

July 2009

Breach of Warranty

[Kosinski v. Carr](#) 112 Conn. App. 203 (2009)

The buyer of real property sued the seller to recover damages for breach of contract and breach of warranty because neither the contract nor the warranty deed disclosed the existence of a restrictive covenant that prohibited subdividing the property. The seller acquired title to the property following the death of her husband. The property had been conveyed to her husband and his former wife in a 1955 deed which contained the restriction. Although the seller's attorney had a copy of the 1955 deed, he made no reference to the restriction in the contract or in the deed, both of which he prepared.

The buyer's attorney discovered the restriction in his title search, but did not disclose the existence of the restriction to his client or to the seller's attorney. The seller's attorney prepared the warranty deed in reliance upon a title report he received from the buyer's attorney. The defendant seller argued that the discovery of the restriction by the plaintiff's attorney prior to the closing barred the plaintiff's recovery.

The Appellate Court affirmed the trial court's award of compensatory damages with respect to the breach of warranty action: "As the (trial) court properly observed, even proof of the plaintiff's actual knowledge of the existence of a restrictive covenant at the time of the closing would not have barred her recovery for breach of warranty. See *Berube v. Nagle*, 81 Conn. App. 681 (2004)."

The Court affirmed the trial court's award to the plaintiff of attorney's fees and costs for breach of contract, since the contract contained a provision allowing the prevailing party to recover fees and costs in the event of a default. The Court also determined that the trial court properly denied the defendant's argument that the plaintiff's breach of contract claim should be barred by the doctrine of unclean hands or because there was no meeting of the minds. Since the defendant could not show that the plaintiff or his attorney were aware of the restriction at the time the contract was signed, the trial court properly held that the plaintiff was entitled to recover attorney's fees and costs for breach of contract.

Littoral Rights / Laches

**[Caminis v. Troy](#)
112 Conn. App. 546 (2009)**

The parties own adjoining properties which abut a navigable and tidal river. In 1984, the defendants' predecessor obtained a permit to replace an existing dock. When the dock was completed, the plaintiffs became concerned that the rebuilt dock infringed upon their littoral rights area. Although they expressed this concern to the Department of Environmental Protection between 1985 and 1988, they did not obtain a survey until 2000.

The defendants purchased their property in 1991 without notice of any issue regarding the location of the dock. They expended considerable sums of money in improving their property prior to receiving notice of the plaintiffs' concerns, in 2000, when the plaintiffs asked the defendants to relocate their dock.

In 2005, the plaintiffs commenced an action seeking a declaratory judgment that the defendants' dock encroached upon the plaintiffs' littoral rights area and an injunction ordering the defendants to remove the encroachment. The defendants argued that the plaintiffs' delay in asserting their rights constituted laches, which barred the plaintiffs from both declaratory and injunctive relief.

The trial court denied the plaintiffs' application for an injunction, based on laches, but concluded that the plaintiffs' delay did not bar their right to a declaratory judgment establishing the littoral rights boundary line. The plaintiffs appealed and the defendants cross appealed.

The Appellate Court agreed with the trial court's conclusion that principles of laches prevented the plaintiffs' claim for injunctive relief ordering the removal of the encroachment. The Appellate Court disagreed, however, with the trial court's conclusion that laches did not prevent the plaintiffs' claim for declaratory relief: "...because the request for a declaratory judgment in this case is based on an underlying claim that sounds in equity and is subject to laches, the declaratory action is likewise subject to the same defense." Given the considerable delay by the plaintiffs and the detrimental reliance by the defendants, it was improper for the trial court to have granted the plaintiffs' request for a declaratory judgment setting the littoral boundary lines between the parties.

Affirmed as to the trial court's denial of the plaintiffs' application for injunctive relief, but reversed and remanded with direction to deny the plaintiffs' request for a declaratory judgment setting the littoral boundary line.

This case also provides a concise summary of the law of littoral rights:

An ancient principle of the common law is that the title in the soil of the sea...below ordinary high water mark...is held subject to the public right...of navigation and fishing....Although Connecticut law has long recognized that the public, whose representative is the State, is the owner of the soil between the high and low-water mark upon navigable water where the tide ebbs and flows the owner of the adjoining upland has certain exclusive yet qualified rights and privileges in the waters and submerged land adjoining his upland, notably the exclusive privilege of wharfing out and erecting piers...However, where a party's upland...adjoins and abuts the property of another, each must exercise his respective littoral rights with due regard for the corresponding rights of the other. (Internal quotation marks and citations omitted.)

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