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Verdicts & Settlements

Real Estate 'Flipping' Case Results In \$148K Award

By Natalie White

In what may be the first real estate fraud "flipping" case in the state to go to trial, a Maryland jury awarded a Baltimore couple \$148,250 - including \$100,000 in punitive damages - after they were cheated by an unscrupulous home seller.

"It's an important case because this is happening all over Maryland and the country, mortgage fraud and flipping," said solo Peter Holland of Annapolis, Md. "People are looking at this case because it's one of the first that went all the way to a jury verdict."

Holland said he is developing a niche practice in these real estate fraud and flipping cases and that this verdict shows the potential of such a market.

He said there are hundreds, if not thousands, of cases in the state where a shady seller, or "flipper," buys a house cheaply and then sells it to unsuspecting homebuyers for a price that far exceeds its real value. Most often these cases are either settled or simply declined by attorneys, who have traditionally viewed them as too thorny to litigate.

Defense attorney Robert Taylor Jr. argued the case was more of a landlord/tenant dispute than a true "flipping" case. However, he conceded that the plaintiffs were clever to characterize a rent-to-own agreement as a lease-to-own agreement because that took it out of the realm of landlord/tenant disputes and into the mainstream courts. In Maryland, a lease-to-own agreement is considered to be a private mortgage for legal purposes, said Taylor.

"I know that's how the plaintiffs are describing it — as a flipping case — but I really do think it's a reach," said Taylor. "This was essentially a fraud and consumer protection case, not a flipping case. The defendants acquired a house, fixed it up and leased it to the plaintiffs with an option to buy."

He said the defendants plan to appeal. One of the legal questions they plan to raise, Taylor said, is if the judge should have ruled whether the case involved a lease-to-own or a rent-to-own agreement. He did not, and instead let the jury decide the issue as a land installment agreement.

The jury returned its verdict in an hour and a half. The judgment includes \$100,000 for punitives, \$15,000 for fraud, \$13,200 for payments made under a land installment contract that was never recorded, \$6,300 for negligent misrepresentation, and \$13,750 for damages under the Maryland Consumer Protection Act.

Holland said that the case fits the "flipping" definition used by the state attorney general and that he used that definition in his closing arguments. It defines flipping as buying a house cheap and then selling it to an unsuspecting home buyer for a price that far exceeds its real value.

"This shows that what the flipper is preying on is the American dream, and it also shows that - as in this case - the flipper is selling the house at a price that far exceeds its actual value," says Holland. "In our case, the appraised value was \$8,500, but the sales price was \$49,500 for a house that was not habitable due to the broken main sewer line. Because my clients could not qualify for a traditional mortgage, the flipper in this case proposed a [lease-to-own] contract whereby the buyer was paying the equivalent of mortgage payments directly to the owner."

Characterizing this as a flipping case had no legal bearing on its outcome. It's significant because there are so many potential flipping cases out there and, in the past, they almost always settled. Thus, the fact that this case went to a jury and ended in a plaintiff's verdict bolsters Holland's contention that these are viable cases.

"I think that what this does is send a strong message to the legal community and also to predatory real estate people and sellers that juries do understand these cases and will not tolerate these kinds of actions," Holland said. "These predators tend to prey on first time homebuyers. Basically they're cases of fraud. What they're stealing is the American dream. Everyone aspires to be a homeowner in this country."

Raw Sewage

In 1997, after years of waiting, Margaret and Marvin Farley, both in their 60s, were finally able to buy their own home. They entered into a rent-to-own agreement in which, after three years, their monthly \$500 rent would go toward the purchase price of the home.

However, their dream soon turned into a nightmare.

Shortly after moving in, the sewer line to the house backed up and raw sewage filled their basement, the plaintiffs said. The sellers, John and Pauline Edwards, refused to fix the problem and the Farleys were forced to use port-a-potties in their new home, Holland said.

In researching the case, Denis Murphy, executive director of Civil Justice Inc., who initially represented the couple, had the title searched and found several problems with the sale, including strong evidence of flipping, Holland said. Shortly before selling the house to the Farleys for \$49,500, the Edwards family had it appraised. The appraisal showed the house was worth \$8,500.

Not only that, but Civil Justice discovered other improprieties. John Edwards, a home health care worker, befriended the original owner of the house, Caro Lynch Ellis. When she died in 1996, her will named John Edwards as the personal representative of her estate. She left the home to the House of Ruth, a Baltimore battered women's help center.

Instead of turning the house over to the charity, John Edwards sold the house to himself and his wife for the \$8,500 and then turned around and sold it to the Farleys.

The House of Ruth filed suit and settled with the Edwards family for \$10,000. The Farleys then filed a separate suit against the Edwards family in March 2000.

Taylor said his clients, as landlords, fixed the plumbing problem when they were told about it. He said they were not informed of the problem for months. He said the Farleys went to court earlier asking to put their rent money into escrow rather than pay the Edwards family but that a judge found there was no reason to do so because his clients had already fixed the problem.

Murphy asked Holland to take over the case because he would be called as a witness.

Taylor said that the plaintiffs did not prove "flipping" at trial and did not call witnesses to testify about the appraisal.

No Shortage Of Flipping Cases

Holland said many lawyers shy away from these real estate cases in part because they are complicated, involving long trails of complex finances and documents. But he says the Farley case shows that juries can understand and rule for plaintiffs in these cases.

However, he warns that many flipping cases are difficult to prove because the plaintiffs have to demonstrate a web of conspiracy between many defendants, from appraisers and real estate agents to mortgage lenders. In this case, the defendants were limited to just one couple.

"Still I think that from a plaintiff's point of view, this case shows that you can develop a successful practice in this area," he said.

Holland has handled five such cases in the past year, settling all but the latest case, and plans to continue to build this as a specialty area.

Murphy, through his own private practice and Civil Justice, has handled more than 50 flipping cases over the past three years, settling all of them. He said many of the state's foreclosures are the result of real estate fraud where the buyers get in over their heads financially because of fraudulent real estate and mortgage representations.

Murphy noted that Holland faced a difficult task when he was asked to take over the case weeks before trial. "He had to handle a lot of things on his feet," Murphy said.

Holland said he used traditional trial techniques and cutting-edge technology to get up to speed and make his case.

"I was forced to make the most efficient use of my time," he said.

Some of the most helpful aids on the high-tech end, he said, were Amicus Attorney for basic file and witness organization, and Time Map and Note Map, to help explore theories of the case and prepare outlines of testimony and cross examination. (Both programs are available at <http://www.casesoft.com>).

"These really help give solos an equal playing field," he said.

Another powerful tool, he added, was more traditional.

"When it came time to present the case to a jury, there is nothing like a blow-up of a 'killer photo,'" he said.

In this case, that photo - nicknamed "killer toilet" - was of a bathroom filled with raw sewage. He sent it out to a photo shop and for \$150 had it blown up and mounted.

"I only used it once but I believe it had a very strong impact on the jury," said Holland. "The

defense theory, in part, was that our people were unsophisticated poor inner-city people who lived like slobs. But the reality was that whenever they used their toilet it backed up with feces all over the bathroom. This doesn't come from someone who doesn't use Tidy Bowl every day. I was able to show the reality of the problem with the picture."

Plaintiffs' attorney: Peter A. Holland of Peter A. Holland P.A in Annapolis, Md. **Defendants'**

attorney: Robert Taylor Jr. of Hoffman & Hoffman in Baltimore, Md. **The case:** *Farley et al v.*

Edwards; Baltimore City Circuit Court, Baltimore; Judge William Quarles. *Questions or comments*

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