

Beware of Reach of Engineering

Evaluations

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At the request of the developer of 21 Christian Condominium Association (“Developer”), Pioneer did a property condition assessment (“PCA”) of a 12-story residential structure. The developer then provided the PCA to all prospective condominium purchasers. The 21 Christian Condominium Association (“Association”), on behalf of its members, later sued Pioneer for negligent misrepresentation in the preparation of the PCA. After the circuit court granted summary judgment for Pioneer, the appellate court reversed and held Association had adequately pled the elements of negligent misrepresentation.

Pioneer admitted the first element of the cause of action – that it was in the business of supplying information for the guidance of others and their business dealings. Pioneer argued that Association could not reasonably rely on the PCA because Pioneer wrote, “this report has been prepared for the sole use of the client identified in the report and cannot be relied upon by other persons or any entities without the permission of Pioneer.” The Court noted a purchaser would reasonably conclude permission had been provided since the purchaser had been provided the report. The Court also rejected Pioneer’s claim that its opinions were just that – opinions – and not a factual misrepresentation. While this might protect Pioneer on such items as projections of useful life, it would not protect Pioneer on its descriptions on the current condition of the property and Association alleged it was the latter that was negligently represented in the PCA.

The takeaway from this decision is that an engineering company that does assessments of property can only protect itself if it prohibits the distribution of its assessment beyond its actual customer. To effectively do so, it must include in its report language like that quoted above saying that it can only be used with “permission of the engineer.” However, as this case makes clear, that language may not be enough such that the provision should also state that, for the permission to be valid, it must be in writing and attached to the report.