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President's message: Can not always rely on assessor's information

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A recent court case in Oklahoma should put us all on notice that we can't always rely on the assessor's information for the representations that we make. Although the case was residential the facts would pertain equally to a commercial transaction. I encourage all readers to review the case below.

Oklahoma's highest court has considered whether to affirm judgment in favor of a real estate broker and seller in a dispute over a home's square footage.

Michael Presley (seller) listed his home for sale with his mother, Linda Presley (salesperson) of Century 21 Bob Crothers Realty (brokerage).

Richard and Dana Bowman (buyers) made an offer to purchase the home, and the parties agreed upon a \$145,000 purchase price. The brokerage listed the property's size as 2,890 s/f in the MLS. The brokerage stated that it had obtained this information from the local tax assessor's office. The buyers claimed their purchase was motivated by their desire to acquire a larger home and they had based their offer for the property was based on the property's listed square footage.

Following the closing, the buyers received an appraisal report listing the property's actual size as 2,187 s/f. The buyers later obtained an earlier appraisal made at the time seller purchased the property also listing the square footage as 2,187. The buyers filed a lawsuit against the salesperson, brokerage, and the seller for fraud, breach of contract, and also alleged violations of the state's license laws against the broker and the salesperson. The lower courts ruled in favor of the salesperson, brokerage, and the seller, and the buyers appealed.

The supreme court of the state of Oklahoma reversed the lower courts and ruled that there were issues of fact that needed to be resolved by a jury. The lower courts had found that the buyers could not claim fraud because the inaccurate square footage information had not harmed them, as the appraisal had also valued the property at more than \$145,000 and so the buyers did not have any damages.

The court ruled that the lower courts had improperly relied upon the appraisal as an accurate valuation for the property, finding the appraisal is merely an opinion about the property's value. A jury's role is to resolve factual disputes at trial, and so a jury should determine if the buyers had suffered any harm. Because the lower courts had improperly resolved this fact issue, the court reversed these rulings and sent the case to the trial court for further proceedings.

Next, the court considered whether the brokerage and the salesperson had violated the Oklahoma license laws by misrepresenting the size of the home. The brokerage and the salesperson argued that they had relied on the information provided by the county assessor's office and also there was a

disclaimer in the MLS stating that "this information is deemed reliable, but not guaranteed". The court found that the state's license laws prevented "substantial misrepresentations" and required licensees to "exercise reasonable skill" in performance of duties. Committing fraud while performing brokerage duties would constitute a breach of the state's license laws. Because a jury needed to determine whether the brokerage and salesperson had committed fraud in their dealings with the buyers, the court sent these allegations back to the jury for further proceedings.

Finally, all of the defendants argued that the state's doctrine of caveat emptor placed the burden of verifying the square footage on the buyers. The court found that the caveat emptor doctrine did not apply to statements of material fact asserted by a party, only to opinions offered during a transaction. Since the defendants had asserted the property's square footage to the buyers and the property's size was a material fact, the court ruled that the caveat emptor doctrine did not bar the buyers' lawsuit. Therefore, the court sent the case back to the trial court for further proceedings.

Bowman v. Presley, 212 P.3d 1210 (Okla. 2009).

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