

# SUNCOAST INSPECTIONS.com, inc.

505 SCOTLAND STREET • DUNEDIN, FLORIDA 34698

(727) 734 – 8822 • Fax (727) 736–8822

chris@suncoastinspections.com



To our loyal customers,

In the landmark case of *Johnson v. Davis*, 480 So.2d 625, 627 (Fla.1985), the Supreme Court of Florida stated the doctrine of *Caveat Emptor* (buyer beware) does not exempt a seller from responsibility for the statements and representations which he makes to induce the buyer to act. The Court extended this principle to not only affirmative representations by a seller amounting to fraud, but nondisclosures that materially affect the price or use of the land.

PL(plaintiff) , DF(defendant) , \$(deposit money)

## **Johnson v. Davis, FL Supreme Ct. (1985)**

Author: Bram

**Parties:** PL - Davis - seek rescission of the contract and return of their deposit  
DF - Johnson - sold the house knowing the roof leaked.

**Cause of action/remedy sought:** The following is an equitable action of rescission.

**Procedural History:** Unclear what happened below and who was appealing here. P brought the action seeking rescission of the contract and his \$ back. Lower court found D affirmative representation that the roof was sound was a false representation entitling P to rescind.

**Facts:** PL entered into a contract to purchase DF's home, and gave 10% down. DF knew the roof leaked, but affirmatively represented to the PL there were no problems with the roof. PL entered the home after a heavy rain and found water gushing in.

**Issue(s):** Under FL law, did the court determine that the seller of a home has a duty to disclose a latent material defect to the PL?

**Holding:** Yes. DF's knew of a fact materially affecting the value of the property which was not readily observable or known to the buyer. This was a fraudulent concealment, entitling PL to the return of his deposit plus interest, plus costs and fees.

**Court's Rationale/Reasoning:** Must look at the tort distinctions between misfeasance and nonfeasance. One is liable for affirmative acts of harm (misfeasance), but not for failing to act (nonfeasance) Florida had previously followed *Caveat Emptor*, and mere nondisclosure did not constitute a fraudulent concealment. The court rejects this, stating full disclosure of all material facts must be made when ever elementary fair conduct demands it. Many other jurisdictions have already adopted this approach.

**Rule:** The court expanded the traditional caveat emptor rule for latent defects.

**Did court avoid issues?:** Buyers responsibility as an RPP.

**Dicta:** No.

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Christopher L. Miller Sr.

CRI, CPI, RPI, CMI, CMA

President , Suncoast Inspections.com Inc.

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