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Recent Developments: Romm v. Flax: Court of Appeals Rejects Literal Definition of "Void" as It Appears in the Context of the Real Property Article

Nicole M. Zell

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In *Romm v. Flax*, 340 Md. 690, 668 A.2d 1 (1995), the Court of Appeals of Maryland held that the term "void," as it appears in the context of section 10-702(g)(1) of the Real Property Article of the Annotated Code of Maryland, means "voidable at the option of the purchaser," instead of its literal definition, "of no legal force or effect." In so holding, the court prevented sellers from benefitting from their failure to supply purchasers with a disclosure or disclaimer statement as required under the Real Property Article.

On February 19, 1994, Lawrence and Elaine Flax ("sellers") signed a contract to sell their house to Barry and Marcy Romm ("purchasers"). The contract included an addendum designated "Notice of Purchaser's Right to Property Condition Disclosure Statement or Disclaimer Statement" which established, as required by section 10-702 of the Real Property Article, that the purchasers were entitled to receive a written residential property condition disclosure statement or a written residential property disclaimer statement from the sellers. The addendum further stated, also in accord with the code section, that if the sellers delivered the disclosure or disclaimer statement more than three days after entry into a contract of sale with the purchasers, then the contract would be "void." At the time the contract of sale was signed, the sellers did not furnish, nor did the purchasers

request, the required disclaimer or disclosure statement.

Subsequent to the contract's execution, the sellers refused the purchasers' request to inspect the property, despite the fact that inspection was required by the terms of the contract. On February 24, five days after the contract was signed, the purchasers requested in writing and through their attorney an inspection of the property. On March 4, in response to the purchasers' request for an inspection, the sellers' attorney responded that his clients' failure to provide a disclosure or disclaimer statement rendered the contract void.

The purchasers filed a complaint and motion for summary judgment in the Circuit Court for Montgomery County on March 17, 1994. In their complaint, the buyers sought specific performance of the contract and money damages. On December 12, 1994, circuit court Judge Durke G. Thompson denied the purchasers' motion for summary judgment but granted the sellers' motion for summary judgment, holding that their failure to provide a disclosure or disclaimer statement as required under the contract rendered the contract void. The purchasers appealed to the Court of Special Appeals of Maryland, but before the court of special appeals heard the case, the Court of Appeals of Maryland granted certiorari.

The court began its analysis by noting that carrying out the legislative intent of a statute

Romm v. Flax:

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is “the cardinal rule” in statutory construction. *Flax*, 340 Md. at 693, 668 A.2d at 2 (1995) (quoting *Tucker v. Fireman’s Fund Insurance Co.*, 308 Md. 69, 73, 517 A.2d 730 (1986)). Further, the court explained that a dictionary is the starting point, but not necessarily the ending point, of interpreting controversial language in a statute. *Id.* (citing *Morris v. Prince George’s County*, 319 Md. 597, 606, 573 A.2d 1346 (1990)). Expressing its desire to avoid results which are “illogical,” “unreasonable,” or “inconsistent with common sense,” the court explained that it appraises not only the usual meaning of ambiguous terms, but also the goals of the statute in question. *Id.* (quoting *Tucker*, 308 Md. at 75, 517 A.2d at 732).

Applying this rationale, the court next turned to section 10-702 of the Real Property Article of the Maryland Code. *Flax*, 340 at 694, 668 A.2d at 3. The code states, in pertinent part, that “[i]f the disclosure statement is delivered later than three days after the vendor enters into a contract of sale with the purchaser, the contract is void.” *Id.* (citing Md. Code Ann., Real Prop. section 10-702(g)(1) (1974, 1988 Repl. Vol., 1994 Supp.)). In order to ascertain the General Assembly’s intent when enacting section 10-702(g)(1), the court looked to the legislative history of the section, located in Chapter 640 of the Acts of 1993. The court concluded that the stat-

ute’s intended purposes included “[r]equiring a vendor of certain real property to deliver to a purchaser a certain disclosure statement or disclaimer statement,” and “[p]roviding that a purchaser has a right to rescind a contract of sale of real property under certain circumstances.” *Id.* at 694-95, 668 A.2d at 3.

Seeking to avoid a result inconsistent with legislative intent, the court explained that if the term “void” was given its literal definition, then sellers of real property would “benefit from their failure to comply with the law,” which requires them to provide disclosure or disclaimer statements to buyers. *Id.* at 695, 668 A.2d at 3. This rationale was in accord with an opinion of the Attorney General which expressed that “it is hard to see why a law intended to aid buyers would victimize the unwary buyer[s] by giving a seller who entered a contract without delivering a statement the great advantage of three risk-free days to look around for a better offer.” *Id.* (quoting 79 Op. Att’y Gen. ___, 6 n. 5 (March 11, 1994)). Thus, contrary to the sellers’ position, the court found no evidence of legislative authority in support of granting sellers a right of rescission in this situation. *Flax*, 340 Md. at 695, 668 A.2d at 3.

The court of appeals further explained that interpreting “void” to mean “null and void” in the context of section 10-702 would convert real estate contracts signed before the

required disclosure or disclaimer statements are delivered into “option contracts exercisable by the sellers only.” *Id.* The court noted that the term “void” in contracts rarely means “of no legal force or effect,” but instead evidences that one party’s duty is conditioned upon the other party’s performance. *Id.* at 696, 668 A.2d at 3 (quoting *Corbin on Contracts* section 761 at 517-18 (1960)). Accordingly, the purpose of such a contract provision is “to limit the duty of the purchaser” and not “to give a loophole of escape . . . to the seller.” *Id.* at 696, 668 A.2d at 4. Finally, the court explained that it had previously rejected the literal meaning of “void” when holding otherwise would alter the principles of justice and equity by allowing one party to thwart contract enforcement by preventing a condition precedent. *Id.* (citing *Brewer v. Sowers*, 118 Md. 681, 86 A. 228 (1912)).

In *Romm v. Flax*, the Court of Appeals of Maryland held that the term “void,” as it appears in section 10-702 of the Real Property Article of the Annotated Code of Maryland, is not to be interpreted literally. Doing so would alter the common law and contradict legislative intent by creating a new class of option contracts exercisable only by sellers who refuse to comply with the law. Instead, “void” carries the contractual meaning, “voidable at the option of the buyer.” This decision protects an unwary buyer from a seller who, before

this decision, could deliberately forego his or her obligations under the code and in return, receive a three day "grace period" in which to search for better

offers after entering a contract of sale. Perhaps more significantly, the court wisely preserved the goals which the General Assembly intended this stat-

ute to accomplish when enacting it as part of Maryland law.

- Nicole M. Zell



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BEL AIR COURTHOUSE 1858

This imposing, Italiante style brick building is the architectural centerpiece of Bel Air, Maryland, and home of the first Harford County court. Featuring a formally appointed second-floor courtroom, the courthouse was built to replace the original 1791 Georgian style courthouse which was destroyed by fire. Two story wings, added to house offices in 1830's, survived the fire. Expanded in 1904, the courthouse continues as the anchor of local government.