

IN THE SUPREME COURT OF FLORIDA

M/I SCHOTTENSTEIN HOMES,
INC., a Florida corporation,

CASE NO.: SC00-1582

Petitioner,

4DCA Case No.: 4D99-2898

v.

Florida Bar No. 773476

NASAD AZAM, SAFEEIA AZAM,
TOM BELL, HOPE BELL, SCOTT
M. DOLBEARE, MARY E. RYAN,
ASIF ISLAM, REBECCA ISLAM,
CHARLES KATZKER, SUSAN KATZKER,
LOUIS LAMM, DARA LAMM, EDWARD
McCAULEY, JEANETTE McCAULEY,
and ARTHUR SHUSHAN,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH DISTRICT COURT OF APPEAL

REPLY BRIEF ON THE MERITS OF PETITIONER
M/I SCHOTTENSTEIN HOMES, INC.
WITH APPENDIX

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CERTIFICATION OF FONT TYPE

It is hereby certified that the size and type used in this Brief is Times New Roman 14, a font that is not proportionately spaced.

POINT ON APPEAL

The *Azam* Court erred in rejecting the “bright line rule” or “broad prohibition” of *Pressman* that statements concerning the Public Record cannot form the basis for a claim of actionable fraud, and failed to follow *Besett* to determine as a matter of law that an alleged misrepresentation was obviously false, in favor of a “case-by-case” determination which turns on the subjective impressions of the Buyer, and a myriad of other factors.

ARGUMENT

RESPONDENTS' REQUEST AS TO COUNTS II AND III (RECISION AND NEGLIGENCE) IS IMPROPER

PURCHASERS, Respondents herein, have requested relief including reversing the Fourth District Court of Appeal which let stand the Trial Court's dismissal of Count II, Recision and Count III, Negligence. Respondents have not properly invoked jurisdiction of this Court as to those issues, nor have they cited any authority in support of the naked claim that any error occurred with respect to those aspects of the proceedings below, both in the Fourth District Court of Appeal and in the Circuit Court. Having failed to preserve these issues, nor having sought to invoke this Court's limited discretionary jurisdiction, Respondents are foreclosed from seeking appellate review and/or relief on the two causes of action they abandoned.

THE BRIGHT LINE RULE FOR STATEMENTS CONCERNING THE PUBLIC RECORD IS JUSTIFIED

The essence of Respondents' argument is that anything other than a case-by-case determination of whether a party's reliance on a misrepresentation was justified, is a step back toward the Doctrine of Caveat Emptor. Yet Petitioner has stated cogent reasons justifying the disparate treatment of misrepresentations or omissions which relate to the Public Record.

Here, the parties had an equal opportunity to avail themselves of knowledge in the public record, and specifically the Site Plan at issue in this case. The PURCHASERS are not justified in relying upon a misrepresentation which is obviously false and “which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation.” *Besett v. Basnett*, 389 So.2d 995, 997 (Fla. 1980) (quoting from Restatement (Second) of Torts, Sec. 541 (1976)).

This Court in *Besett* adopted both Sections, 540 and 541, of the Restatement (Second) of Torts. Section 541 makes clear that reliance is not justified if the recipient knows the matter is false, or its falsity is obvious to him. This Court can determine, from reviewing the Complaint and its attachment, that the PURCHASERS had knowledge that the alleged misrepresentations were false and, as a matter of law, that the alleged misrepresentations were “obviously false.” PURCHASERS need look no further than Comment (a) to s 540 which states:

On the other hand, if a mere cursory glance would have disclosed the falsity of the representation, its falsity is regarded as obvious under the rule stated in s 541. (Emphasis Added)

In their Answer Brief, PURCHASERS have not offered one reason, nor any explanation whatsoever, why each should be excused from Florida’s policy and long line of cases which recognize that a landowner or purchaser is charged with

knowledge of information within the Public Record. The Site Plan is included in the Appendix herein.

CONCLUSION

Petitioner respectfully requests that so much of the Fourth District's Decision as revived Count I - Fraud in the Inducement be quashed, that the Third District's result in *Pressman* be approved, and that this Court align the First District accordingly.

CERTIFICATE OF COMPLIANCE

This Brief complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2). The size and type used in this Brief is Times New Roman 14, a font that is not proportionately spaced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this _____ day of _____, 2001 to: **S. TRACY LONG, ESQ.**, Gustafson & Roderman, Attorneys for Respondents, 4901 North Federal Highway, Suite 440, Ft. Lauderdale, FL 33308.

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