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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JESSICA C. ANDREWS et al.,

Plaintiffs and Appellants,

v.

MARDEAN E. ALESSO et al.,

Defendants and  
Respondents.

B271725

(Los Angeles County  
Super. Ct. No. MC025119)

APPEAL from judgment of the Superior Court of Los Angeles County, Rick S. Brown, Judge (Ret.). Affirmed.

Henry M. Lee, Law Corporation, Henry M. Lee and Matthew Tsuei, for Plaintiffs and Appellants.

Gipson Hoffman & Pancione, Jason Wallach and Allen L. Michel, for Defendants and Respondents.

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Plaintiffs and appellants Chana and Jessica Andrews appeal the judgment in favor of defendants and respondents Mardean Alesso, the Alesso Family Trust, Donald Kenneth Black, and Steven Edward Black. After the Andrews purchased a home from defendants, they discovered that the home had a termite infestation, mold, and rotting wood, which they attributed to earlier water intrusions that defendants did not disclose.<sup>1</sup> Alleging that they were deprived of the opportunity to rescind the purchase agreement, the Andrews filed a complaint alleging negligence, intentional misrepresentation (fraud), concealment (fraud), negligent misrepresentation, breach of

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<sup>1</sup> Defendants were sued in their capacity as sellers, solely on a theory of liability for failure to disclose material facts concerning the property. The house was owned by the trust, and as the trustee, Alesso executed all of the relevant documents in conjunction with the sale. Because Donald and Steven are not owners of the home or trustees, and did not personally make any representations to the Andrews, it is unclear what their duty of care to the Andrews may be, if any. Although Donald assisted Alesso and had verbal authority to act on her behalf, Alesso met with her real estate agent to review the disclosures, provided the agent information concerning the condition of the home, and personally signed the disclosures. Steven was only involved insofar as he performed repairs on the home.

contract, and intentional infliction of emotional distress.<sup>2</sup> Only the first four causes of action are at issue on appeal.<sup>3</sup>

The Andrews contend on appeal that the trial court erred by ignoring evidence supporting their claims and by requiring them to prove elements not present in their causes of action.<sup>4</sup> We affirm.

## FACTS AND PROCEDURAL HISTORY

### *Facts*

The Andrews purchased a home in West Lancaster from the Alesso Family Trust in September 2014. Alesso,

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<sup>2</sup> The Andrews also sued the real estate agent who represented the trust and multiple property inspectors. The case against the present defendants was severed due to Alesso's advanced age. Trial was as to liability only.

<sup>3</sup> The Andrews's sixth cause of action for intentional infliction of emotional distress was dismissed before trial on defendants' motion, and the Andrews did not challenge—or indeed even acknowledge—the judgment with respect to their fifth cause of action for breach of contract in their opening brief.

<sup>4</sup> The opening brief includes several sections that purport to present distinct contentions, but as the Andrews state in their reply brief, only two issues are raised on appeal.

the trustee, had lived in the home for almost 35 years, up until a few months prior to its sale.

Approximately 15 years before trial, a sprinkler located in a planter outside of the front bedroom window burst, and water leaked into the bedroom.<sup>5</sup> About a foot to a foot and a half of carpeting became wet. It was “a small leak.” Alesso called her sons, who fixed the sprinkler immediately and took measures to dry the room. They pulled back the carpet, wet-dry vacuumed the area, disinfected it, and ran fans in the room for a few days until the carpet was fully dry. When they put the carpet back, everything looked “good as new.” “There was no damage.”

Approximately eight and a half years prior to the sale, there was a small leak in the roof a few feet away from the chimney. The water leaked into a bedroom in “one little spot in a closet.” The leak was “very small” and Alesso “discovered it right away.” Alesso had her son, Steven, a licensed contractor, replace the roof “right away.” Alesso did not know if Steven was specifically licensed to replace roofs, but she was “quite sure he was capable of doing everything.” Steven testified that he was not licensed to make the repair at the time.

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<sup>5</sup> Alesso testified that the sprinkler leak had occurred about 15 years prior to trial. In his deposition, Donald estimated that the sprinkler leak occurred between 5 and 10 years before trial. At trial he could not recall when it occurred.

David Olney, an experienced painter, painted the interior of the house two months before the sale. Olney is able to recognize water damage, and did not discover any. He cleaned the walls by hand prior to painting. Olney did not detect any soft or crumbly areas, stains, rippling, or bubbling, which would have made the walls unsuitable for painting.

Prior to close of escrow, defendants' lender requested that the water heater be fitted with double straps in compliance with safety requirements. Donald and Steven Black repaired the water heater personally. Neither was licensed to do the work.

Property inspector James Abraham visually inspected the house before escrow closed. He observed signs of water intrusion around a hole in the attic where a TV antenna had been located. Abraham's report included this information, and recommended that the area be repaired. Abraham did not discover any other indication of water intrusion in the house.

The trust sold the house to the Andrews "as is." The contract stated, "The property is sold as is in its current physical condition as of the date of acceptance but subject to buyer's investigation rights." In conjunction with the sale, Alesso executed a Seller Property Questionnaire, in which she was required to disclose "known material or significant items affecting the value or desirability of the [p]roperty." Alesso disclosed that the roof had been replaced approximately eight years prior to the sale. She indicated on

the questionnaire that there were no “water-related and mold issues,” checking “No” to indicate no “[w]ater intrusion into to any part of any physical structure on the [p]roperty; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage on or affecting the [p]roperty.” She disclosed that there were “past or present defects, leaks, cracks, repairs or other problems with the sprinklers,” and specified that the Arizona Cypresses in the yard were not covered by the sprinkler system. Alesso considered the water intrusion incidents to be inconsequential. “It was years before, and there was no problem afterwards. That, to me, was a closed issue.” There was no damage at the time Alesso signed the disclosure. Alesso also executed a Real Estate Transfer Disclosure Statement. The Real Estate Transfer Disclosure Statement does not include questions relating to water intrusion other than flooding, drainage, and grading. Alesso did not note the water intrusion incidents on the statement.

Because Alesso was elderly, her son Donald assisted her with the sale and had her verbal authority to act on her behalf. Alesso personally signed the disclosures, however, and participated in the meetings at which the disclosures were discussed. Donald testified that he was aware of the roof leak and the sprinkler incident and that as a licensed contractor he understood water intrusion into a house could cause serious problems. He did not believe the minor water intrusions that occurred were of consequence, however, and

did not think it was necessary to include them on the disclosure forms.

Real estate agent Maxi Case assisted Alesso with the sale of the house. She conducted numerous visual inspections and did not see signs of water damage. The house appeared to be a “very well cared for home.” Defendants did not apprise her of prior water intrusions of any magnitude. If they had, she would have included the water intrusions in the disclosure forms, regardless of the size of the leak or the remoteness in time. She could not say whether the information was “important,” but she would have disclosed it regardless of importance. In her opinion, disclosure of such conditions is good business practice whether or not the seller believes them to be material.

Real estate agent Sylvia Shelman represented the Andrews when they bought the house. The disclosure forms did not advise her clients of any water intrusion into the house. In her opinion all of the water intrusions at issue were material, affected the desirability of the home, and should have been disclosed.

The Andrews reviewed the disclosure statements, which contained no information concerning the water intrusions. Had they been informed of any of the previous water intrusions they would not have purchased the house. They were aware of the water intrusion near the antenna hole, but did not take action because Abraham told them it was not anything to worry about. They also relied on a termite inspection from High Desert Termite & Pest, which

concluded the house was free of evidence of active termite infestation. The Andrews found evidence of what they suspected to be water damage, mold, and termite infestation after the close of escrow.

The Andrews engaged Don Collard to perform a second termite inspection after the sale. He discovered evidence of termite infestation in the area below the front bedroom adjacent to the planter. He inferred that the termites entered through “cold joints” that he was unable to visually inspect. In Collard’s opinion, the pipe bursting in the planter created moisture. Moisture is a causal factor in termite infestations. Even if the sprinkler burst five years before the sale, there could be a causal link to the infestation. Other sources of water, including rain, a high water table, or lawn sprinklers could also create moisture in the ground. Collard “couldn’t impute any . . . direct correlation. The best [he was] in a position to report [was] visible findings.”

Collard testified that the termites he discovered in the house were subterranean and did not create “frass,” which is a type of waste. He saw no evidence of dry wood termites, which are the type that create frass. If someone testified that “there was frass all over the house” that would be inconsistent with his findings.

Licensed general contractor Jenice Dryer inspected the house approximately three times shortly after the sale, beginning on October 11, 2014. Dryer had a close personal relationship with Jessica, who she described as “almost a

daughter.” Dryer observed numerous areas of water damage throughout the house, including water damage in the front bedroom near the planter, and around the water heater in the basement. Water damage was indicated by mold, ripples in the drywall paper, and termite frass. “[T]here was a lot of frass where it was wet” “between the tack strip and the wall” where baseboards had been pulled up. Dryer observed a lot of water-related damage in the front bedroom on the wall with the planter. There was “a lot of frass” on that particular wall. Dryer was able to recognize termite frass, dry rot, and mold from a training she received 15 years earlier as a specialty insurance adjuster. Her husband worked in pest management, so she also had knowledge of termites through him. Dryer also noticed one area of damage on the front door that had been recently painted over.

Dryer initially testified that she estimated total repairs as \$144,609.03, and attributed 90 percent of the cost to water-related damages. The estimate included Dryer’s recommendation to remove a height of between one and four feet of dry wall from all but one of the rooms in the house. When compiling the total estimate, Dryer used estimates from Jessica’s subcontractors at Jessica’s request. For those line items, she had not personally done any inspection and could not testify as to the conditions. The estimate included roof replacement at a cost of approximately \$14,000 from one of Jessica’s subcontractors. The cost of replacing the fireplace was also included. Dryer had personally provided

an estimate of \$3,750 to remove the old fireplace and \$10,458.78 to install a new fireplace. Dryer observed an internal crack in the fireplace. Jessica asked her for the estimate because she would not use a damaged fireplace. There was no water or termite damage to the fireplace. The cost of new appliances was also included in the estimate at Jessica's request. The appliances had not been damaged by any water-related causes. The estimate also included completely replacing the heating, ventilation, and air conditioning systems, which had not suffered water-related damage. When defendants' counsel pointed out that Dryer's estimate of water-related damages was off by at least \$30,000 and asked why, she responded, "I didn't do the math." "I'm not good at math." She did not read any of the subcontractor's estimates. She "just did what [Jessica] asked her to do for her." Dryer did not produce any of the photographs accompanying her estimate until the day of her testimony. She had misplaced them, but Jessica located them in Dropbox the night before she testified, so she was able to bring them to trial.

At trial, Jessica attested that a piece of baseboard with "black stuff" on it had been taken from the front bedroom under the window with the planter. Donald testified that due to the style of the molding the baseboard could not have come from the front bedroom, and must instead have come from the kitchen.

## *Counsels' Arguments*

At trial and in supplemental post-trial briefing, the Andrews argued there were significant leaks that defendants knew of and did not disclose. They alleged Alesso and Donald were aware that water intrusion could cause serious damage. Even if they had not been aware of the possibility of damage, defendants had a duty to disclose any and all water intrusions, regardless of whether they felt the intrusions were material. Both real estate agents testified that they would have disclosed the information if they knew about the water intrusions. The Andrews asserted it was “the clear and undeniable truth that **water intrusion, regardless of scope, is itself a material defect/condition.**” (Emphasis in original.) The water leak in the front bedroom was significant—the water had to rise to the top of the planter to spill into the bedroom, and drying out the bedroom took several days. The water intrusions were not visible in a visual inspection, so the sellers could not have learned of them independently. By not disclosing the water intrusions, defendants denied the Andrews the opportunity to rescind the contract. Had they known about the water intrusions, the Andrews would have rescinded the contract or taken other action. The Andrews “didn’t want the headache” and “didn’t have the finances” for the repairs. The water intrusion caused the termite infestation in the front bedroom. The Andrews argued that water intrusion seriously impacted the desirability of the house—Dryer

attributed over \$100,000 in repairs to water damage, and the Andrews did not want a house with wood rot, mold, and termite infestation. The water intrusion was a substantial factor in causing the wood rot, mold, and termite infestation. The Andrews were harmed because they closed the transaction and would now have to pay for repairs.

Defendants conceded that water intrusion had occurred and that it had not been disclosed, but argued the water intrusions were not significant. The only evidence of the water intrusions' materiality was evidence of the cost of repairs for wood rot, mold, and termite infestation—not for the water intrusions themselves. The Andrews did not present evidence that linked the water intrusions to the damage alleged. Defendants questioned the credibility of Dryer's testimony. The termites infesting the house were subterranean, and that variety of termite does not produce the frass she claimed to have seen. Dryer noted damage in many rooms that were unaffected by the water intrusions, including the kitchen, living room, family room, hallway closet, laundry room, craft room, and master closet. Collard testified that there was no telling where the termites originated, and they could have come from beneath the street. There were ample natural sources of water, and watering the lawn could provide moisture. Dryer was not an expert on mold and there was no other expert testimony on the subject. Jessica was also not credible. Abraham testified that she told him she wanted to replace the fireplace, water

heater, and HVAC system on August 25, 2014.<sup>6</sup> When confronted with Abraham’s testimony, she accused him of lying. Jessica’s testimony that the baseboard came from the front bedroom was contradicted by Donald, who testified that the molding did not match.

### ***Trial Court’s Decision***<sup>7</sup>

The trial court found that the Andrews failed to establish the water intrusions were material or significant. The incidents were remote in time, and limited in duration and size. Defendants repaired the roof and the sprinkler, and there were no subsequent water intrusion incidents. The court “[did] not agree with Plaintiffs’ contention that any water intrusion is *ipso facto* a material defect or requires disclosure.”

The trial court found that even assuming the water intrusions were material, the Andrews failed to provide sufficient evidence that they were the proximate cause of any defect. The court found Dryer’s testimony to be suspect. Her estimate of damage included substantial remodeling and

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<sup>6</sup> Abraham testified that when he spoke with the Andrews about the house, they indicated that they intended to replace the fireplace, water heater, and HVAC system “immediately.”

<sup>7</sup> We have omitted the trial court’s findings on the fifth and sixth causes of action, as they are not relevant to this appeal.

replacement of drywall up to four feet high in all but two of the rooms in the house.<sup>8</sup> Contrary to Jessica's testimony, the baseboard that the Andrews presented did not originate in the front bedroom, and did not provide any evidence of mold.

The court found there were no hidden defects known to defendants. Alesso credibly testified that she had never seen any mold and that she had no intention to conceal defects. The court rejected the Andrews's contention that Olney painted over defects. Olney credibly testified that there were no stains and the drywall was not damaged.

The Andrews were put on notice of possible water intrusion by Alesso's disclosure that there had been defects in the roof, and by Abraham's inspection, which revealed that there had been water intrusion around an antenna hole in the attic.

The court found the following as to each cause of action:

"1. Negligence: any negligence of Seller did not cause any defects.

"2. Fraud-Intentional Misrepresentation: Seller did not intentionally make any fraudulent misrepresentation of any material or significant defects, and if for purposes of argument, she did, there was no proximate cause of damages.

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<sup>8</sup> Dryer testified that the four feet of removal was recommended for all but one of the rooms.

“3. Fraud-Concealment: no evidence of fraudulent concealment and no proximate cause.

“4. Negligent Misrepresentation: there was no material misrepresentation nor any causal link to damages.”

The Andrews timely appealed.

## DISCUSSION

### *Trial Court’s Consideration of Evidence*

The Andrews first contend that the trial court erred by ignoring evidence presented in support of their claims, and in particular, “undisputed expert testimony” that the water intrusions were material and affected the value of the property and that the failure to disclose deprived the Andrews of the opportunity to rescind the contract or take other action. There is no merit to this argument.

“[A] trial judge has an inherent right to disregard the testimony of any witness, or the effect of any prima facie showing based thereon, when he is satisfied that the witness is not telling the truth or his testimony is inherently improbable due to its inaccuracy, due to uncertainty, lapse of time, or interest or bias of the witness. All of these things may be properly considered in determining the weight to be given the testimony of a witness although there be no adverse testimony adduced. The trial judge is the arbiter of the credibility of the witnesses. A witness may be contradicted by the facts he states as completely as by direct

adverse testimony, and there may be so many omissions in his account of particular transactions or of his own conduct as to discredit his whole story. His manner of testifying may give rise to doubts of his sincerity and create the impression that he is giving a wrong coloring to material facts.” (*Camp v. Ortega* (1962) 209 Cal.App.2d 275, 282–283 (*Camp*), quoting *La Jolla Casa De Manana v. Hopkins* (1950) 98 Cal.App.2d 339, 345–346.) “The finding or conclusion of the trial court denying credence to such testimony cannot be controlled by this court ‘unless it appears that there are *no matters or circumstances which at all impair its accuracy.*’ [Citation.]” (*Camp, supra*, at p. 282.)

Although the Andrews attempt to frame the issue as one of the trial court ignoring their evidence, the record shows that the trial court performed its proper function and weighed the evidence, taking into account adverse testimony and the credibility of witnesses. In particular, there were many reasons to distrust Dryer’s testimony. Dryer was very close to Jessica and considered her to be almost a family member. She erred significantly in her estimates of the repairs due to water damage according to her own testimony, and her estimate contained quotes from subcontractors regarding issues she had not investigated. Jessica personally provided her with the subcontractor estimates and the photographs of the alleged damages that Dryer herself purportedly took. Dryer claimed to have seen termite frass throughout the house, particularly in the area of the front bedroom below the window where there was moisture,

but the Andrews's termite inspector testified that only dry wood termites produce frass, and he had not found evidence of that variety of termite. The trial court did not ignore Dryer's testimony—it specifically found Dryer's testimony to be suspect. The Andrews have not been deprived of the right to have their evidence considered. They are simply unhappy with the result. In essence, their arguments are a challenge to the sufficiency of the evidence.

On appeal, we view the facts in the light most favorable to the judgment. In this challenge to the sufficiency of the evidence, our power “*begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the [trial court's] determination.*” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) The substantial evidence rule requires this court to review the evidence in the light most favorable to the prevailing party, giving it the benefit of all reasonable inferences and resolving all conflicts in its favor. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514 (*Escamilla*)). We do not reweigh the evidence or attempt to evaluate the credibility of witnesses; those are functions delegated to the trial court. (*Escamilla, supra*, at pp. 514–515; *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.)

The trial court's findings amply support its decision. The Andrews's four remaining causes of action are all

dependent upon defendants' failure to disclose material facts regarding the property, either intentionally or unintentionally.<sup>9</sup> “In the context of a real estate transaction, “[i]t is now settled in California that where the seller knows of facts materially affecting the value or desirability of the property . . . and also knows that such facts are not known to, or within the reach of the diligent

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<sup>9</sup> “The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury.” (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) “The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. [Citations.] The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. [Citations.]” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.) “The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact.” (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 606.)

attention and observation of the buyer, the seller is under a duty to disclose them to the buyer. [Citations.]” [Citations.] Undisclosed facts are material if they would have a significant and measurable effect on market value. [Citation.] A breach of this duty of disclosure will give rise to a cause of action for both rescission and damages. [Citation.]’ [Citations.] The seller or his or her agent must have actual knowledge in order to be liable for failing to disclose a material fact. [Citation.]” (*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 410 (*Assilzadeh*), fn. omitted.) An as is seller is not excepted from liability for false representations concerning known conditions that the buyer could not have observed. (*Loughrin v. Superior Court* (1993) 15 Cal.App.4th 1188, 1195.)

“A seller’s duty of disclosure is limited to material facts; once the essential facts are disclosed a seller is not under a duty to provide details that would merely serve to elaborate on the disclosed facts. [Citation.] Where a seller fails to disclose a material fact, he may be subject to liability ‘for mere nondisclosure since his conduct in the transaction amounts to a representation of the nonexistence of the facts which he has failed to disclose [citation].’ [Citation.] Generally, whether the undisclosed matter was of sufficient materiality to have affected the value or desirability of the property is a question of fact. [Citations.]” (*Calemine v. Samuelson* (2009) 171 Cal.App.4th 153, 161.)

The Andrews argued both that “water intrusion, regardless of scope, is itself a material defect/condition,” and alternatively, that the water intrusion was material because of the damage it caused, as evidenced by the cost of repairs for wood rot, mold, and termite infestation.<sup>10</sup> The trial court found the water intrusions were not material facts that defendants failed to disclose because they were minimal, occurred remotely in time, and were repaired with no problems recurring after repairs—i.e. they had no significant and measurable effect on the market value of the house.

The evidence supports the trial court’s findings. Alesso, Donald, and Steven all testified that the leaks in the roof were minor and ceased after the roof was replaced. They testified that the burst sprinkler saturated only a small section of the carpet, and that the problem was immediately and fully remedied. There were no subsequent leaks from the sprinkler. Collard testified only that moisture is a causal factor for subterranean termite infestations, and that the sprinkler—among several other possible factors including rain and the water table—could have provided that moisture. Absent a causal connection, the cost of repairs is not relevant to the materiality of the

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<sup>10</sup> Perhaps recognizing the difficulty of proving a direct causal connection between the specific water intrusions at issue and the alleged wood rot, mold, and termite infestation in the house, the Andrews insist that their damages result from being denied the opportunity to rescind the contract, not from the cost of repairs.

water intrusions. The Andrews did not provide evidence that these particular minor incidents led to any damage, let alone over \$100,000 in damages. Where a known historical defect or condition has been remedied, the seller has no duty to disclose the defect or condition. (See *Pagano v. Krohn* (1997) 60 Cal.App.4th 1 [no duty to disclose past occurrence of algae or efflorescence when problem had been remedied over a year before sale and was not related to current water intrusion problem].) Although the Andrews's termite inspector testified that a sprinkler leak occurring five years prior to the sale could be causally related to subsequent termite damage, there was conflicting testimony about when the leak occurred, with five years prior to trial being the most recent estimate. Donald believed that the leak may have occurred as many as 10 years prior to trial, and Alesso estimated the time frame as 15 years. Collard did not testify regarding the effect of a sprinkler leak occurring this remotely in the past. Defendants testified there had been no outward indications of mold, wood rot, or termite infestation in the intervening period, and every witness who personally viewed the property agreed that there was no outward sign of any of these conditions. The trial court could reasonably conclude that there was no causal connection between the roof leak, or sprinkler or water heater malfunction and the problems the Andrews encountered, and that absent any evidence of damages caused by the water intrusions, they were not material in and of themselves.

The Andrews complain that the trial court ignored the real estate agents' testimony that water intrusions are material and should be disclosed, regardless of when they occur. But even if we were to assume that this was a question that required expert rather than lay opinion to resolve, the testimony was conflicting. While the Andrews's real estate agent testified that the mere fact that water intrusion occurs is material and should be disclosed, the trust's real estate agent testified that she could not say whether the information was important, and that disclosure of such conditions is good business practice regardless of materiality. The trial court was free to determine which of these opinions deserved greater weight.

Substantial evidence also supports the trial court's finding that the Andrews were put on notice that water intrusions had occurred by both Alesso's disclosure that there were defects in the roof, and by Abraham's inspection report identifying water damage in the attic and suggesting repair. The existence of water intrusion was a fact that the Andrews could reasonably discover, and did, in fact, discover. Despite their inspector's discovery of a water intrusion and the inspection report's recommendation to repair the area, the Andrews did not display diligence and further investigate. They went forward with the "as is" purchase of the house knowing that water had permeated the roof in the past. Defendants had no duty to disclose a fact "known to, or within the reach of the diligent attention

and observation of the buyer.”” (Assilzadeh, supra, 82 Cal.App.4th at p. 410.)

Either of these findings is substantial evidence sufficient to support the trial court’s judgment. With respect to the Andrews’s claims that require an intent to deceive or a misrepresentation without reasonable grounds for believing the representation to be true, substantial evidence also supports the trial court’s finding that defendants had no reason to believe the leaks might have had lasting consequences. The evidence demonstrated that all the leaks were minor and immediately repaired. None of the witnesses noticed any evidence of termites, mold, wood rot, or problems with the hot water heater. The evidence supports the conclusion that defendants had no reasonable basis to disclose the water intrusions.

### ***Additional Elements Affecting the Burden of Proof***

The Andrews contend that the trial court erred by requiring them to prove the existence of a defect and then prove a causal link between the water intrusion incidents and the defect. Assuming that the trial court erred, reversal is unwarranted because the trial court made multiple dispositive findings that were unaffected by the alleged errors.<sup>11</sup> We affirm the judgment.

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<sup>11</sup> The court’s statement that it “[did] not agree with Plaintiffs’ contention that any water intrusion is *ipso facto* a material defect or requires disclosure” was a direct response

## DISPOSITION

The judgment is affirmed. Defendants Mardean Alesso, the Alesso Family Trust, Donald Kenneth Black, and Steven Edward Black are awarded costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.\*

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to the Andrews's contention in their supplemental post trial brief that it is "the clear and undeniable truth that **water intrusion, regardless of scope, is itself a material defect/condition.**" (Emphasis in original.) By its own language, it is apparent that the trial court's finding was not limited to material defects, but included any basis for requiring disclosure. The common law required the seller to disclose material defects and conditions, so it was not inappropriate to include the term "material defect" with respect to this finding.

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.