

### Court Denys Buyer Rescission When the Buyer Delayed After Two Years

In DM Residential Fund II, LLC v. First Tennessee Bank National Association, the Ninth Circuit Court of Appeals declined to permit a buyer to sue a seller for rescission after delaying two years to bring the claim. In DM Residential, defendant First Tennessee owned the residential property, which it had purchased at a non-judicial foreclosure sale. It sold the property to DM Residential. A new home had been built on the property, but there was neither a utility easement to provide electrical service nor a certificate of occupancy. Defendant discovered the easement shortly after purchasing the property. Approximately two years later, DM sued First Tennessee seeking to rescind the purchase and sale agreement in light of First Tennessee's failure to disclose the easement defect. Defendant moved for summary judgment contending that DM was put on inquiry notice of the issue when it discovered the lack of electricity at the property. The District Court granted the motion for summary judgment in favor of the bank. The Ninth Circuit Court of Appeals affirmed holding that DM's two-year delay deprived it of the remedy of rescission.

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