

# Does Caveat Emptor apply to my real estate sale? The Bullet Point: Volume 3, Issue 7

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The Bullet Point is a biweekly update of recent, unique, and impactful cases in Ohio state and federal courts in the area of commercial litigation.

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## Damages

*Lee v. Cooke*, 11th Dist. Lake No. 2018-L-045, 2019-Ohio-1163.

This was an appeal of a trial court's decision to grant a directed verdict at trial. The issue centered on whether the appellant had met his burden of proving damages.

In February 2012, the defendant purchased a country club out of receivership. The country club consisted of a clubhouse and golf course which were run separately. The appellant orally agreed to keep the three individuals who had been running the golf course, including the plaintiff, on as salaried employees. The country club did not have a credit card or a credit card reader for purchases. Rather, the plaintiff owned a mobile credit card reader that he utilized to accept payment. The payments were then routed to an account owned by the plaintiff. He would routinely then route these funds into a country club bank account for certain payments to be made by check, including property taxes. This included lending \$35,000 of his own money to payoff outstanding taxes owed by the club. A fire destroyed part of the club and an audit was done related to the fire investigation. The credit card system plaintiff had used was uncovered and he was promptly fired without being repaid the \$35,000 loan. Plaintiff eventually filed suit and the defendant counterclaimed. At the close of trial, plaintiff moved for a directed verdict on the appellant's counterclaims, arguing that he failed to establish any damages. The trial court agreed and appellant appealed.

On appeal, the Eleventh District Court of Appeals affirmed.

**The Bullet Point:** A plaintiff bears the burden of proving the nature and extent of damages suffered by him or her. Damages must be established by a "reasonable certainty." In a breach of contract action, damages must be shown to a greater degree of certainty than for tort claims, and the amount of damages must not be speculative.

## Shareholder Standing

*Slodov v. City of Mentor*, 11th Dist. Lake No. 2018-L-080, 2019-Ohio-1052.

This appeal addressed the question of standing in the context of a declaratory judgment claim. Appellant, a tax payer, brought suit to challenge the re-zoning of property in his city that, he claimed, caused his company income to be diminished. The defendants moved to dismiss the declaratory judgment claim due to lack of standing and the trial court agreed.

On appeal, the Eleventh appellate district affirmed, finding that he lacked standing to sue on behalf of his company.

**The Bullet Point:** Any wrongful action by a third party to a corporation creates a potential cause of action for the corporation, not its shareholders. As such, a shareholder or employee of a corporation lacks standing to assert claims that belong solely to the corporation.

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## Caveat Emptor – Real Estate

*AE Property Servs., LLC v. Sotonji*, 8th Dist. Cuyahoga No. 106967, 2019-Ohio-786.

This appeal centered around a real estate deal gone wrong. The parties had entered into a real estate transaction to purchase a home. A property disclosure form was provided that indicated while the seller knew of water damage, she had no knowledge of any termites or wood destroying insects. The property did in fact have termite damage and the buyer sued, alleging that the seller knew of this and fraudulently concealed the damage. The trial court ultimately granted the seller summary judgment and on appeal, the Eighth Appellate District affirmed based on the doctrine of caveat emptor.

**The Bullet Point:** Caveat emptor applies to “as is” residential real estate sales when: (1) the condition complained of is open to observation or discoverable upon reasonable inspection; (2) the purchaser had the unimpeded opportunity to examine the premises, and (3) there is no fraud on the part of the vendor. An “as is” sale indicates that the buyer is “accepting the risk” associated with purchasing the property. In those situations, caveat emptor applies unless the seller has engaged in fraud. While Ohio law now has statutory requirements for disclosure of latent defects in residential property sales, caveat emptor still applies, and only a showing of actual knowledge of the defect on the seller’s part without disclosing it will suffice to avoid the doctrine.