1914); Joiner v. McCullers, 28 So.2d 823, 824-825 (Fla. 1947); Besett v. Basnett, 389 So.2d 995 (Fla. 1980); Lance v. Wade, 457 So.2d 1008, 1011 (Fla. 1984); Johnson v. Davis, 480 So.2d 625, 627 (Fla. 1985). It is highly unlikely that this Court would have abrogated such a long line of precedent without a single comment indicating its intent.

Judge Altenbernd, in his dissent below, recognized how the majority opinion in Woodson ignored hundreds of years of precedent:

> An action for deceit has existed at common law since 1201. William L. Prosser, Handbook of the Law of Torts, §105 (4th ed.1971). The modern common law of fraud traces its roots to Pasley v. Freeman, 3 Term Rep. 51, 100 Eng.Rep. 450 (1789). In general terms, the interest protected by fraud is society's need for true factual statements in important human relationships, primarily commercial or business relationships...
>
> ...Nothing in Casa Clara causes me to conclude that the supreme court actually intended to abolish a seven hundred-year-old intentional tort in the context of limiting a negligence theory. Although the opinion quickly jumps from the correct term "negligence theory" to an overly broad reference to "tort", it contains no discussion of the interest protected by the intentional tort of fraud. The supreme court refused to make an exception to the economic loss rule for homeowners because they have adequate protection arising from the "duty of sellers to disclose defects." 620 So.2d at 1247. The Casa Clara opinion supports that statement with a citation to Johnson v. Davis, 480 So.2d 625 (Fla. 1985), a case in which the home buyer's cause of action was fraud in the inducement... Woodson v. Martin, 663 So.2d 1327, 1330 (Fla. 1995)

Judge Lazzara, in his dissent in Woodson, explained that the Casa Clara decision can only be read consistently with the Supreme Court's earlier decision in Johnson v. Davis, 480 So.2d 625 (Fla.

1985),[3] if the decision is limited to tort remedies based on negligence, not intentional fraud:

> ...the court's refusal in Casa Clara to exempt homeowners from the economic loss rule, when examined in its proper context, did not emasculate Johnson but instead reaffirmed its basic holding as one of the protections still available to purchasers of homes....
>
> * * *
>
> The Court in Casa Clara initially made a seemingly all-encompassing statement that "[i]f a house causes economic disappointment by not meeting a purchaser's expectations, the resulting failure to receive the benefit of the bargain is a court concern of contract, not tort, law." 620 So.2d at 1247 (emphasis added). Significantly, it immediately qualified this broad pronouncement by observing that "[t]here are protections for home buyers, however, such as...the duty of sellers to disclose defects [,]" specifically citing Johnson for this proposition. Id. The Court then observed that such protections, coupled with a purchaser's ability to bargain over price, were sufficient to safeguard the interests of a home buyer without incurring "the mischief that could be caused by allowing tort recovery for purely economic losses." Id. (emphasis added). It then reaffirmed its prior holding in Florida Power & Light Company v. Westinghouse Electric Corp., 510 So.2d 899 (Fla. 1987), a case also involving a claim based on a negligence theory that "contract principles [were] more appropriate than tort principles for recovering economic loss without an accompanying physical injury or property damage." Id. (emphasis added).

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[3] In Johnson v. Davis, 480 So.2d 625 (Fla. 1985), this Court acknowledged the right of a homebuyer to bring a cause of action for fraud in the inducement if a seller breaches its common law duty to disclose any defect in the home which materially affects its value. This duty has since been applied to realtors acting on behalf of the seller. Revitz vs. Terrell, 572 So.2d 996, 998 n. 5 (Fla. 3d DCA 1990); Rayner vs. Wise Realty Co. of Tallahassee, 504 So.2d 1361, 1363-1364 (Fla. 1st DCA 1987).

> Based on this language, it seems clear to me that Casa Clara did nothing more than decline to exempt homeowners from the reach of the economic loss rule which precludes the recovery of purely economic damages under a negligence claim when there is no accompanying physical damage or personal injury.... Furthermore, as I have underscored, although the Supreme Court used the generic terms "tort law," "tort recovery," and "tort principles" in its opinion, it cannot be emphasized enough that the use of these terms was in the context of a negligence claim and not within the context of an intentional tort such as the appellant alleged in this case. 663 So.2d at 1333.

There is simply no support in Casa Clara, or in any precedent of this Court, to support the application of the Economic Loss Rule to claims for fraud in the inducement.

B. THE MAJORITY OF DISTRICTS IN FLORIDA HAVE HELD THAT THE ECONOMIC LOSS RULE DOES NOT BAR CLAIMS FOR FRAUD IN THE INDUCEMENT

Woodson is the first Florida opinion holding that a claim for fraud in the inducement is barred by the economic loss rule. The Third and the Fourth districts have ruled that fraud in the inducement is an independent tort, not barred by the economic loss rule. Jarmco, Inc. v. Polygard, 21 FLW (D)478 (Fla. 4th DCA 1996); HTP, LTD. v. Lineas Aereas Costarricenses, 661 So.2d 1221 (Fla. 3d DCA 1995) ("fraud in the inducement and deceit are independent torts for which compensatory and punitive damages may be recovered."); TGI Development, Inc. v. CV Reit, Inc., 665 So.2d 366 (Fla. 4th DCA 1996) ("fraud in the inducement, even when only economic losses are sought to be recovered, is the kind of independent tort that is not barred by the economic loss rule").

The Second District is the only court to hold to the contrary; and as discussed above, the Woodson court was deeply divided.

C. FEDERAL COURTS INTERPRETING FLORIDA LAW HAVE CONSISTENTLY HELD THAT THE ECONOMIC LOSS RULE DOES NOT BAR CLAIMS FOR FRAUD IN THE INDUCEMENT

Federal courts, interpreting Florida law, have consistently held that claims for fraud in the inducement are independent torts, not barred by the Economic Loss Rule. Pulte Home Corp. v. Osmose Wood Preserving, Inc., 60 F.3d 734, 742 (11th Cir. 1995); SFC Valve Corp. v. Wright Machine Corp., 883 F.Supp. 710 (S.D.Fla.1995); American Eagle Credit Corp. v. Select Holding, Inc., 865 F.Supp. 800, 815 (S.D.Fla.1994); Leisure Founders, Inc. v. CUC Intern., Inc., 833 F.Supp. 1562, 1573 (S.D.Fla.1993); Brass v. NCR Corp., 826 F.Supp. 1427, 1428 (S.D.Fla.1993); Kingston Square Tenants Assoc. v. Tuskegee Gardens, Ltd., 792 F.Supp. 1566, 1576 (S.D.Fla.1992); Williams Electric Co. v. Honeywell, Inc., 772 F.Supp. 1225, 1237-1238 (N.D.Fla.1991). Moro-Romero v. Prudential-Bache Securities, 5 FLW FED (D)520 (S.D.Fla.1991); Serina v. Albertson's, Inc., 744 F.Supp. 1113, 1118 (M.D.Fla.1990) (claim for fraud in the inducement may be independent from breach of contract).

The Williams Electric opinion has been cited by courts across the country to explain why a fraud in the inducement claim is an independent tort outside the scope of the Economic Loss Rule. The court reasoned that, unlike claims for fraud occurring in the performance of a contract, claims for fraud in the inducement are

independent torts based on pre-contractual conduct which is separate from conduct constituting a breach of contract:

> ...I conclude that Interstate Securities Corp., which involved fraud in the performance of a contract, is distinct from the fraud in the inducement claim in this case. The distinction is critical, for the essence of the "economic loss" rule is that contract law and tort law are separate and distinct, and the courts should maintain that separation in the allowable remedies. There is a danger that tort remedies could simply engulf the contractual remedies and thereby undermine the reliability of commercial transactions. Once the contract has been made, the parties should be governed by it.
>
> **Fraud in the inducement, however, addresses a situation where the claim is that one party was tricked into contracting. It is based on pre-contractual conduct which is, under the law, a recognized tort. 772 F. Supp. at 1238. (emphasis added).**

See also, Leisure Founders, Inc. v. CUC Intern., Inc., 833 F.Supp. 1562, 1573 (S.D.Fla.1993) (fraudulent inducement claim does not fall within the scope of the Economic Loss rule because it involves conduct prior to any alleged agreement which is distinct from conduct constituting a breach of contract).

D. FLORIDA COURTS HAVE LONG RECOGNIZED THAT FRAUD IN THE INDUCEMENT CLAIMS ARE INDEPENDENT TORTS.

The independent tort doctrine has been a part of the economic loss rule in Florida since the rule was first recognized by this court. AFM Corp. v. Southern Bell Tel. & Tel. Co., 515 So.2d 180, 181 (Fla. 1987). Under this doctrine, the economic loss rule does not apply "where a tort independent of [a] breach of contract [has been] committed." Greenberg v. Mount Sinai Med. Center of Greater Miami, Inc., 629 So.2d 252, 255 (Fla. 3d DCA 1993). To constitute

an independent tort, the tort claim must be based on "some additional conduct" beyond the conduct constituting a breach of contract. SFC Valve Corp. v. Wright Machine Corp., 883 F.Supp. 710, 716 (S.D.Fla.1995); American Eagle Credit Corp. v. Select Holding, Inc., 865 F.Supp. 800, 815 (S.D.Fla.1994); AFM Corp. v. Southern Bell Tel. & Tel. Co., 515 So.2d at Id.

Prior to Woodson, virtually every district in Florida, including the Second, had recognized that claims for fraud in the inducement are independent torts which may be brought separately from a breach of contract claim. Burton v. Linotype Co., 556 So.2d 1126, 1128 (Fla. 3d DCA 1989); Johnson v. Bokor, 548 So.2d 1185, 1186 (Fla. 2d DCA 1989) (party fraudulently induced into a contract may sue for fraud in the inducement or for breach of contract); John Brown Automation, Inc. v. Nobles, 537 So.2d 614, 617-618 (Fla. 2d DCA 1988); Sprayberry v. Sheffield Auto & Truck Serv., Inc., 422 So.2d 1073 (Fla. 1st DCA 1982) ("one who has been fraudulently induced into a contract may elect to stand by that contract or sue for damages for fraud"); Gold v. Wolowitz, 430 So.2d 556, 557 (Fla. 3d DCA 1983); Wallis v. South Florida Savings Bank, 574 So.2d 1108, 1110 (Fla. 2d DCA 1991); Bachrodt Chevrolet, Inc. v. Savage, 570 So.2d 306, 308 (Fla. 4th DCA 1990); Yanks v. Burnett, 563 So.2d 776, 777 (Fla. 3d DCA 1990).

E. COURTS ACROSS THE COUNTRY HAVE HELD THAT CLAIMS FOR FRAUD IN THE INDUCEMENT ARE INDEPENDENT TORTS

To the undersigned's knowledge, every court that has considered this issue outside of Florida has held that a claim for

fraud in the inducement may constitute an independent tort, not barred by the economic loss rule.

1. Michigan law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule

In Huron Tool and Eng. Co. v. Precision Consulting Services, Inc., 532 N.W.2d 541 (Mich.App. 1994), the court ruled that fraud in the inducement is an exception to the economic loss rule under Michigan law. This case is significant because before Huron, the Michigan Supreme Court had issued an opinion almost identical to Casa Clara, which left unclear the issue of whether an exception for fraud in the inducement existed.

The Michigan Supreme Court's opinion in Neibarger v. Universal Cooperatives, Inc., 486 N.W.2d 612 (Mich. 1992) mirrored this court's opinion in Casa Clara. Like Casa Clara, Neibarger involved negligence and strict liability claims. In Neibarger, the Michigan Supreme Court likewise discussed the economic loss rule in broad terms, referring generally to its effect on "tort claims" and stating that the rule was necessary or "contract law would drown in a sea of tort." The Defendants in Huron argued that this broad language indicated that the rule barred all tort claims. This is the identical rationale employed by the Second District in Woodson. The Huron court rejected this argument and reasoned:

> Although the Neibarger Court discussed the economic loss doctrine in broad terms, referring generally to the viability of "tort" claims under the doctrine without further distinction, we find nothing in the opinion to suggest that the Court's holding extended beyond the limited facts of that case to address the viability of intentional torts

such a fraud. We therefore reject defendant's simple argument that because "tort" claims for economic losses are barred, and because fraud is a "tort," plaintiff's fraud claim is barred...

* * *

...we decline to adopt defendants' position that the economic loss doctrine precludes any fraud claim. **Fraud in the inducement presents a special situation where parties to a contract appear to negotiate freely - which normally would constitute grounds for invoking the economic loss doctrine - but where in fact the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party's fraudulent behavior...**

* * *

...The danger of allowing contract law to "'drown in a sea of tort'" exists only where fraud and breach of contract are factually indistinguishable. (citation omitted). However, a claim of fraud in the inducement, by definition, redresses misrepresentations that induce the buyer to enter into a contract but that do not in themselves constitute contract or warranty terms subsequently breached by the seller. 532 N.W.2d at 544-546.[4]

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[4] The Huron court adopted a case-by-case analysis to determine whether the alleged fraudulent misrepresentation was distinct from a breach of contract. If this court adopts a case-by-case analysis to determine whether a fraud in the inducement claim is an independent tort, the trial court's summary dismissal of the fraud in the inducement claim in the instant case, should be reversed and the case remanded so this issue can be tried. Burton v. Linotype Co., 556 So.2d 1126, 1128-1129 (Fla. 3d DCA 1989) (issue of whether fraud in the inducement claim is independent from breach of contract claim presented a question of fact for the jury). Appellant notes that its claim for fraud in the inducement against the realtor sought damages separate from those sought for the seller's breach of contract. The issue of whether damages caused by fraud in the inducement are separate from damages caused by a breach of contract is a question of fact for the jury. Southland Const. Inc. v. Richeson Corp., 642 So.2d 5, 9 (Fla. 5th DCA 1994).

Several other courts have held that fraud in the inducement is an exception to the Economic Loss Rule under Michigan law. Roehm v. Charter Mobile Home Moving Co., 907 F.Supp. 1110, 1113-1114 n.1 (W.D.Mich.1993); Theuerkauf v. United Vaccines Division of Harlan Sprague Dawley, Inc., 821 F.Supp.1238, 1241-1242, n. 1 (W.D.Mich. 1993); Electro-Matic Products, Inc. v. Prime Computers, Inc., 1989 WL 99044, p.2 (6th Cir.1989).

2. **Virginia law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule**

In City of Richmond v. Madison Mgmt. Group., Inc., 918 F.2d 438 (4th Cir.1990) the Fourth Circuit, interpreting Virginia law, was faced with the same scenario as the Michigan Supreme Court in Huron. The court likewise found that fraud in the inducement was an exception to the economic loss rule, although an earlier Supreme Court of Virginia opinion contained broad language stating that "tort" claims were barred by the Economic Loss Rule. The court cognized an exception for fraud in the inducement because irginia law, like Florida law, had long recognized the independent tort of fraud in the inducement, even between parties to a contract. City of Richmond v. Madison Mgmt. Group, 918 F.2d at 447-448. See also, Tidewater Beverage Services, Inc. v. Coca Cola Company, Inc., 907 F.Supp. 943, 947-948 (E.D.Va. 1995).

3. Minnesota law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule

One of the first cases discussing the effect of the economic loss rule on claims for fraud in the inducement was Northern States Power Co. v. I T & T Corp., 550 F.Supp. 108, 111 (D.Minn.1982). In Northern States, the court determined that the economic loss rule did not apply to claims for fraud in the inducement under Minnesota law, although the Minnesota Supreme Court in an earlier decision had opined that the rule barred recovery of "tort damages" in general. The court reasoned that, in spite of this broad dicta, Minnesota law had always recognized fraud in the inducement claims as independent torts and since there was no mention of this long line of precedent in the Minnesota Supreme Court opinion, the Economic Loss Rule should be interpreted consistently with this precedent. Therefore, the court recognized an exception for fraud in the inducement claims under Minnesota law. Northern States, 550 F.Supp. at 111-112.

4. Kansas law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule

In Mid Continent Cabinetry, Inc. v. Koch Sons, Inc., 1991 WL 177961 (D.Kan. 1991), the court, applying Kansas law, originally dismissed the Plaintiff's fraud in the inducement claim on summary judgment based on the economic loss rule. On a motion for reconsideration, the court reversed itself, finding that fraud in the inducement is an exception to the economic loss rule under

Kansas law. The court explained why the Economic Loss Rule must give way to a claim for fraud in the inducement:

> The well-rooted rule in Kansas is that parties may contract and provide remedies on their own terms so long as "they are not illegal contrary to public policy, or obtained by fraud, mistake, overreaching, or duress." (citation omitted) (emphasis added).
>
> * * *
>
> The social policy in the field of contract has been left to the parties themselves to determine with judicial and legislative intervention tolerated only in the most extreme cases. Where there has been intervention, it has been by the application of well established contract doctrines, **most of which focus on threats to the integrity of the bargaining process itself such as fraud**... 1991 WL 177961 at page 4. (emphasis added).

5. **Illinois law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule**

In Rardin v. T & D Machine Handling, Inc., 890 F.2d 24, 29 (7th Cir. 1989), the Seventh Circuit described various exceptions to the economic loss rule under Illinois law. The court recognized that the largest exception to the rule "allows a suit for fraud against a person with whom the plaintiff has a contract." Rardin v. T & D Mach. Handling, Inc., 890 F.2d 24, 29 (7th Cir. 1989).

6. **Delaware law has been interpreted to exempt claims for fraud in the inducement from the scope of the economic loss rule**

In Council of Unit Owners of Sea Colony East v. Freeman Assoc., Inc., 1990 WL 177632 (Del.Super. 1990), the court held that "fraud is a recognized exception to the limitations of the economic loss doctrine." The court reasoned that fraud and negligence

claims require different treatment by the economic loss rule because "the rationales which govern actions in negligence and the protections against losses through other means, including insurance, do not apply." Id. at page 4.

II. APPLYING THE ECONOMIC LOSS RULE TO IMMUNIZE A RESIDENTIAL PROPERTY REALTOR FROM LIABILITY FOR FRAUD WOULD ABROGATE THIS COURT'S PRECEDENT IN JOHNSON V. DAVIS AND ENCOURAGE FRAUD IN REAL ESTATE TRANSACTIONS

In Johnson v. Davis, 480 So.2d 625 (Fla. 1985), the Supreme Court held that the sellers of residential real property are under an affirmative duty to disclose any defect they are aware of which materially affects the value of the home. This Court held that breach of this duty gives rise to a claim for fraud in the inducement. This duty applies to realtors acting on behalf of a seller. Revitz v. Terrell, 572 So.2d 996, 998 n. 5. (Fla. 3d DCA 1990); Rayner v. Wise Realty Co. of Tallahassee, 504 So.2d 1361, 1363-1364 (Fla. 1st DCA 1987). In Casa Clara Condominium Association v. Charlie Toppino & Sons, 620 So.2d 1244, 1247 n.6 (Fla. 1993), this Court affirmed its holding in Johnson v. Davis.

By answering the certified question in the affirmative, the Woodson court ignored this Court's precedent in Johnson v. Davis as it applies to real estate agents and effectively made realtors immune to tort actions based on their independent fraud. Buyers of real property, particularly residential property, rely on realtors. If Woodson is upheld, the opportunity for abuse would be substantial.

To illustrate the danger of shielding realtors or any agents of parties involved in their contractual negotiations from tort

liability for fraud, consider the following example: Suppose that a realtor furnishes a prospective buyer a favorable, but false, termite inspection report. The buyer relies on the report and omits any protection from termite infestation or termite damage from the eventual contract. Suppose the seller did not have actual knowledge of the termite infestation, knowing only that it had been twenty years since the residence had last been inspected for termites. The seller cannot be proven to have had knowledge of the termite infestation and extensive damage the buyer discovers after closing. The seller cannot be proven to have authorized or directed the realtor's fraud. Where is the buyer's remedy in this example? If the realtor is immune from liability for fraudulently inducing the contract, the Economic Loss Rule will become a tool for the unscrupulous to defraud innocent homebuyers in this state.

Allowing the Economic Loss Rule to insulate a real estate agent from liability for fraud would violate this Court's admonition in Besett vs. Basnett, 389 So.2d 995 (Fla. 1980), where this Court stated, in an analogous context, that:

> A person guilty of fraud should not be permitted to use the law as his shield....though one should not be inattentive to one's business affairs, the law should not permit an inattentive person to suffer loss at the hands of a misrepresentater. 389 So.2d at 998.

This Court should not allow the economic loss rule to serve as a shield protecting persons guilty of fraud from liability for compensatory and punitive damages.

III. THE ECONOMIC LOSS RULE CANNOT BAR A CLAIM BASED ON THE BREACH OF A STATUTORY DUTY

Under the independent tort doctrine, a claim may not be dismissed under the Economic Loss Rule if it is based on "some additional conduct" beyond the conduct constituting a breach of contract. AFM Corp. v. Southern Bell Tel. & Tel. Co., 515 So.2d at 181. Where the wrong complained of constitutes a breach of a statutory duty, as well as the breach of a contractual duty, the economic loss rule is not applicable under the independent tort doctrine. Amerifirst Bank v. Bomar, 757 F.Supp. 1365, 1378 (S.D.Fla.1991); Kingston Square Tenants Association v. Tuskegee Gardens, Ltd., 792 F.Supp. 1566, 1576 (S.D.Fla. 1992).

Amerifirst Bank v. Bomar, 757 F.Supp. 1365, 1378 (S.D.Fla. 1991) is specifically on point. In Amerifirst, the plaintiff brought claims for breach of contract and for breach of fiduciary duty. The court ruled that the Plaintiff's breach of fiduciary duty claims were not barred by the economic loss rule because the defendants had breached an independent fiduciary duty to the plaintiffs under applicable statutes, as well as under their employment contracts. The Defendants had argued that the statutes creating these fiduciary duties could not give rise to an independent tort claim because these statutes did not contain a private right of action. The court rejected this argument reasoning that the plaintiffs were not suing for damages under these statutes, but were relying on them to show that the Defendant's conduct had breached a separate statutory duty which would give rise to an independent tort claim under the independent

independent tort claim under the independent tort doctrine. Amerifirst Bank v. Bomar, 757 F.Supp. at 1378, n. 20.

A. A REALTOR WHO COMMITS FRAUD IN THE INDUCEMENT BREACHES THE STATUTORY DUTY OF GOOD FAITH PURSUANT TO FLORIDA STATUTE §475.25

In this case, the Defendants were licensed real estate salespersons who breached their independent statutory duty of good faith, honesty and fair dealing under Fla. Stat. §475.25. This statutory duty has long been recognized by the courts of this state. "Those dealing with a licensed broker may naturally assume that he possesses the requisites of an honest, ethical man; and where a real estate broker is acting as agent for the seller, he nevertheless owes a duty to the buyer." Fraioli v. Bobby Byrd Real Estate, Inc., 630 So.2d 1131, 1133 (Fla. 2d DCA 1993); Ellis v. Flink, 301 So.2d 493, 494 (Fla. 2d DCA 1974); United Homes, Inc. v. Moss, 154 So.2d 351, 354 (Fla. 2d DCA 1963); Zichlin v. Dill, 25 So.2d 4, 5 (Fla. 1946). In Zichlin, an en banc panel of the Florida Supreme Court explained this statutory duty:

> The broker in Florida occupies a status under the law with recognized privileges and responsibilities. The broker in this state belongs to a privileged class and enjoys a monopoly to engage in a lucrative business. See Sec. 475.01 et seq., Fla.Stat., '41, F.S.A. The statute requires that (475.17): "* * * all applicants who are natural persons shall be competent, honest, truthful, trustworthy, of good character, and bear a reputation for fair dealing...
>
> The state, therefore, has prescribed a high standard of qualifications and by the same law granted a form of monopoly and in so doing the old rule of caveat emptor is cast aside. Those dealing with a licensed broker may naturally assume that he possesses the

requisites of an honest, ethical man. 25 So.2d 4-5. (emphasis added).

B. A REALTOR WHO COMMITS FRAUD IN THE INDUCEMENT BREACHES THE STATUTORY DUTY NOT TO COMMIT DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER FLORIDA STATUTE §501.201

A realtor who fraudulently induces a purchaser to enter into a contract also breaches the statutory duty under Fla.Stat. §501.201 prohibiting deceptive and unfair trade practices. See §501.203(8) and §501.204(1). §501 contains a private right of action, but does not provide for punitive damages as does the independent tort of fraud in the inducement.

Like the Defendants in Amerifirst, the Defendants in this case breached independent statutory duties. As the Amerifirst court held, the breach of a separate statutory duty gives rise to an independent tort claim, even if the statute upon which the duty is based does not contain a private cause of action. Therefore, a claim for fraud in the inducement against a real estate agent is an independent tort claim not subject to dismissal under the economic loss rule.

IV. A FRAUD IN THE INDUCEMENT CLAIM BASED IN PART ON EXTRA-CONTRACTUAL DAMAGES CANNOT BE DISMISSED AS A MATTER OF LAW.

When a tort claim is based on damages beyond the scope of a breach of contract, the tort claim may not be dismissed as a matter of law because an issue of fact remains as to whether the Plaintiff suffered extra-contractual damages. Burton v. Linotype, 556 So.2d 1126 (Fla. 3d DCA 1989).

In Burton v. Linotype, the plaintiff brought a claim for fraud in the inducement and for breach of contract. The fraud claim

alleged the identical damages as the breach of contract claim. The trial court dismissed the fraud claim and this holding was reversed by the Third District. In its opinion, the Third District held that it was error to dismiss the fraud claim as a matter of law because it was possible that the plaintiff could prove extra-contractual damages at trial. The Third District reasoned:

> Fraud in the inducement and deceit are independent torts for which compensatory and punitive damages may be recovered (citations omitted)....[Defendant] urges that notwithstanding this general principle of law, [plaintiffs] have failed to plead damages or facts different from those suffered from the breach of contract, and therefore their tort claims cannot be maintained...[Defendant] anticipates that [plaintiffs] will be unable to prove fraud damages as distinct from contract damages because the relief segments of the complaint are identical. [Defendant] presumes too much: [plaintiffs] seek general relief and not specific dollar amounts. At trial, [plaintiffs] may be able to establish, for example, that the loss of business suffered as a result of the alleged fraud is different from the loss of business occasioned by the failure of the machinery to work properly. Under the facts of this case, it would be premature to foreclose proof of differentiated damages. 556 So.2d at 1128. (emphasis added).

The court noted that punitive damages may be recovered if conduct independent of a breach of contract is demonstrated.

Under the reasoning in Burton, it was error for the court to deprive Woodson of the opportunity to prove his entitlement to extra-contractual damages because Woodson pled and offered sufficient evidence that he was entitled to recover extra-contractual damages, as well as punitive damages.

The evidence presented by Woodson demonstrates the existence of damages beyond those recoverable for breach of the contract. The contract provided only two warranties concerning defects in the property. The first warranty covered "visible evidence" of "leaks or water damage" discovered within 10 days of the closing. The second warranty, located at Clause W of the contract, provides a limited warranty concerning defects known to the seller materially affecting the value of the real property which are not readily observable by the buyer or which have not been disclosed to the buyer.

Woodson's fraud claim seeks damages which would not be covered by either of these two warranties. For example, Woodson's Second Amended Complaint and affidavit claimed the following two types of losses which would not be covered by either warranty:

A. VALUE OF THE PROPERTY

Martin made a specific material misrepresentation that the property was, in her expert opinion, worth the $500,000.00 set forth in the Copeland appraisal report that she offered to Woodson. She explained the basis of her opinion and specifically represented herself as an expert to render that opinion. Martin actively encouraged Woodson to rely upon her opinion.

Martin confided to Woodson that the only reason the Sheas were selling this residence for less than its true value was economic survival in the face of a builder's recession. The fact that the property was misrepresented as to value and condition cost Woodson substantial anticipated profit that is not contemplated within the

four corners of the sales contract. This loss of value is not attributable against the sellers for breach or non-disclosure. It can be measured as the difference between the actual value of the house at the time of sale and the value represented by Martin. The fraud and resulting damages for loss of value are attributable to Martin and her employer, MacLean Realty. They are distinct from the breach of contract or any contractual remedy.

B. DAMAGES FOR RECURRENT POST-SALE PEST CONTROL SERVICES

The internal water intrusion caused by the structural deformities in the house attracted repeated infestations of ants, vermin and insects to the interior of the house. (App. 18). The infestations were so severe that a pest control expert who examined the house said it was the first home in his extensive experience that Sears pest control would not warrant against future infestations. (App. 18). The reason Sears would not warrant the house was because of the amount of water the inspector found which had improperly pooled between the house slab and the wood floors. (App. 18).

While the contract may provide a remedy for some of the water damage, there is no remedy available under the contract for recovery of the cost of frequent recurring pest control expenses. If the sellers were unaware of this problem, the second warranty would not cover this. The first warranty also would not apply because there is no evidence that the infestation problem was discovered by the buyer within 10 days of closing.

As the Burton court held, the existence of extra-contractual damages is not a question to be decided as a matter of law, and therefore, this case should be remanded to the trial court for further proceedings to determine this issue of fact.

V. COURTS HAVE LONG RECOGNIZED THAT PRINCIPLES OF CONTRACT LAW SHOULD NOT BE APPLIED TO VICTIMS OF FRAUD IN THE INDUCEMENT.

The Economic Loss Rule is premised on the rationale that parties to a contract should be limited to the contractual remedies they freely and knowingly negotiated. East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 872-873, 90 L.Ed.2d 865, 878 (1986). This principle is based on the assumption that the parties had a fair opportunity to negotiate. This is not the case where a party bargains under false pretenses due to the intentional fraud of another. A party who is deceived into entering into a contract cannot be presumed to have had a fair opportunity to negotiate adequate contractual remedies.

For this reason, courts have always provided exceptions to principles of contract law for victims of fraud in the inducement. One example is the parole evidence rule. Like the economic loss rule, the parol evidence rule is intended to preserve stability in contractual relationships by limiting parties to the terms of their agreements. Courts have long recognized an exception to the parol evidence rule for claims for fraud in the inducement. Bachrodt Chevrolet, Inc. v. Savage, 570 So.2d 306, 308 (Fla. 4th DCA 1990); Tinker v. DeMaria Porche Audi, Inc., 459 So.2d 487, 491 (Fla. 3d DCA 1984). Fraud in the inducement is also a recognized defense to a claim for breach of contract. Poneleit v. Reksmad, Inc., 346

So.2d 615, 616 (Fla. 2d DCA 1977). Another example involves the law governing stipulations between parties to litigation. The law treats stipulations as binding contractual agreements, but will not enforce a stipulation which is fraudulently induced. Champlovier v. City of Miami, 20 FLW(D) 2286, 2289 n. 9 (Fla. 1st DCA 1995) (citing Steele v. A.D.H. Bldg. Contractors, Inc., 174 So.2d 16, 19 (Fla. 1965). Yet another example involves limitation of remedies provisions in contracts. Although these provisions are usually strictly enforced, they will not bar claims for fraud in the inducement. Burton v. Linotype Co., 556 So.2d 1126, 1127 (Fla. 3d DCA 1989); Luria & Son, Inc. v. Honeywell, Inc., 460 So.2d 521, 523 (Fla. 4th DCA 1984); Oceanic Villas, Inc. v. Godson, 4 So.2d 689, 690 (Fla. 1941). Fraud in the inducement is also a recognized basis to rescind a contract altogether. Johnson v. Bokor, 548 So.2d 1185 (Fla. 2d DCA 1989); Oceanic Villas, Inc. v. Godson, 4 So.2d at id.

If these established principles of contract law were applied to claims for fraud in the inducement the opportunities for abuse would be enormous. For this reason, the law does not allow a party to be bound by a contract it would not have entered into had it not been defrauded. This Court steadfastly prohibited this in Oceanic Villas, in an analogous context, where it declared:

> To hold that by the terms of the contract which is alleged to have been procured by fraud, the lessor could bind the lessee in such manner that lessee would be bound by the fraud of the lessor would be against the fundamental principles of law, equity, good morals, public policy and fair dealing. 4 So.2d at id.

The economic loss rule, which is based on the same rationale as the foregoing principles of contract law, likewise should not limit a victim of fraud in the inducement to a set of contractual remedies he would not have agreed to had he not been defrauded. Applying the economic loss rule in this context would create a great inconsistency in the law and, more importantly, provide perpetrators of fraud a "safe harbor" to commit fraud and escape the major deterrent the law has long maintained against fraud in the inducement: punitive damages. First Interstate Dev. Corp. v. Ablanedo, 511 So.2d 536, 539 (Fla. 1987).

CONCLUSION

Most contractual relationships should be governed by contract law, not tort law. Florida law has consistently recognized, however, that contract law is ineffective in situations where, due to intentional fraudulent misconduct, a party to a contract is deprived of the ability to fairly and knowingly negotiate. Where the integrity of the bargaining process is destroyed by fraud in the inducement, only tort law provides sufficient relief and deterrent. By acknowledging that the economic loss rule does not apply to claims for fraud in the inducement brought against a residential realtor, this Court would deter fraud, promote stability in these types of transactions and preserve this Court's important precedent in Johnson v. Davis.

For all of the foregoing reasons, the certified question should be answered in the negative and this case should be remanded to the trial court for further proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by first class United States Mail to Marsha G. Rydberg, Esquire, Rydberg, Goldstein & Bolves, 500 East Kennedy Boulevard, Suite 200, Tampa, Florida, 33602, to Robert L. Rocke, Esquire, of Annis, Mitchell, Cockey, Edwards & Roehn, P.A., One Tampa City Center, Suite 2100, 201 North Franklin Street, P. O. Box 3433, Tampa, Florida, 33601-3433, and to Paul P. Jackson, Paul P. Jackson Realty, 14047 Briar Dale Lane, Tampa, Florida, 33618, on the 15th day of March, 1996.

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Appendix