

DOCTRINE OF MERGER



COUNSEL'S CORNER

In the late 1980s Joseph and Genevieve Roche starting work on the Roche Family Winery outside the City of Sonoma on Highway 121. By 2005 the winery went bust, and the property was offered for sale.

On November 15, 2006, Ram's Gate Winery LLC entered into a contract to buy the winery property. The Roches agreed to provide a full disclosure of all information known to them regarding the property condition within 10 days.

Ram's Gate evidently approved the condition of the property, and the deal closed on December 14, 2006. Four years later Ram's Gate sued the Roches and the brokers involved in the purchase, alleging that the Roches failed to provide information within their possession relating to earthquake issues.

Ram's Gate alleges it learned in mid-2007 about an active fault line on the property, which had been documented in two reports available to the Roches, being a site plan prepared in 1987-1988 and a geological study of 1987. Both identified a fault trace on the land, which required the Roches to relocate the winery building to provide a 50-foot setback.

The Roches contend that Ram's Gate either knew or should have known about the earthquake issues before closing, as the two reports were in the Sonoma County files.

The Roches filed a Motion for Summary Judgment, claiming that since the Purchase Agreement did not specifically provide that the warranty relating to disclosures would survive closing, those obligations "merged" into the deed and could not properly be the subject of a claim.

On March 1, 2013 the court granted the Roches' Motion for Summary Judgment, stating that the representations and warranties made in the agreement are extinguished as of the closing date, unless the Contract specifically stated they would survive. Ram's Gate appealed.

This Federal Appellate Court started by focusing on the intent of the parties. In doing so, the Court determined that the contractual terms were inconsistent with the Deed. And that the Deed was “. . . a rather pedestrian instrument addressing only ‘the mechanics of transferring title’ and containing a legal description of the property conveyed.”

From there, the Court analyzed the balance of the Contract. As in most commercial contracts, the Court found that some portions of the Contract specifically provided for post-closing survival, while many others were silent. However, from there the Court concluded that the fact that several paragraphs in the Contract provided for survival does not mean that no other provision could survive without a similar recital.

Although a basic legal doctrine of “merger” states that those matters excluded from the Deed and not continued within a “survival” recital in the Purchase Agreement are forever extinguished, this Appellate Court rejected the concept of integration. Instead, this Court concurred with Ram’s Gate that the Roches should have disclosed the existence of fault trace lines within the buyer’s due diligence period. The Roches could not now escape that obligation by using the “Doctrine of Merger” inherent in all commercial real estate closings.

See *Ram’s Gate Winery, LLC v. Joseph G. Roche*; Nos. A139189 and A141090; US Court of Appeals, 1st Circuit, Division 4; April 9, 2015.

Lessons learned:

1. I’ve been doing this a long time. A really long time. I was pretty sure I knew the doctrines of merger and integration, particularly as applied to commercial real estate. Maybe this is a rogue opinion (it’s from California after all), but still.
2. And yet there’s another way to look at this that makes sense. Forget integration and merger. Instead, focus on the issues created where the Seller (could also be a Landlord) fails to disclose material conditions to the Buyer / Tenant in the period of time before the Buyer / Tenant becomes committed to do the deal. In that context, this outcome is logical.
3. Practice Point: Disclose more, not less. Keep written records of your disclosures. Don’t assume that the buyer / tenant had knowledge of a defect or condition, and factored that into the decision to close or go forward with the deal, unless you furnished that intel to the buyer / tenant.

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