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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

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Is Seller of Property Liable for Personal Injuries Occurring After the Sale?

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In a decision handed down in early June, the Seventh Circuit United States Court of Appeal addressed the interesting issue of whether the vendor of real property was liable to the purchaser for personal injuries sustained by the purchaser after the sale was complete.

In *Tindle v. Pulte Home Corporation*, No. 09-2888, the plaintiffs had purchased a new home built by the defendant and one of the plaintiffs was seriously injured when his foot and leg sank into a hole concealed underneath the sod in the backyard of his new home.

The holes had developed over a period of time on a number of different properties located in the same subdivision following flooding in the area. It was later determined that portions of the subdivision had been improperly graded.

A few months after moving into their home, the plaintiffs complained to the defendant regarding the appearance of the holes in the yard. The defendant later fixed the holes in and around the driveway in the spring of 2004. Later that year, approximately 7 months after the plaintiffs had moved into their home, the injured plaintiff stepped into a hole located elsewhere on the property.

As the court explained, the dispute is governed by Illinois personal



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injury law, which holds that the seller of land is generally not liable for personal injuries occurring after the transfer of title. However, the court noted that there was an exception to the general rule of non-liability: :

To state a claim...plaintiff-purchaser must sufficiently allege that (1) defendant-vendor concealed or failed to disclose a condition which, prior to the sale, created an unreasonable risk to persons on the land; (2) the defendant knew or had reason to know of the condition and realized or should have realized the risk involved; (3) that defendant had reason to believe that plaintiff would not discover the condition; (4) that the condition caused physical harm, after plaintiff took possession but before plaintiff knew or had reason to know of the condition and the risk involved; and (5) before plaintiff had an opportunity to take precautions to prevent the injury.

In this case, however, the court concluded that the applicability of the exception had not been established and thus the defendant was not liable. The court reasoned that the plaintiff had been aware of the dangerous condition of the sink holes on his land long before his injury occurred and was unable to establish that defendant had knowledge of the dangerous condition of the sinkholes existing on the plaintiffs' property at the time of the sale.

Accordingly, the court held that the defendant was entitled "to summary judgment, both because of what Tindle knew and what Pulte did not." Thus, unfortunately, the injured plaintiff was unable to recover from the defendant for his injuries.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury](#) cases. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.