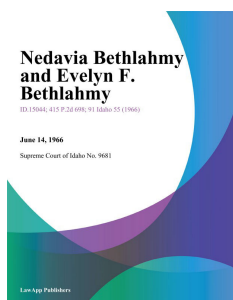


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NEDAVIA BETHLAHMY AND EVELYN F BETHLAHMY EBOOKS 2019



Author: Supreme Court of Idaho No. 9681

Realese Date: Expected @@expectedReleaseDate@@

April 12, 1963, plaintiffs (appellants), who were desirous of purchasing a home, met with one Roper, a salesman for A. L. Modin, dba Modin Realty u0026amp; Insurance Company. Roper showed them a split-level home in Boise which was in course of construction by defendant (respondent) Bechtel. On the same day plaintiffs visited the house a second time in the company of Roper and Bechtel. Bechtel told plaintiffs the houses he built were the finest, that this house was of first quality construction, and assured them it would be completed and ready for occupancy on May 15th, following. Roper informed plaintiffs the house was outside the city limits of Boise and for that reason taxes would be low, but he also advised them it was entirely possible that Boise would extend the city limits to include this property in the near future. Neither Bechtel nor Roper at any time advised plaintiffs that there existed a covenant running with the land which limited occupancy to members of the Caucasian race. Following the second visit to the property, plaintiffs entered into a contract for its purchase from defendant Bechtel, and moved into the house the following May 17th, although it had not been completely finished at that time. Construction was thereafter substantially completed and defects discovered by plaintiffs were generally remedied. About the middle of July plaintiffs discovered the covenant limiting occupancy to persons of the Caucasian race, and although the plaintiff husband testified he would not have purchased the house had he known of the restriction, plaintiffs were apparently satisfied when assured that the restriction was void and unenforceable. About the same time plaintiffs also discovered the property was located within the Boise city limits prior to its purchase by them. The representation by Roper that the house was outside the city limits was not actionably fraudulent for the reason that it was accompanied by the advice that it would likely be annexed to the city; also, the finding by the trial court that the representation was not material because plaintiffs would have purchased the property had they been advised that it was located within the city limits, was supported by the evidence. The judgment of dismissal in favor of Modin was proper.

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