

- I. Road map
 - a. Distinguish our three causes of action
 - i. Tex. Prop. §5.071—
 - ii. Tex. Prop. §5.076—
 - iii. Tex. Prop. §5.069
 1. Statutory—
 2. DTPA
- II. Brief history of the case
 - a. The Clients purchased real property from Defendant by contract for deed on January 24, 2003;
 - b. Undisputed that they have paid a total of \$20,138.00;
 - c. Defendant has failed to:
 - i. Provide Plaintiffs with a Seller's Disclosure of Property Condition prior to the execution of the contract;
 - ii. Provide Plaintiffs with a Seller's Disclosure of Financing Terms prior to the execution of the contract;
 - iii. Record a Seller's Disclosure of Property Condition in the Tarrant County Deed Records within 30 days of the execution of the contract;
 - iv. Record the contract in the Tarrant County Deed Records within 30 days of its execution.
- III. Brief history of the law
 - a. 1995 the legislature sought to remedy the abusive practice of sellers in *Colonias*. Sellers were using contracts for deed or executory contracts to in effect defraud disadvantaged persons en masse by doing things like selling on a contract for deed and not disclosing that there is no water or sewage, or that the financing terms are outrageous or even taking out another lien on the property and allowing it to be foreclosed.
 - b. Rather than an outright prohibition on contracts for deed the legislature sought to control their use in certain areas of Texas and then later expanded the rules to cover the entire State.

- c. To do this the legislature was forced to create a private cause of action for the Buyer's. Defendant seems to be arguing that no such private cause of action exists, and I can understand that. If the roles were reversed I would be making the same argument. Unfortunately according to the Court of Appeals in *De La Cruz v. Brown* I would be wrong.
- IV. Tex. Prop. §5.071—Seller's Disclosure of Financing Terms
 - a. *De La Cruz* shows us that the legislature intended section 5 of the property code, concerning contracts for deed to be private causes of action.
 - b. Defendant has admitted to failing to provide a Seller's Disclosure of Financing Terms, as required by the statute. Refer to Plaintiff's affidavit.
 - c. Based on Defendant's admissions we would ask that the court enter a judgment finding that Defendant has violated Tex. Prop. Code §5.071, with damages to be determined at trial.
- V. Tex. Prop. §5.076—Recording Requirement
 - a. *De La Cruz* shows us that the legislature intended section 5 of the property code, concerning contracts for deed to be private causes of action.
 - b. Defendant has admitted to failing to record the Contract for Deed, as required by the statute. Refer to Request for Admission number 6.
 - c. Based on Defendant's admissions we would ask that the court enter a judgment finding that Defendant has violated Tex. Prop. Code §5.076, with damages to be determined at trial.
- VI. Tex. Prop. §5.069—Seller's Disclosure of Property Condition. This section has two separate sections that must be address. Specifically (d)1 and 2. (d)1 is creates a "tie in" to the DTPA, while (d)2 is a stand alone provision that provides for a statutory amount of damages for a violation of the statute.
 - a. §5.069(d)2 Statutory
 - i. Defendant has admitted to failing to provide the Plaintiffs with a Disclosure of Property Condition, as required by the statute. Refer to Request for Admission number 4.

- ii. Defendant has admitted to failing to record the Disclosure of Property Condition, as required by the statute. Refer to Request for Admission number 5.
- iii. Defendant has admitted that Plaintiff's have paid, pursuant to the contract for deed, the amount of \$20,138.00
- iv. OFFSET
 - 1. There is no evidence of an offset currently before the court. Specifically Defendant's Affidavit does not provide a correct measure of any contractually due offset that should have been made. Defendant states that in his opinion \$20,000.00 is owed based on missed payments and the monthly amount that Defendant feels the property could have brought. Unfortunately there was contract that specified the monthly payments that were due, therefore Defendant may not now make up an amount. Additionally Defendant completely fails to state which months were missed and approximates as to amounts. Therefore section 4 of Defendant's Affidavit is not suitable summary judgment evidence.
 - 2. Section 6 of Defendant's Affidavit is also an attempt to establish evidence of offset against the Plaintiffs but also fails due to lack of any foundation. Defendant has not stated that the Plaintiffs caused this damage, or given any basis for liability on the part of Plaintiff's for any repairs made by Defendant. It should be remembered that Plaintiffs actually owned the home the entire time they lived in it, under the contract for deed and were not renters. But even if they were renters, wear and tear occurs and is not suitable for use as an offset.
- v. Based on Defendant's admissions we would ask that the court enter a judgment finding that Defendant has violated Tex. Prop.

Code §5.076. Additionally we would ask the court to enter a judgment stating that the Plaintiffs are entitled to a refund in the amount of \$20,138.00.

b. §5.069(d)1 DTPA

- i. The statute clearly says that a violation of this section is a “laundry list” violation and the Buyer is entitled to bring suit as such. Nowhere does it state that the DTPA is the only vehicle for bringing said suit.
- ii. As has been discussed above Defendant has admitted to violating the statute and has therefore violated the DTPA, no other findings are necessary to find liability,

VII. Affirmative defenses

- a. Unclean hands: Parties with unclean hands may not claim equitable affirmative defenses. Cases cited.
- b. Persons who violate statutes have unclean hands. Cases cited.
- c. Each of Defendant’s affirmative defenses, including offset is an affirmative defense.