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Evidence

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vendors learned the true facts. They believed and were reassured by the village officials that zoning restrictions would not permit erection of the intended church structure. Relying on this, they took no action to rescind and, in fact, offered to sell the congregation their home and additional land for parking purposes. The congregation obtained a building permit after modifying the architectural plans to satisfy zoning officials, secured a mortgage, contracted for construction and commenced construction. Four and one-half months after learning of the misrepresentations and after the events just listed had occurred the vendors filed an action to rescind both deeds. The court concluded that the vendors could have rescinded the transaction had they acted promptly upon learning the true facts. However, the court held that under all the circumstances the vendors had acquiesced in the sale of the land and in legal effect had affirmed the contract and waived the right to rescind. The congregation had reasonably assumed that the contract had been affirmed by the vendors and acted thereon. Given this, the court would by its rescission have had to impose injury upon the congregation because of vendor's failure to act seasonably. This, it refused to do. The judge well put the proposition involved: the vendors "took their gamble and lost and now seek the aid of a court of equity to perform like an ace in a game of skill to rescue them from the unsuccessful result of their game of chance. Equity cannot lend its aid under such circumstances."⁹

In *Triplett v. Ostroski*,¹⁰ a contract had been entered into whereby a builder agreed to construct a house according to certain specifications and purchaser agreed to pay a specified sum and accept title upon completion. When completed the purchaser accepted possession of and a deed to the house. A court of appeals held that acceptance of the deed did not merge the prior contract into the deed so as to prevent recovery by the purchaser for latent defects caused by unworkmanlike construction of the dwelling.

EDGAR I. KING

EVIDENCE

Mr. Clinton DeWitt, who usually reviews the cases on evidence for the Survey Issue, has not submitted an article this year due to the lack of significant opinions rendered on this subject during the period covered by this survey.

EDITOR

⁹ 103 Ohio App. 423, 435, 143 N.E.2d 313, 320 (1957).

¹⁰ 103 Ohio App. 290, 145 N.E.2d 209 (1957).