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## Creating vs disclosing defective conditions in property: Lewis v Chevron, 2004

Roger Bernhardt

Golden Gate University School of Law, rbernhardt@ggu.edu

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## **Creating vs disclosing defective conditions in property:**

### ***Lewis v Chevron, 2004***

**Roger Bernhardt**

**Absent concealment, prior owner of real property is not liable for injuries caused by defective condition on property after ownership was relinquished, even if prior owner negligently created condition.**

*Lewis v Chevron U.S.A., Inc.* (2004) 119 CA4th 690, 14 CR3d 636

In 1992, Chevron sold property to Berlex. In 2000, a hot water pipe burst on the property, injuring Lewis. Lewis sued Chevron, among others, for negligence and premises liability. Chevron successfully moved for summary judgment on the grounds that it had nothing to do with the property for eight years.

The court of appeal affirmed, holding that, absent concealment, a prior owner of real property is not liable for injuries caused by a defective condition on the property long after the owner has relinquished ownership and control, even if the prior owner negligently created the condition. The court explained that Chevron, as a seller of real property, was not liable for the injuries that occurred after Berlex took possession and that were caused by a dangerous condition that existed at the time the buyer took possession. This rule applies whether the defect is patent or latent. The court noted that Chevron had no ability to inspect or test the pipe, to prevent injuries, or insure itself against any failure. The court opined that Chevron could be liable only if it knowingly concealed a dangerous condition. Because there was no evidence that Chevron knew of any defect in the pipe and deliberately concealed that defect, Chevron could not be liable for Lewis's injuries.

***THE EDITOR'S TAKE:*** Caveat emptor can be an extremely comforting doctrine. As long as an owner is unaware of the defects that exist in the property she is selling, the sale will preclude liability for those defects (perhaps subject to a secondary caveat regarding liability for cleanup of toxic waste; but even there the situation described probably comes within an "innocent landowner" exception). The comfort, however, arises only when it is least needed. The owner who knows of the dangerous condition and either lies about it or intentionally fails to disclose it will be liable long after the sale—not merely to her own buyer, but to successor owners as well when it is finally discovered. See Bernhardt, *You Can Sell But You Can't Hide*, 18 CEB RPLR 182 (May 1995). Furthermore, she faces liability for any personal injuries that result from the failure to disclose, even when the victim is a remote nonproperty owner (such as the contractor's employee in *Lewis*). Thus, caveat emptor only works for some defects.

*Preston v Goldman* (1986) 42 C3d 108, 227 CR 817, much discussed in the *Lewis* opinion, did involve a condition that was known to the sellers, but because it was visible, it

was also known to the buyers, which makes the situation legally the same as if it had been disclosed to them. The seller may incur post-sale liability only when the defect is latent and known only to the seller. Perhaps a discovery by the next owner before the condition causes any personal harm might terminate the original seller's liability risk, although liability for the reduced value of the property should still remain intact (under CC §3343; see Bernhardt, *On Making and Breaking Contracts*, 27 CEB RPLR 12 (Jan. 2004)).

If your clients are selling their property, you can tell them that they don't have to repair everything that doesn't work, but they do have to disclose everything that wasn't repaired (and maybe even report the disrepairs they think they fixed). —*Roger Bernhardt*