

Prior Accord Is Must On Mortgage 'Points'

The Michigan Supreme Court has ruled that a house seller has no legal obligation to pay "points," unless this re-

quirement is spelled out in a contract. The court also said that real estate brokers have an obliga-

tion to see that both buyers and sellers understand all aspects of sales contracts, particularly FHA terms.

The court's opinion, written by Justice Thomas E. Brennan, was handed down in a case involving purchase of a

house by Mr. and Mrs. Ocie Wilson from Mr. and Mrs. Sotirios Romeos in Pontiac Township, Oakland County.

THE ROMEOS entered into an agreement with real estate broker Wyman Lewis in October 1965 to list their home for

sale for \$11,500 on FHA terms. In December 1965 they agreed to sell to the Wilsons. The Wilsons paid the broker an \$800 deposit and the Romeos agreed to vacate the house by April 15, 1966.

The Wilsons secured their mortgage in March 1966, and the deal was to be closed May 16, 1966, but the Romeos did not appear for the closing.

On June 6, 1966, the Wilsons filed suit in Oakland County circuit court, asking that the Romeos be ordered to fulfill terms of the agreement, or that they be awarded damages for breach of contract.

The matter was first assigned to Judge Phillip Pratt, then re-assigned to Judge James S. Thorburn. Attorneys for both sides agreed that the contract was binding, but that the contract did not bind the seller to pay the points.

The agreement, and an order issued Jan. 24, 1967 by Judge Thorburn, concluded that the purchaser would pay mortgage costs, and would get financing other than FHA because FHA forbids the purchaser to pay points.

The transaction was to have been completed by Jan. 30, 1967, but was not. On FEB. 14, 1967, the Romeos asked that the case be dismissed. It was then assigned to Judge Clark J. Adams, who concluded that Judge Thorburn had no authority to enter the previous order, and ordered the matter for immediate trial.

No order was entered setting aside Judge Thorburn's order, and the matter did not come up for trial until April 30, 1968. Judge Adams ruled on May 9, 1968, in favor of the Wilsons, ordering that the sale be completed.

The Court of Appeals affirmed, the Supreme Court remanded the case to pass upon the issue of sufficiency of tender, and the Court of Appeals affirmed once again.

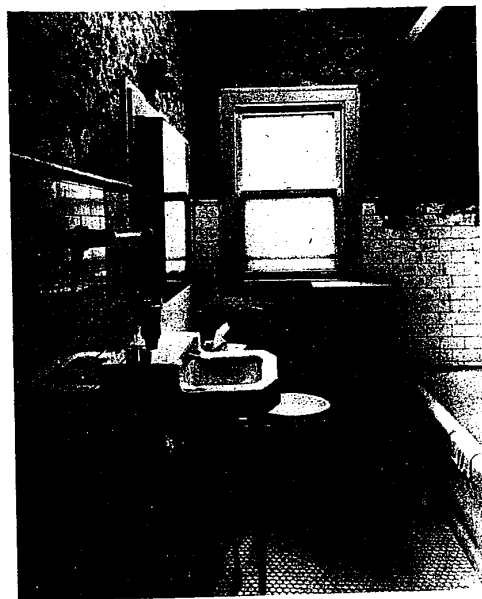
IN THE SUPREME Court's opinion, Justice Brennan wrote: "The case cried for settlement. Seasonable settlement. Merciful settlement. And indeed settlement came. . . . But it was a hasty settlement, pregnant with the embryo of its own defeat."

"Accurately, the circuit judge concluded that the defendants were not obliged to pay the mortgage premium. Unrealistically, he concluded that the plaintiffs should be ordered to do something that was neither legally permissible nor physically possible in today's mortgage market."

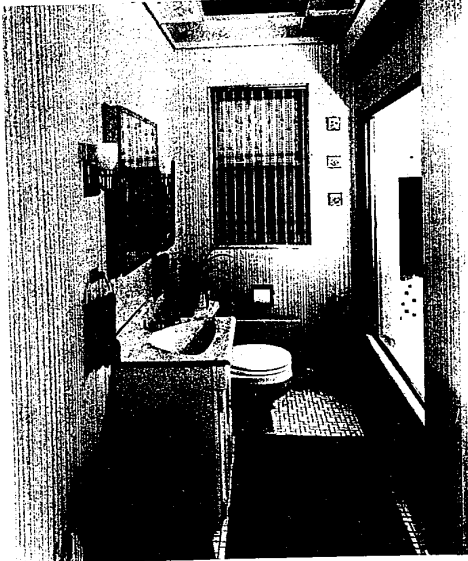
"Under federal law, Mr. and Mrs. Wilson could not pay the mortgagor's premium. And everyone in court should have realized that getting an FHA mortgage without payment of the premium was an impractical pipe dream."

"... Concern for the equality of the division of the judicial workload came ahead of concern for the people whose litigation begged for attention. The matter was not returned to the judge who entered the order of settlement. He might even then have been able to iron out his own action."

The court said that under general court rules, Judge Adams had no jurisdiction to set aside Judge Thorburn's order. The court remanded the case to Judge Thorburn with the instructions to immediately make a final disposition of the case in accordance with the court's opinion.



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1x10	2.70	3.60	4.50	5.40	6.30	7.20	8.10	9.00
1x12	3.30	4.40	5.60	6.72	7.84	8.96	10.08	11.20
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