

IN THE COURT OF APPEALS OF MARYLAND

No. 50

September Term, 1995

BARRY ROMM et ux.

v.

LAWRENCE L. FLAX et ux.

Murphy, C.J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker,

JJ.

OPINION BY MURPHY, C.J.

Filed: December 5, 1995

The issue before us is whether Maryland Code (1974, 1988 Repl. Vol., 1994 Supp.) § 10-702 of the Real Property Article renders a residential real estate contract void under the circumstances of this case when the seller fails to provide a disclosure or disclaimer statement as required by the statute.

I

On February 19, 1994, Lawrence and Elaine Flax (Flaxes) signed a contract to sell their home in Bethesda to Barry and Marcy Romm (Romms) for \$439,000. The Montgomery County Association of Realtors form contract that the Flaxes signed included an addendum entitled "Notice of Purchaser's Right to Property Condition Disclosure Statement or Disclaimer Statement." The addendum included language accurately quoting the requirements of § 10-702:

Purchaser is advised that under Maryland law (Real Property Article, §10-702), he is entitled to receive from Seller a written residential property condition disclosure statement . . . or a written residential property disclaimer statement Seller must deliver the completed disclosure or disclaimer statement to the Purchaser on or before the Purchaser's entering into a contract of sale *If the disclosure statement is delivered by the Seller later than three (3) days after the Seller enters into a contract of sale with the Purchaser, the contract is void.* A Purchaser who does not receive the disclosure statement on or before the execution of a contract by the Purchaser has the unconditional right, upon written notice to the Seller or Seller's agent, to rescind the contract of sale at any time before the receipt of the disclosure statement or within five (5) days following receipt of the disclosure statement and to the immediate return of any deposit. However, a Purchaser's right to rescind the contract terminates if not exercised before making a written application to a lender for a mortgage loan

(emphasis added). The Flaxes did not provide, and the Romms did

not request, a disclosure or disclaimer statement before signing the contract. The day after the parties executed the contract, the Romms' buyer-broker, Anita Tauber, delivered a blank disclosure statement to the Flaxes and requested that they complete the form. The Flaxes never provided the required disclosure or disclaimer statement and refused to allow inspection of the property, as required by the contract.

On February 24, 1994 the Romms' attorney requested, in writing, that the Romms be allowed to inspect the property. The Flaxes' attorney responded, on March 4, 1994, that the Flaxes' failure to provide a disclosure or disclaimer statement rendered the contract void. On March 17, 1994, the Romms filed a complaint and a motion for summary judgment in the Circuit Court for Montgomery County seeking specific performance of the contract and money damages. The Flaxes answered that their failure to provide a disclosure or disclaimer statement rendered the contract void. A circuit court judge, on July 1, 1994, denied the Romms' summary judgment motion.

The Flaxes thereafter filed a motion for summary judgment which circuit court Judge Durke G. Thompson granted on December 12, 1994; he held that the failure of the Flaxes as sellers to provide the required disclosure or disclaimer statement rendered the contract void. The Romms appealed to the Court of Special Appeals. Before argument in that court, we granted certiorari.

"In construing the meaning of a word in a statute, the cardinal rule is to ascertain and carry out the real legislative intention." Tucker v. Fireman's Fund Insurance Co., 308 Md. 69, 73, 517 A.2d 730 (1986). We start by examining the language of the statute. Id. We are not constrained, however, by the "the literal or usual meaning" of the terms at issue. Id. at 75. "A dictionary is a starting point in the work of statutory construction, but not necessarily the end." Morris v. Prince George's County, 319 Md. 597, 606, 573 A.2d 1346 (1990). "[W]here a statute is plainly susceptible of more than one meaning and thus contains an ambiguity, courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment." Tucker, supra, 308 Md. at 75. In construing statutory language, we seek to avoid results which are "illogical," "unreasonable," or "inconsistent with common sense." Id.; see also Kaczorowski v. Mayor and City Council of Baltimore, 309 Md. 505, 516, 525 A.2d 628 (1987).

At issue here is the meaning of the term "void" in the context of its usage in § 10-702(g)(1) of the Real Property Article. Section 10-702(b) and (e) require the seller of single family residential real property to complete and deliver to the purchaser a disclosure or disclaimer statement on or before entering into a contract of sale. Section (g)(1) provides:

(g) *Effect of failure to deliver a statement.* - (1) If the disclosure statement is delivered later than 3 days

after the vendor enters into a contract of sale with the purchaser, the contract is void.¹his section.UENDRECORD 18 A.2d 1173 (1980). Since there is no clear evidence of a legislative intent to alter the common law, we conclude that the legislature did not intend for "void" to be interpreted literally.

A literal interpretation of the term "void" would grant sellers a right of rescission, allow them to benefit from non-compliance with the duty to prepare a disclosure or disclaimer statement, create a new class of option contracts, and alter the common law. These results are unreasonable and inconsistent with the legislature's intention in passing § 10-702. We, therefore, hold that the term "void" in Maryland Code § 10-702(g)(1) of the Real Property Article was intended to mean "voidable at the option of the purchaser" and, thus, does not render a residential real estate contract void when the seller fails to deliver a disclosure or disclaimer statement as required by the statute.²(1995).

¹ The remainder of the section provides:

(2) A purchaser who does not receive the disclosure statement on or before entering into the contract of sale has the unconditional right, upon written notice to the vendor or the vendor's agent:

(i) To rescind the contract of sale at any time before the receipt of the disclosure statement or within 5 days following receipt of the disclosure statement . . .

(3) A purchaser's right to rescind the contract of sale under this subsection terminates if not exercised before making a written application to a lender for a mortgage loan . . .

(j) *Waiver of purchaser's rights.* - (1) The rights of a purchaser under this section may not be waived in the contract of sale and any attempted waiver is void.

(2) Any rights of the purchaser to terminate the contract provided by this section are waived conclusively if not exercised before:

(i) Closing or occupancy by the purchaser . . .

² Since the language of the contract mirrors the statute, as is required by § 10-702(k), our interpretation of the statutory language governs our interpretation of the contract.

The Governor, on May 18, 1995, signed into law Senate Bill 437, effective on October 1, 1995, which deletes section (g)(1) of the statute. Ch. 384 of the Acts of 1995. Since this subsequent legislative action may arguably support either party's argument, we

KEYBOARD() FAVOR OF THE APPELLANT; COSTS IN THE CIRCUIT COURT AND IN THIS COURT TO BE PAID BY THE APPELLEE.

do not consider it a reliable source of legislative intent in the passage of the 1993 bill. Cf. American Recovery Co. v. Dep't of Health, 306 Md. 12, 18, 506 A.2d 1171 (1986) ("[S]ubsequent amendment . . . of a statute is not controlling as to the meaning of the prior law."); Jack Schwartz & Amanda Stakem Conn, The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History, 54 Md. L. Rev.