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New Case Underlines Benefits of Disclosing Defects

Top Story

(Always on the lookout to provide AIR members with educational information that provides them with expanded avenues of professional success, AIRWaves, through the good offices of Greenberg Glusker, is pleased to pass along this article authored by firm Partner Lee Dresie and Litigation Associate Steven Stein. The highly relevant topic is the benefits of disclosing defects emanating from a recent California Court of Appeal decision. Links to both the entirety of the article, bios of the principals, and the case itself are provided following this excerpt).

THE UPSIDE OF BEING UPFRONT: NEW CASE ILLUSTRATES THE BENEFITS OF DISCLOSING DEFECTS

By [Lee Dresie](#), Partner and
[Steven Stein](#), Litigation Associate
Greenberg Glusker

We have written before about the importance of disclosing potentially negative facts, and that doing so can help protect a broker from liability. A new case from the California Court of Appeal illustrates that, even if disclosure is not required by law, providing all available information about possible problems can earn a broker both a relatively quick dismissal of litigation and an award of attorney fees.

In *Peake v. Underwood*, Joanne Peake purchased a house from Marviel and Deanna Underwood. After the purchase, Peake alleged that she learned that the subfloor was rotting when her son’s foot went through the floor.

Peake filed a lawsuit against the Underwoods and their real estate agent Paul Ferrell, alleging that they failed to disclose the deteriorating subfloor. After Peake dismissed her suit against the Underwoods, she pursued her claims against Ferrell.

Peake alleged that Ferrell owed her an affirmative duty under California law “to fully and completely disclose all known material defects, failures and deficiencies.” She alleged that Ferrell breached this duty by failing to “conduct a competent and diligent inspection” and “disclose information about the true condition of the (residence) including water damage” that Ferrell knew or should have known.

After filing the lawsuit, Ferrell’s counsel sent Peake several emails explaining that Peake’s claims were legally and factually deficient because Ferrell, the seller’s agent, did not owe Peake an affirmative duty to disclose unseen defects. Ferrell’s counsel warned that Ferrell would seek sanctions if Peake did not dismiss her claims. Despite these warnings, Peake proceeded with the lawsuit.

Ferrell’s counsel filed a motion for sanctions against Peake. Ferrell submitted evidence showing that, although the Underwoods represented they were not aware of any issues with the subflooring, only they, and *not* Ferrell, made this representation. Ferrell also submitted evidence showing that he had disclosed to Peake a “soft spot” in the subflooring. Finally, Ferrell submitted evidence showing that (1) he had provided Peake with reports detailing decay in the subflooring, and (2) Peake was aware during escrow that the house had drainage issues. [TO VIEW THE BALANCE OF THIS ARTICLE CLICK HERE](#)



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Enthusiastic Sponsor Support Big Endorsement for Next Month's 'Golf Classic' **Second Top Story**

If there is one way to measure the respect and value that the commercial real estate industry affords one of its most long lasting and important events, it's the degree to which the affiliated companies to that industry lend their support to its success. By that rule of thumb, the 31st Annual "AIR Golf Classic" is already a resounding success.

Set for September 22, 2014 at the challenging and award-winning Industry Hills Golf Club in City of Industry, the event enjoys a virtual "who's who" of sponsors. Leading the way is the generous Majestic Realty Co., which once again has stepped up as the event Grand Patron. The event kicks off at 9 a.m. with registration and Pre Event Contests. A shotgun format and lunch are set for 11:30 a.m.

Providing in-depth support as sponsors are Bank of America, California Statewide CDC and Commerce Escrow Company, Corporate Title Sponsors; Newmark Grubb Knight Frank, Corporate Gold Sponsor; Rexford Industrial, Platinum (lunch) Sponsor; BFC Funding, Patron (cocktails) Sponsor; Xceligent, Inc., Gold Sponsor; DPA Insurance, Silver Sponsor; Prologis, Pre-Tournament Long Drive Contest Sponsor; CBRE, Long Drive Contest Sponsor; The Altemus Company, Putting Contest Sponsor; California Statewide CDC, Hole-In-One Contest Sponsor; KTR Capital, Closest to the Pin Contest Sponsor; CenterPoint Properties and US Bank, Straightest Drive Contest Sponsors; ACME, Inc., Golf Shirt Sponsor; DAUM Commercial Real Estate Services, Margarita Station Sponsor; CBRE, Mojito Station Sponsor; SIOR/LA Chapter, Cigar Booth Sponsor; Greenberg Glusker, Green Econome, Beverage Cart Sponsors; The Quantum Associates and GM Properties, Hole Sponsors; Heger Industrial, Tee Sponsor, and Ansoorian Associates, Raffle Sponsor.

Following the lively golf tourney will be an always networking rich cocktail reception at 4:30 p.m., setting the stage for the gala dinner/awards banquet at 6:30 p.m. where highly desirable raffle prizes are presented.

Augmenting the robust sponsor response to the "Classic", the underlying noble cause behind the event is a major attraction and represents a wonderful way to give back to our industry. That's because the "Classic" benefits the Jules Altemus Scholarship Fund that supports outstanding students at local area Graduate Schools of Business specializing in commercial real estate. The program also funds scholarships and internships for deserving real estate college students at AIR and at member and affiliate firms. Preparing area students to become tomorrow's real estate lenders and community contributors is the overriding goal.

To register for the "Classic" call (213) 687-8777 or 877.GO.AIREA, or access the AIR Golf Classic website: www.airgolfclassic.com.

SuperSheets Provide Daily Listing Updates **Member Benefit**

AIR members are reminded that "SuperSheets" are posted on a daily basis on AIR's updated website. This is a password protected service designed for members only. Your current AIRMail password will enable you to access this information. If you need assistance with your user name and password, please call AIR's Technical Support Department at (213) 687-8777. "SuperSheets" feature daily updates of all major new listings throughout the AIR service area reported on a region-by-region basis. "SuperSheets" are e-mailed to members daily listing eight of the most interesting listings in each region.

Andy White Is About Trust **Member Profile**

Andy White trusts in being trusted as a broker. It's been the cornerstone of his successful 13-year commercial brokerage career in Orange County's office sector.

Andy is Senior Vice President for JLL in Irvine, having launched his brokerage career in the Anaheim office of CBRE. A decade later, Andy helped start 360 Commercial Partners with fellow AIR member Louis Tomaselli. Both became part of JLL in 2012 when that firm acquired 360 Commercial.

With JLL, as is his trademark, Andy focuses on office properties, including institutional and corporate representation. His demographic outreach blankets all of Orange County, overlapping to the 605 Corridor, he said.