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Research has shown that people exposed to toxic mold for extended periods of time often suffer from serious and long-term health issues. Symptoms of mold toxicity include throat irritation, coughing, labored breathing, sinus infections, and eye irritation. People with compromised immune systems are particularly susceptible to more serious effects such as respiratory illnesses and death (*New York State Department of Health, Coppola*). Damages to a person's health caused by non-disclosure of property defects, negligence, or a breach in a person's fiduciary duty can lead to legal action. The installation of defective construction materials, unrepaired leaks, and a party's failure to disclose known or noticeable defects are among the reasons these types of lawsuits are filed. Legislation permitting sellers to remain silent regarding the condition of the property being sold was replaced in many states and the new doctrine requires the seller to disclose any existing defects to the buyer before the real estate transaction closes (*Albano, Dolgetta*).

Before the Property Condition Disclosure Act was enacted in several states requiring the seller of a residential property to disclose any known or easily discovered property defects, buyers were at the mercy of the doctrine of caveat emptor. Under this legislation, the buyer was responsible for ensuring that the condition of the property was suitable for purchase and for the discovery of any patent and latent defects. The only way that a buyer could hold a seller liable for

any costs associated with the correction of the property's defects is to prove that the seller deliberately withheld property defect information from the buyer to sell the property (*Albano*).

Despite the state of New York's implementation of the Property Condition Disclosure Act in 2002, the number of suits filed against sellers or their agent's involving buyers with claims of illnesses due to toxic mold defects not disclosed by the seller or their agent has increased. The denial of homeowner's insurance claims related to toxic mold found in a recently purchased and insured property most likely contributed to the increase in the number of actions filed (*Dolgetta*).

Clement v Delaney Realty Corp. is a case filed in New York State Supreme Court in November 2007. The Plaintiff's suit against the seller, the seller's agent and agency, and the home inspection company claimed that shortly after closing, the buyer uncovered a large amount of mold in the home, that the defect was not disclosed to them by anyone before the closing, and it was not noted in the homeowner's inspection report. The buyer claimed that the agent and the agency breached their fiduciary duty by withholding information about the defect, that the seller committed fraud in deliberately covering up the presence of the defect with painted walls, and that the home inspection company was negligent in not detecting and including the defects in their home inspection report (*Clement v Delaney Realty Corp., Dolgetta*).

New York state's Real Property Law §466 indicates that the agent is responsible for ensuring that a Property Condition Disclosure Statement is presented to the buyer and seller and to inform them of their rights under section 462. Section 465 of New York's Real Property Law also indicates that if a buyer is not provided with a Property Condition Disclosure Statement before the signing of a real estate purchase agreement, the buyer is to receive a \$500.00 credit on their settlement statement and that any seller failing to provide this statement or a revision of it as needed

is liable for the costs to repair the damages caused by the defect (*Thomson Reuters, New York State Senate*).

In this case, the court found that under Real Property Law §465, the buyer was issued a credit of \$500.00 at closing and that because the Plaintiff could not present any triable issues of fact other than the premise under which \$440.00 in damages was awarded to them, dismissed the case. (*Clement v Delaney Realty Corp., Dolgetta, Thomson Reuters*).

As stated in articles published in the spring of 2003 by St. John's Law Review and in the winter of 2020 by the New York Real Property Law Journal, despite the implementation of The Property Condition and Disclosure Act, the courts in the state of New York are not overlooking the doctrine of caveat emptor when ruling on cases involving damages caused by non-disclosure of latent property defects. Appeals Courts take no issue with dismissing a case where the defects could be proven to have been present before closing and not detected during an inspection of the property but where the buyers were also found to be negligent in not attempting to notice defects by performing walkthroughs and falsely claiming misrepresentation by their representing attorney. The case of *Clement v Delaney Realty Corp* is a case comparable with the cases outlined in these articles (*Lee, Lucrezia*).

In conclusion, the serious health risks caused by long-term exposure to toxic mold and a party's failure to disclose it as a property defect have been ongoing issues that often result in lawsuits being filed as a means to remedy the conflict between the parties to the real estate transaction (*Coppola, Albano*). If the courts finds in favor of the Plaintiff, the ruling compensates the plaintiff for injuries suffered as a result of the defendant's negligence or a breach in the duty of care and serves as the precedent for future cases. Although most states have implemented statutes governing a seller's diligent duties to disclose property defects, the common law doctrine

of caveat emptor indicating that a buyer also holds a duty to themselves to ensure the safe condition of the property being purchased still serves as the basis for many of the court's rulings (*Clement v Delaney Realty Corp.*). This fact, according to the statutes governing the state of New York is well documented in law review articles published in the years since the enactment of The Property Condition Disclosure Act (*Lee, Lucrezia*).

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