

10/16/01 "See News Release for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-C-0587

J. ELISE SHELTON

Versus

STANDARD/700 ASSOCIATES, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FOURTH CIRCUIT, PARISH OF ORLEANS

JOHNSON, J., dissenting

Summary judgment is inappropriate in this case because material issues of fact exist as to plaintiff's allegations of fraud. Summary judgment is not intended to be used as a vehicle to circumvent a trial on the merits, and it may not be used to dispense with a case that is difficult to prove. *Serigne v. Ivker*, 95-1538 (La.App. 4 Cir. 2/15/96), 669 So.2d 1335.

In this case, defendants vouched for the soundness of the roof and denied that there had been any previous leaks prior to the Act of Sale. Yet, it is apparent from the record that defendants had experienced problems with the roof. In fact, in the three years prior to plaintiff's purchase, defendant spent in excess of \$5,000.00 on roof repairs, the last of which occurred eight months before plaintiff's purchase. Further, despite the "as is where is" warranty, defendants spent several months (January of 1997 through March of 1997) attempting to repair the roof after plaintiff moved into the condominium.

Because I believe that plaintiff should have been given the opportunity to prove to a trier of fact that defendants misrepresented or suppressed the truth about the problems with the roof, I respectfully dissent.