Beware: The Doctrine of Caveat Emptor Is Alive and Well in New York

By R. Randy Lee

Courts may be somewhat split on the issue, but the doctrine of caveat emptor is still very much the guiding law in New York State.This fundamental principle of real estate law mandates that the buyer beware and imposes no duty upon a vendor "to disclose any information concerning the property in an arm's length real estate transaction."[1] Despite the state Legislature's attempt to modify this longstanding principle back in 2002, courts are still taking a hard line on buyers who do not complete their own due diligence, so be careful.

In 2017, the Appellate Division affirmed dismissal against the sellers, noting that active concealment was required to overcome the presumption of caveat emptor despite some evidence of a property defect.[2] The defendant sellers in *Gallagher v. Ruzzine* had purchased the property from another couple, who provided them with an inspection report, noting no evidence of foundation movement. The new owners subsequently discovered a crack in the basement wall and repaired it. When they decided to sell the property to the plaintiff buyers, they did not include the original inspection report from when they themselves had purchased the property. The buyers hired an inspector who concluded that "there were no concerns with the property," but after moving in, they discovered cracks starting to appear, evidence of past repairs, water leakage in the basement, and fixtures pulling away from the property.[3] The new owners filed suit for fraud, breach of contract, and other claims against the defendants and the former owners of the property, but the trial court granted defendants' motion for summary judgment and dismissed the complaint.

A decade earlier, in *Adrien v. Estate of Zurita*, a defendant property seller appealed a New York Supreme Court judge's denial of summary judgment and won. The Appellate Division Second Department ruling confirmed that the doctrine of caveat emptor has been a perennial principle in New York State.[4]

The plaintiff in *Adrien* sued to recover damages for fraud arising out of his purchase of property in Warwick, N.Y. He closed on the property aware that a holdover proceeding had been commenced against the existing tenants and that the proceeding was not scheduled to be heard until a few days after the closing. He even signed a post-closing survival agreement acknowledging that the tenants had not yet left and agreed to a $4,000 holdover escrow to cover the costs of the proceeding. Still, he claimed that the defendant's attorney failed to disclose, misrepresented, and concealed facts

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concerning the property, specifically the future outcome of the holdover proceeding.

Since the plaintiff knew about the tenants and took steps to address the situation, the Second Department reversed the denial of summary judgment and held:

> Pursuant to the doctrine of caveat emptor, the plaintiff had a duty to inquire whether the tenants had a written lease and, if so, request a copy of the lease or request any other documents pertaining to the tenancy. The plaintiff's claim of justifiable reliance on alleged misrepresentations of [defendant's attorney] regarding the lease and the status of the tenancy is unsupportable. Thus, we reject the plaintiff's claim that [defendant's attorney's] alleged fraudulent misrepresentations rather than his own failure to exercise due diligence caused him damages when the

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holdover proceeding was determined in favor of the tenants.[5]

Caveat Emptor and the Property Condition Disclosure Statement

In addition to the nature of the ruling in *Adrien*, it is important to note that the seller disclosed to the plaintiff in a Property Condition Disclosure Statement (PCDS) that somebody other than the seller had a lease to use the property. This is mandated by the Property Condition Disclosure Act (PCDA),[6] a 2002 law in which the New York State legislature radically altered the caveat emptor landscape by placing an affirmative duty on the seller to disclose certain specified property details.

The legislation provides assurances that overt fraud is minimized in arm's length real estate transactions, but is not designed to relieve a buyer's obligation to carefully examine a prospective piece of property, along with related public record. For instance, a month before the Second Department decided *Adrien*, the Third Department issued its decision in *Boyle v. McGlynn*.[7] In *Boyle*, a month after plaintiffs purchased a 133-acre Otsego County property, they learned about the construction of large wind turbines on the neighboring parcel and filed an action seeking rescission of the contract. While the defendants claimed that the doctrine of caveat emptor was a complete defense to this action, the trial court denied defendant's motion for summary judgment and the Third Department held:

> . . .We find that questions of fact have been raised concerning whether defendants knew about the subject wind turbine project when they placed their home on the market and whether they thereafter made material misrepresentations which deceived plaintiffs and induced them to purchase the property.[8]

According to plaintiffs, the status of the adjacent parcel was specifically discussed with defendants prior to the closing and defendants reassured plaintiffs that the property was "protected." And, though the plaintiffs could have discovered the plans to construct the wind turbine project prior to the closing, the court ruled that because there was only a single published article about the project in a local newspaper and the actual plans were not filed with the local planning board until one month after the closing, there was a triable issue of fact.

Active concealment of the nature claimed in Boyle has always been an exception to caveat emptor and requires disclosure,[9] but the PCDA still requires every seller of residential real property pursuant to a real estate purchase contract to deliver a property condition disclosure statement to the buyer or the buyer's agent prior to the buyer signing a binding contract of sale.[10] While the statute is applicable only to the re-sale of previously or currently occupied residential housing,[11] it does impact a large percentage of real estate transactions.

Answering the Disclosure Statement

The seller is required to answer all 48 of the PCDS statutory questions based on his actual knowledge, and may answer "N/A" to inapplicable questions or "UNKN" where he does not know the answer.[12] The questions cover:

- General information about the property's age and title.
- Specific environmental and structural conditions.[13]
- Mechanical systems and services, including the existence of defects in those systems.[14]

Once complete, the seller must certify that the statement is accurate, and must provide a revised statement if he acquires actual knowledge of anything that renders the prior statement "materially inaccurate" until the earlier of title transfer or occupancy by the buyer.[15] If the seller fails to deliver the statement prior to the buyer signing the binding contract of sale, the buyer will receive a $500 credit towards the purchase price.[16] If the seller provides the statement, he can be held liable only for "willful failure to perform the requirements" of the PCDA,[17] making him liable for actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy.[18]

Even when the Supreme Court denied a motion to dismiss by the sellers of a Harrison, NY home in a 2016 case where they had completed a mold remediation project prior to the sale and the property was sold "as is," with the buyers accepting a $500 property condition disclosure credit in lieu of a PCDS,[19] the Appellate Division, Second Department reversed finding that because the contract of sale for the subject premises included a specific disclaimer of reliance on representations as to the condition of the premises, there was no fraud

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despite mold reappearing and requiring over $1 million in repairs.[20] It based its decision in part on the doctrine of caveat emptor.[21]

What Is the Seller's Potential Liability Under the PCDA?

The legislative history clearly states that "[t]his act is not intended to and does not diminish the responsibility of buyers to carefully examine property which they intend to purchase and, in fact, highlights the importance of professional inspections and environmental tests."[22] In addition, the disclosure statement itself contains a provision that it is neither a warranty nor a substitute for any inspections, tests, or searches of the public record by the buyer.[23] Actually, the PCDA "does not limit any existing legal cause of action or remedy at law, in statute or in equity"[24] and it does require the seller to affirmatively disclose certain information, while before he could remain silent.[25]

Under the statute as written, a seller with actual knowledge of defects on the property could simply refuse to provide the required statement prior to the contract signing, limiting his liability to $500.[26] In *Bishop v. Graziano*,[27] the First Department held that where the defendant sellers did not elect to complete a property condition disclosure statement under the PCDA[28] and sold their property "as is," there was no fraud and, therefore, no recovery.[29] It stated:

> The Court can think of no situation wherein the intent and conduct of the parties is as clearly delineated as where a party pays for the right to invoke a statutory authorization to expressly be relieved of the obligation to make representations. Absent an express or implied misrepresentation, there exists no fraud.[30]

Given how strongly the benefit of offering the $500 credit outweighs the potential liability for providing a disclosure that is incorrect or viewed as some type of misrepresentation, "the provision truly has the effect of offering an option for sellers to buy-out of their statutory obligation."[31]

Even if a seller provides the disclosure and answers "N/A" on a disclosure form, when he is arguably aware of a problem, he may still only be liable for the $500.[32] Furthermore, where a seller denies actual knowledge of basement seepage resulting in standing water on the PCDS, but does disclose outside the document the frequent running of a pump during a heavy rain and that the basement has flooded before, and no actual damages result, such a claim under PCDA may be properly dismissed.[33]

But sellers take note—if you do answer the disclosure statement and you do indicate that some element of the property has "no material defects," you could be liable for a willful failure and have to pay the buyer's actual damages.[34] In *Fleischer v. Morreale*, a Suffolk County judge ruled that because the seller erroneously indicated on her disclosure statement that there were no material defects with respect to her roof and any flooding matters, she was liable for damages of $11,000.[35]

In addition, the language of the disclosure statement seems to indicate that there is a cause of action under the statute for a misrepresentation.[36]

In the first case to address the PCDA following enactment of the statute, *Malach v. Chuang*, the plaintiffs alleged that the defendants had improperly completed the PCDA disclosure statement because they failed to reveal some rot at the base of a swimming pool.[37] The court concluded that the PCDA did not create a cause of action for a seller's alleged misrepresentation in the disclosure form, and criticized subsection 465(2) of the PCDA, stating, "It is not clear that a reasonable person can understand what it means."[38] The court noted that the statute failed to provide any guidance as to what a "willful failure to perform the requirements of this article" was, and that if the legislature was attempting to create a new legal right, the statute needed to be clear and unequivocal.[39] It concluded that the PCDA's remedies, other than the $500 credit, were void for vagueness, and dismissed the plaintiffs' case.[40]

Now that the courts have had a few years to evaluate the PCDA and its impact on real property transactions, one would think that cases like *Fleischer,* raised above, provide additional guidance. One would, of course, be mistaken to draw such a conclusion. While the *Fleischer* court found a cause of action for misrepresentation, the court in *Renkas v. Sweers*, decided two months before, held that the PCDS does not raise a cause of action for breach of contract because the parties used a merger clause.[41]

The more it looks like a seller engaged in acts amounting to active concealment, or attempting to thwart a buyer's efforts to inspect a property, the more likely the seller will be liable. By misrepresenting facts or lying on a PCDS, a seller may be providing evidence of active concealment, which could support an action for fraud. However, PCDS disclosures are based on a seller's "actual knowledge," and where a seller has taken steps to repair issues in the past, and other red flags are raised by independent inspections, a fraud claim may be dismissed.[42]

What Can a Seller Do?

While the PCDA has influenced the doctrine of caveat emptor, it has in no way replaced it. The court in *Gabberty* confirmed that "[t]here is no indication in the [legislative history] that the law was intended to completely subvert or replace many decades of well-established common law."[43] In fact, *Renkas* confirmed that the Property Condition Disclosure Statement only

reinforces the doctrine of caveat emptor and reminds buyers to inspect and investigate the property they are purchasing.[44]

Renkas indicates that New York courts may remain willing to continue to enforce merger and disclaimer clauses to bar a buyer's claims of inducement into a transaction, or a seller's misrepresentations or omissions in the PCDS.[45] To be effective, a merger and disclaimer clause must contain a disclaimer of reliance as to the specific representation or omission which the buyer later claims induced her or him into the transaction.[46] Even a specific disclaimer, however, will not act as a bar where the facts not disclosed are particularly within the knowledge of the party invoking it, and not discoverable by reasonable means.[47]

The courts have not retreated from this understanding. In *Gallagher v. Ruzzine*, to support its affirmation of the dismissal of fraud claims against sellers who were aware of dampness in the basement and repaired a crack thought to cause such dampness, the Appellate Division reasoned that, although the PCDS was silent with respect to seepage or dampness, the plaintiffs' home inspection report put them on notice of that issue and, therefore, they could not justify relying on the silence in the PCDS.[48]

The contract should contain an explicit representation by the buyer that the buyer has:

•Examined the subject premises.

•Had ample opportunity to perform tests.

•Consulted independent professionals concerning the property and surrounding area.

•Made necessary inquiries with city, state and federal agencies about environmental conditions on the property and in the surrounding area.

•Had the opportunity to thoroughly investigate all zoning issues, certificates of occupancy, and other matters that might affect the value, reputation, or use of the property.

The contract should also state that:

•Any and all representations about the subject property or any matter that might affect its value, reputation, or use have been explicitly included in the written contract.

•The buyer has not relied on any representation on any matters not contained in the contract.

•The contract represents the full and complete understanding between the parties.

•The buyer has relied exclusively on his or her own investigation.

It once appeared as if the PCDA represented a substantial legislative erosion of the common law doctrine of caveat emptor.[49] Over two decades later, however, New York courts still apply the core logic of the doctrine of caveat emptor, even to claims brought under the PCDA.[50] Sellers should, therefore, incorporate well-crafted merger and disclaimer clauses into their contracts to ensure additional protection from both common law claims as well as those arising under the PCDA.[51] While caveat emptor reminds the buyer to beware, it is the seller who must often be mindful of all potential consequences.

Endnotes

1. *See Rector v. Calamus Group*, 17 A.D.3d 960, 961, 794 N.Y.S.2d 470, 471 (3d Dept. 2005); *Gizzi v. Hall*, 300 A.D.2d 879, 881, 754 N.Y.S.2d 373, 377 (3d Dept. 2002); *Raizen v. Robbins*, No. 6739/04 (N.Y. Sup. Feb. 16, 2006). *See also Devine v. Meili*, 89 A.D.3d 1255, 1255-56, 932 N.Y.S.2d 581, 582 (3d Dep't 2011) (affirming prior cases).
2. *Gallagher v. Ruzzine*, 147 A.D.3d 1456, 46 N.Y.S.3d 323 (N.Y. App. Div. 2017).
3. *Id.*
4. *Adrien v. Estate of Zurita*, 29 A.D.3d 498, 814 N.Y.S.2d 709 (2d Dep't 2006).
5. *Id.* at 499, N.Y.S.2d at 710; *see Goldman v. Strough Real Estate*, 2 A.D.3d 677, 770 N.Y.S.2d 94 (2d Dep't 2003); *Cohen v. Cerier*, 243 A.D.2d 670, 663 N.Y.S.2d 643 (2d Dep't 1997).
6. The Property Condition Disclosure Act, N.Y. Real Prop. Law § 460 *et seq*. (which became effective on March 1, 2002).
7. *Boyle v. McGlynn*, 28 A.D.3d 994, 814 N.Y.S.2d 312 (3d Dep't 2006).
8. *Id.* at 995, N.Y.S.2d at 313-14.
9. *Jablonski v. Rapalje*, 14 A.D.3d 484, 788 N.Y.S.2d 158 (3d Dep't 2005).
10. N.Y. Real Prop. Law § 462[1].
11. "Residential real property" is defined as "real property improved by a one to four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons." N.Y. Real Prop. Law § 461[5], held unconstitutional by *Goldman v Fay*, 8 Misc 3d 959 (N.Y. Civ. Ct. 2005) (holding that it is against the equal protection provisions of the Constitution to exclude owners of condominiums and co-ops from the PCDS requirements.)New legislation removing these restrictions, and thus any constitutional objection to the law, has been proposed by the New York Assembly, 2005 NY A.B. 6361 (NS) (March 2005), however such restrictions have not been removed from the law. See also, N.Y. Real Prop. Law § 463. The fourteen exceptions to the requirement for a disclosure statement deal with transfers through legal proceedings, transfers by or between fiduciaries, transfers of newly constructed residential real property which has not been previously inhabited, or transfers between co-owners.
12. N.Y. Real Prop. Law § 462[2]. *See also*, N.Y. Real Prop. Law § 461[3] (defining "knowledge" for the purposes of the PCDA as "only actual knowledge of a defect or condition on the part of the seller of residential real property").
13. N.Y. Real Prop. Law § 462[2].

14. *Id.*

15. *Id. See also*, N.Y. Real Prop. Law § 464 (requiring seller to deliver a revised statement if he acquires knowledge which renders "materially inaccurate" the previously provided statement).

16. N.Y. Real Prop. Law §§ 462[2], 465[1].

17. N.Y. Real Prop. Law § 465[2].

18. *Id.*

19. *Comora v. Franklin*, No. 62504/2015, 2016 WL 11598589 (N.Y. Sup. Ct. May 3, 2016).

20. *Comora v. Franklin*, 171 A.D.3d 851, 97 N.Y.S.3d 734 (2d Dep't 2019).

21. *Id.* at 736.

22. 2001 Sess. Law News of NY Ch. 456 (s. 5539-a) (McKinney).

23. N.Y. Real Prop. Law § 462[2] ("THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR TESTS AND THE BUYER IS ENCOURAGED TO OBTAIN HIS OR HER OWN INDEPENDENT PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.").

24. N.Y. Real Prop. Law § 467.

25. N.Y. Real Prop. Law §§ 462[2], 464.

26. N.Y. Real Prop. Law § 465[1].

27. *Bishop v. Graziano*, 10 Misc. 3d 342, 804 N.Y.S.2d 236 (1st Dep't 2005).

28. N.Y. Real Prop. Law § 462.

29. *Bishop*, 10 Misc. 3d at 346, 804 N.Y.S.2d at 239.

30. *Id.*

31. Philip Lucrezia, *New York's Property Condition Disclosure Act: Extensive Loopholes Leave Buyers and Sellers of Residential Real Property Governed by the Common Law*, 77 St. John's L. Rev. 401, 413 (2003). *See also*, Karl B. Holtzschue, *Property Condition Disclosure Act Enacted*, 30 N.Y. Real Prop. L.J. 15 (2002).

32. *Gabberty v. Pisarz*, 10 Misc. 3d 1010, 810 N.Y.S.2d 799 (Sup. Ct. N.Y. 2005).

33. *Meyers v. Rosen*, 69 A.D.3d 1095, 893 N.Y.S.2d 354 (3d Dep't 2010).

34. N.Y. Real Prop. Law § 465[2]. *See also*, *Malach v. Chuang*, 194 Misc. 2d 651, 754 N.Y.S.2d 835 (NY Civ. Ct. 2002) (discussing the question of whether, the Article as written, encourages a seller not to file the disclosure statement in order to limit the buyer to a $500 recovery).

35. *Fleischer v. Morreale*, 11 Misc. 3d 1004, 810 N.Y.S.2d 624 (Sup. Ct. N.Y. 2006), *declined to follow by Middleton v. Calhoun*, 13 Misc. 3d 949, 821 N.Y.S.2d 444 (Rensselaer County 2006), holding that the PCDS has not successfully created any cause of action for willful misrepresentation.

36. N.Y. Real Prop. Law § 462[2] ("A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE." [Emphasis added.])

37. *Supra* note 34.

38. *Malach*, Misc. 2d at 656, 754 N.Y.S.2d at 839.

39. *Id.* at 654, N.Y.S.2d at 840.

40. *Id.* at 665-6, N.Y.S.2d at 846.

41. *Renkas v. Sweers*, No. 2003/08882 (N.Y. Sup. Ct. Nov. 7 2005).

42. *See, e.g.*, *Klafehn v. Morrison*, 75 A.D.3d 808, 906 N.Y.S.2d 347 (3d Dep't 2010) (dismissing fraudulent inducement claim against defendant sellers where sellers had stated on the PCDS there was "seasonal dampness," years prior black ooze had been found but had been drained and lumber replaced, and buyer was aware through own observations and inspector's report that waste lines may need to be replaced).

43. *Gabberty*, 10 Misc. 3d at 1014, 810 N.Y.S.2d at 802.

44. *Renkas v. Sweers*, 2005 N.Y. Slip. Op. 52247U at *5.

45. *Id.*at *6; *See also McMullen v. Propester,* No. 2006-0149, 2006 WL 3112196 (N.Y. Sup. Ct. Oct. 30, 2006).

46. *See Dannan Realty Corp. v. Harris*, 157 N.E.2d 597, 599-600, 184 N.Y.S.2d 599, 603 (N.Y. 1959) (holding that where the other party has the means available of knowing, by the exercise of ordinary intelligence, the truth or the real quality of the subject representation, it must make use of those means, or it will not be heard to complain that it was induced to enter the transaction by misrepresentation). This basic principle applies to conditions beyond those "readily observable" such as zoning restrictions, non-exemption from rent-stabilization laws, and cracks hidden behind paneling. *See also Di Filippo v. Hidden Ponds Associates*, 146 A.D.2d 737, 537 N.Y.S.2d 222 (2d Dep't 1989).

47. *See Stambovsky v. Ackley,* 169 A.D.2d 254, 259-60, 572 N.Y.S.2d 672, 677 (1st Dep't 1991) (finding that caveat emptor did not require dismissal where defendant had publicized in the local community that subject house was haunted, but failed to disclose same to buyer, reasoning that no inspection by plaintiff would have uncovered ghosts or unearthed property's local reputation and emphasizing that defendant had herself created the house's reputation for being haunted. *See also Tahini Investments, Ltd. v. Bobrowsky*, 99 A.D.2d 489, 470 N.Y.S.2d 431 (2d Dep't 1984).

48. *Gallagher v. Ruzzine*, 147 A.D.3d 1456, 1459, 46 N.Y.S. 3d 323, 327 (4th Dep't 2017).

49. *Supra* note 26.

50. *Gabberty*, 10 Misc. 3d at 1014, 810 N.Y.S.2d at 802.

51. The following proposed Merger and Disclaimer Clause, although never the subject of litigation, would seem to be quite comprehensive in general terms, as well as in its attention to the PCDA. It is drafted for a transaction concerning previously occupied housing, but could be modified to cover builders/developers of new housing:

PURCHASER agrees, warrants and represents that PURCHASER has received the statutorily mandated Property Condition Disclosure Statement (PCDS) made by the SELLER and has thereafter examined the PREMISES agreed to be sold herein and has been given ample opportunity to review the contents of the PCDS, in particular, but without limitation, matters referable to those answers marked "unknown" and/or "non-applicable (N/A)" and to thereafter perform any and all tests and/or to consult independent professionals concerning the PREMISES and the area surrounding same and all matters referable to any and all answers contained in the PCDS, and, in addition, has had an ample opportunity to make inquires with governmental agencies relative to conditions on and off the PREMISES as well as zoning and building laws and regulations and other matters that may affect the value, reputation and/or use of the PREMISES, and, therefore, is fully and completely familiar with the use and condition thereof. Except as may otherwise be stated in this contract, PURCHASER further agrees, warrants and represents that (*i*) SELLER has not made any representations as to the following: the physical state or condition of the PREMISES including, without limitation, environmental hazards or regulation, asbestos, lead, mold, radon or other toxic substances or matters; the condition of the plumbing, septic, heating, air-conditioning and electrical systems, the roof and basement; the manner or method of construction; the quantity or quality of any material used; the items of personal property and fixtures which are included in the sale and their condition and state of repair; present or prospective rents, taxes or other expenses of operating or maintaining the PREMISES; the legal status of the PREMISES or the uses to which same may be put or the Certificate of Occupancy, if any; or any other matter or thing affecting or relating to the aforesaid PREMISES, and*(ii)* the PCDS is not a warranty or guaranty of any kind by SELLER or any agent of the SELLER in this transaction and is not a substitute for any inspections or warranties the PURCHASER may wish to obtain. Therefore, if, as a part of the contract to sell the property, the SELLER warrants the condition of

any portion of the property, then, to the extent there is a conflict between this contract's warranties and any representations contained in the PCDS, the terms of this sales contract shall control. It is further agreed, warranted and represented by PURCHASER that the answers and contents of the PCDS and all prior discussions, understandings and agreements between the parties, as well as brokers and/or agents, nominees or representatives of PURCHASER or SELLER, or anyone else not a party to this contract, are merged in this contract, which fully and completely expresses the parties agreement, and that the contract is entered into after testing and investigation, with neither party relying upon any statement or representation not expressly embodied in this contract made by the other. Therefore, PURCHASER hereby irrevocably agrees to accept the PREMISES and the personalty, fixtures, equipment and systems included in this sale, "AS IS" "AS IS" "AS IS" on the date hereof, subject to normal wear and tear to the time of CLOSING, EXCEPT, HOWEVER, the plumbing, heating (including air-conditioning, if any) and electrical systems will be in working order and roof free of leaks at the time of CLOSING and that within five (5) days of such date, PURCHASER shall receive vacant possession of the PREMISES, subject to present tenancies and uses, in broom-clean condition. PURCHASER further agrees and represents that the maximum liability of SELLER, for any reason whatsoever, for any matter, in law or equity, arising from or concerning the Property Condition Disclosure Act (PCDA), the PCDS or the answers therein, shall be limited to $500 and no further, and that any proceeding or action, in law or equity, which relies upon the PCDA or PCDS or contains any allegation which is based upon the answers and contents of said PCDS or anything whatsoever therein, must be brought within one (1) year of the date of this contract, and that, thereafter, it will be considered, by agreement of the parties herein, to be irrevocably time barred for all purposes. It is understood that SELLER has relied on the agreements, warranties and representations herein made by PURCHASER, and that without same, SELLER would not have entered into this contract. The agreements, warranties and representations herein made by PURCHASER shall survive the CLOSING.

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