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BUILDING NEWS



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PG. 38

PARADE OF HOMES

pg. 24

CONTENTS



FEATURES

- 24 GAHBA'S SUMMER OF SPECIAL EVENTS!
- 32 HOW CAN YOU MAKE THE MOST OF ASSOCIATION MEMBERSHIP?
- 34 ASK THE EXPERTS: SELLER CONCESSIONS CAN HELP YOU CLOSE
- 38 HOW WILL TARIFFS AFFECT HOMEBUILDING?
- 41 YEARNING FOR 'COZY' SPACES



DEPARTMENTS

- 5 President's Letter
- 6 GAHBA Staff
- 6 Board of Directors
- 7 Spike List
- 10 Chapter Update
- 12 Council Round Up
- 20 Government Affairs
- 22 Education
- 26 EarthCraft
- 28 Legal Corner
- 30 Member Spotlight: Mollie Stanfield, Dalton Carpet One
- 46 HomeAid Georgia



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Negligent Construction Exception to Caveat Emptor

by Tyler Dunn, Weissman P.C.

Caveat emptor, “Let the buyer beware,” is still the “general rule” in Georgia in the context of the sale of new residences. Under this general rule, purchasers of new residences do not have construction defect or conditions-related claims against their sellers.

Caveat emptor is subject to exceptions. One exception applies when the sales contract provides for claims that survive closing. Fraud by sellers, whether by affirmative misrepresentation, active concealment of a defect or passive concealment of a defect, has been another important exception to caveat emptor.

Still another exception has allowed negligence claims against sellers that were also the builders of new houses. Whether a similar exception allowed negligence claims against non-builder sellers has not been clear from Georgia appellate courts decisions. Some of those decisions seem to provide such an exception, while others do not.

The existence or non-existence of such an exception for non-builder sellers is important to, among others, developer sellers and other sellers that contract with separate general contractors to construct houses or other residential projects, such as condominium projects.

In a decision by the Georgia Supreme Court, *Cendant Mobility Financial Corp. v. Asuamah*, the Court decided to “dispel any doubt” about the applicability of the negligent construction exception to caveat emptor to non-builder sellers. In *Cendant*, the Georgia Supreme Court ruled that such exception applies only to homeowner claims against builder sellers and not to homeowner claims against non-builder sellers.

If the Georgia Supreme Court really meant to lay down a clear rule that the negligent construction exception to caveat emptor never applies to non-builder sellers, this is good news for developer non-builder sellers and other non-builder sellers that contract with separate general contractors to construct houses or other projects.

However, despite the Georgia Supreme Court’s effort to “dispel any doubt” about the limits of the negligence construction exception, all doubts have not been dispelled. The seller in the *Cendant* case was not a typical developer seller or other seller that had contracted with a separate general contractor to construct a home or other residential project. Cendant managed employee relocations, including sales of employees’ houses. In that role, it retained a contractor to repair an employee’s house.

The plaintiff contended that those repairs were negligently made and that Cendant, as the seller of the house, was liable for that negligence. Because Cendant had a different role than the typical non-builder developer seller or other non-builder seller and because the house in *Cendant* case was not a new house, homeowners and their attorneys may argue that the ruling in *Cendant* does not apply to negligence claims against non-builder developer sellers or other non-builder sellers. ▲

