Buyers Beware: Kentucky Courts will not Protect You from "Unwise Decisions"

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In recent years the nation has engaged in public debate over the degree to which the government should "protect us from ourselves." One example that garnered media attention was New York Mayor Michael Bloomberg's attempt to ban big sodas from NYC restaurants (it was struck down by a New York appellate court). The goal of the measure was to combat a growing obesity problem in the city. While no one doubted the validity of the goal, many questioned the initiative's paternalistic approach along with its potential effectiveness.

Coincidentally, around the same time the soda ban was playing out in the Big Apple, the Kentucky Supreme Court handed down a unanimous opinion in a real property case in which it stated: "The Court will not protect unwise decisions." The case, *Manning v. Lewis*, 400 S.W.3d 737 (Ky. 2013), involved a contract for the purchase of real estate. The deed listed the subject property as 300 acres but stated that it was being sold by the boundary description of the land, not acreage. The buyer also signed a disclosure acknowledging that the seller did not guaranty the total acreage and inviting the buyer to survey the property.

Prior to closing, the buyer was provided with a copy of the county PVA assessment indicating that the property was only 128 acres. The buyer then threatened to back out of the deal, and the seller responded that he was free to walk away. However, the buyer relented and closed on the property anyway. After closing, the buyer discovered that the property was in fact only 44 acres and filed suit asking for rescission of the sale based on the "10% rule" (an equitable doctrine granting relief from a sale where a deficiency in acreage is greater than 10% of the stated acreage).

The Kentucky Supreme Court cited the doctrine of *caveat emptor* ("let the buyer beware") and rejected the buyer's case. In so doing, the Court reiterated that "the buyer must not blindly trust that he will get value for his money, but must take care to examine and ascertain the kind and quality of the article he is purchasing . . . ." The Court further concluded that the 10% rule did not apply to save the buyer because he knew of an acreage deficiency but nevertheless took the risk of buying the property. The buyer being stuck with land listed as 300 acres but turning out to be 44 may seem like a harsh result. The Supreme Court, however, stated that the rules of equity were "not established to protect those who simply make unwise decisions."

Manning v. Lewis did not involve soda or obesity, and it made neither the national news nor the political talk circuit. However, the case provides a clear warning to buyers, consumers, and others doing business in the Commonwealth: do your homework, take precautions, and don't expect courts to bail you out of a bad deal.

If you would like to know more about these issues, please contact Ryan McLane, a Northern Kentucky associate in the Construction, Medical Malpractice, Administrative Law, and Civil Litigation Practice Groups at Dressman Benzinger LaVelle psc. Ryan can be reached at (859) 426-2143 or via email at rmclane@dbllaw.com.