

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MICHAEL STANDEFER,

Plaintiff and Appellant,

v.

SUSAN A. BURROWS et al.,

Defendants and Respondents.

A130143, A130412, A130662

(Sonoma County
Super. Ct. No. SCV242641)

After purchasing a commercial property in Santa Rosa in 2006, Michael Standefer learned the property was subject to a local ordinance that required him to incur substantial earthquake retrofitting costs. He sued the seller and the seller's real estate brokers and property manager—as well as his own broker—for failing to make him aware of the ordinance or its possible application to the property. The trial court granted summary judgments in favor of all defendants except Standefer's broker. Standefer appeals from those judgments and from an ensuing award of contractual attorney fees to the seller. We affirm the judgments and fee award.

I. BACKGROUND

A. Facts

In 1991, Ruth Bittman hired Susan Burrows to manage a piece of property in Santa Rosa. The subject property was built in 1928 and consisted of both residential and commercial units. In 2003, Margery Trevororrow also began working for Bittman, performing a variety of tasks. In 2005, Trevororrow became cotrustee with Bittman of Bittman's living trust, which included the Santa Rosa property as an asset. When

Bittman died in February 2006, Trevorrow became the sole trustee and a beneficiary of the trust.

In 1971, the City of Santa Rosa (hereafter the city or Santa Rosa) enacted an ordinance governing the review and retrofit of buildings that might pose a hazard in the event of an earthquake. Originally, the ordinance allowed the city to determine a building did not comply with seismic provisions of the Uniform Building Code of 1955 and to require such compliance. Some years after the adoption of the earthquake retrofit ordinance, the city changed its administrative procedure to provide for a review only when the building owner applied for a change in use or sought a building permit. Apparently, the ordinance was not consistently enforced until 2006.

In 1992, Santa Rosa sent Bittman a “Preliminary Review Report Notice” under the ordinance, but Bittman did not undertake any further review and did not retrofit the property. In approximately 2000, a commercial tenant of the property told Burrows she had learned from city officials that earthquake retrofit work might be required if a permit was pulled for the property. Bittman asked Burrows to determine the cost of any retrofit that might be required, but when Burrows was told contractors would charge for making any retrofit estimate, Bittman told her not to pursue it. Thereafter, Burrows was never advised by any agency that the property was subject to retrofit requirements, even after applying for and obtaining building permits on it.

On May 19, 2006, about three months after Bittman died, Burrows took Trevorrow on a walk-through of the property, at which time she reminded Trevorrow that she had heard from a tenant the property might be subject to earthquake retrofit requirements if a permit was pulled, a conversation Burrows later memorialized. On August 25, 2006, Trevorrow told Burrows she was going to hire Martin Levy to market the property and asked Burrows to give him any “necessary information” about the property. On September 5, 2006, Burrows showed the property to Levy and his associate, Paul Fehrman, and told them an earthquake retrofit might be required if a permit was pulled. The next day, Trevorrow retained Patron Ventures, Inc. (PVI), represented by Levy and Fehrman, as her real estate agents to sell the property. After

Levy signed the listing agreement, Fehrman became the principal contact for the sale of the property.

In the fall of 2006, Fehrman talked to Robert Stender, a tenant of the property, who expressed an interest in purchasing it. During that conversation, Stender asked Fehrman about the effect of the Santa Rosa earthquake retrofit ordinance. Fehrman told him the ordinance required a seismic upgrade only if the buildings were remodeled.

Michael Friedenberg was a licensed real estate broker who had worked in Sonoma County since 1988. He was aware of the earthquake retrofit ordinance and believed its existence was common knowledge in the real estate community. Friedenberg learned the Santa Rosa property was for sale and believed the property would have to be earthquake retrofitted because of its age and because Fehrman told him the property had not been retrofitted. Friedenberg discussed with Fehrman that the ordinance did not mandate retrofit unless the owner was getting a permit for something else.

The asking price for the property was \$1.275 million. Friedenberg's rough estimate of the cost of retrofit was \$250,000, and he told Fehrman the purchase price would have to be reduced accordingly. In light of the estimated retrofit costs, and his conclusion the retrofitted property would be worth \$1.1 million, Friedenberg faxed an offer to Fehrman in the amount of \$850,000 on October 17, 2006. To explain his low offer, Friedenberg wrote on the fax cover sheet: "The biggest issue is the lack of earthquake upgrading which can run as high as \$50 per square foot." Fehrman told Friedenberg there would be no response to his offer because Trevorrow had received a better offer.

Standefer is a retired college teacher who lives in San Carlos. He wanted to purchase the Santa Rosa property as part of an Internal Revenue Code section 1031 like-kind exchange because he had realized a gain of approximately \$500,000 from the sale of a property in Half Moon Bay. Just before submitting his initial offer on October 24, Standefer and his real estate agent, Edward Heinz, met with Fehrman at the Santa Rosa property. During the visit, Standefer asked Fehrman about the quality of the buildings, and Fehrman said "they were in good condition." When Standefer and Heinz asked

Fehrman “if he knew of any conditions of the property that would negatively affect its value,” Fehrman said, “No.” In that meeting, Fehrman did not disclose to Standefer or Heinz any of the information he discussed with or obtained from Burrows, Stender, or Friedenbergl about possible earthquake retrofit requirements or costs.

Standefer submitted an offer on October 24, 2006. The purchase agreement was finalized on October 30, 2006, for a purchase price of \$955,000. Under the agreement, Standefer had through November 16, 2006 to remove the inspection contingency on the property. The purchase agreement provided that the property was being sold in an “as is” condition. The contract included a “NOTE TO BUYER” with the following warning: “You are strongly advised to conduct investigations of the entire Property in order to determine its present condition since *Seller may not be aware of all defects affecting the Property or other factors that you consider important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.*” (Italics added.) The contract gave Standefer the right, based on his inspection of the property’s condition, to cancel the agreement or negotiate with Trevorrow to make or pay for repairs: “Buyer has the right to inspect the Property and . . . based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that you make Repairs or take other action.” Under the agreement, “Buyer’s acceptance of the condition of, *and any other matter affecting the Property,*” was a contingency of the agreement, and Standefer had until November 16, 2006 to complete his inspections and either remove the contingency or cancel the agreement. (Italics added.)

On November 3, 2006, Standefer’s agent was sent the WIN Home Inspection report (WIN report), the Statewide Buyer and Seller Advisory (Advisory), and The Hitmen Termite & Pest Control report (Hitmen report). Standefer read all three disclosure documents, which he acknowledged by signing the documents on November 16, and initialing each page of the Advisory.

The WIN report was a detailed commercial building inspection report that detailed numerous minor issues and problems. A portion of the “Structure” section of the report (hereafter Section 3) contained the following advisement: “This structure pre dates

current building codes and seismic hold down requirements. There may be existing conditions non compliant with current local regulatory agency and structural requirements. Parties of interest should consider contacting appropriate specialists for further information.”¹ Regarding earthquake precautions, the WIN report also indicated its inspection could not measure the adequacy or proper installation of sill-plate anchor bolts it noted were in place on the property, and recommended consultation with an appropriate specialist on that issue.

Standefer spent 45 minutes to an hour reviewing the WIN report with Heinz. Standefer read and understood Section 3, and discussed it with Heinz, who said it was a “boilerplate” statement that would be found in virtually any inspection-type report. Heinz testified he and Standefer discussed Section 3 and were not concerned about it: “It just reinforced that we knew it was a very old building, and there [were] probably many things that were not to code because it was built so many years prior to current building codes.” Standefer admitted he fully understood there was a substantial likelihood the property built in 1928 did not comply with the then current building code as to seismic issues, and also understood he could be required to do something to bring the building into compliance with the law if it was not already in compliance.

The Advisory also warned Standefer about various other potential issues including possible local regulation in earthquake and seismic hazard zones, noncompliance with current building standards, and the possibility future repairs/remodels might trigger local retrofit requirements. It advised buyer and seller to consult with the appropriate agencies, inspectors, or other professionals to determine the retrofit standards that might apply to the property and the costs, if any, of compliance.

The Hitmen report listed places where fungus, weathering, leaks, or moisture intrusion had been observed and identified necessary repairs. It also advised: “Some structures do not comply with building code requirements [This] Report does not

¹ The seismic retrofit work later performed on the property did not include work on “seismic hold-downs.”

contain information on such defects, if any” Standefer spent an hour and a half reviewing the Hitmen report.

Standefer released his physical inspection contingencies on November 15, 2006. The next day, Standefer, Heinz, and an appraiser did a walk-through of the property with Burrows and Fehrman. When Heinz asked Burrows if there were any major repairs or major problems Standefer should know about, Burrows just referred them to the WIN report. She did not mention the earthquake retrofit requirements.

Escrow closed on December 1, 2006. About a week later, a commercial tenant asked Standefer when she would need to move out because of the earthquake retrofitting. Standefer was dumbfounded by this, and immediately called Heinz. Heinz contacted Fehrman who said he had had a “causal conversation” with one of the tenants about a “possible future expense for earthquake retrofit,” but that he “had no way of knowing if indeed a retrofit was necessary.” Standefer contacted the Santa Rosa Building Department, which led to the city’s discovery of the 1992 notice sent to Bittman in its files and her lack of response. In January 2007, the city wrote to Standefer informing him of the 1992 notice and initiating a process of enforcing the retrofit ordinance. The letter stated: “The 100th year anniversary of the 1906 earthquake . . . has renewed interest by the [city] to revitalize the earthquake rehabilitation program, to become more proactive” in ensuring earthquake preparedness. A property appraiser later hired by Standefer found the value of the property on December 1, 2006, was \$475,000 due to the city’s earthquake retrofit requirements.

B. Trial Court Proceedings

Standefer sued (1) Burrows and her dba, Burrows Property Management (BPM); (2) Fehrman, Levy, and PVI; (3) Trevorow (as trustee for the Ruth Bittman Revocable Trust); and (4) Heinz. His revised third amended complaint alleged causes of action for breach of contract and common counts against Trevorow (first and second), breach of oral contract and fiduciary duty against Heinz (third and fourth), breach of third party beneficiary contract against Burrows and BPM (fifth), negligence against Fehrman, PVI, and Heinz (sixth), concealment against Burrows, BPM, Trevorow, Fehrman, Levy, and

PVI (seventh), negligence against Burrows and BPM (eighth), and intentional misrepresentation against Fehrman and PVI (ninth).

All of the defendants eventually moved for summary judgment. The court granted summary judgment to all defendants except Heinz. As to Trevorrow, the court held the information in the WIN report and Advisory satisfied Trevorrow's obligations under the purchase agreement, Standefer was afforded notice of the possibility earthquake retrofitting might be necessary and did not act reasonably in relying on Trevorrow to assume no retrofitting would be necessary, and Trevorrow was not required to advise Standefer about the legal effects of any material fact. Regarding Burrows, the court held Burrows had no duty to advise Standefer about earthquake retrofitting and did not mislead him or cause him damage. Regarding Fehrman, Levy, and PVI, the court held all material facts were disclosed to Standefer, Fehrman's alleged misrepresentation that the property was in good condition was a general statement of opinion, Standefer did not rely on it and knew the property probably did not comply with current law based on his review of the WIN report and the Advisory, and knowledge of the earthquake retrofitting for the property was reasonably discoverable by him.

Following entry of the ensuing judgments, Standefer timely appealed from the judgments entered in favor of Trevorrow and Burrows (case No. A130143), and in favor of Fehrman, Levy, and PVI (case No. A130412). Standefer filed a separate, timely notice of appeal from a postjudgment attorney fee award to Trevorrow (case No. A130662). We granted Standefer's motion to consolidate the appeals for purposes of briefing, argument, and decision.

II. DISCUSSION

Standefer contends there was no basis for the trial court to conclude as a matter of law the various disclosure documents satisfied the defendants' duty of disclosure or rendered Standefer's reliance on the defendants' incomplete, misleading statements unreasonable, or that Burrows had no duty of disclosure.

A. Standard of Review

On appeal from the granting of summary judgment, “ ‘ “ [w]e review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.’ ” We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.’ ” (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.)

Upon the granting of summary judgment in favor of a defendant, “ ‘ “we [first] identify the issues framed by the pleadings [Citations.] [¶] Secondly, we determine whether the moving party’s showing has established facts which negate the opponent’s claim and justify a judgment in movant’s favor. [Citations.] . . . [¶] . . . [T]he third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue.” ’ ” (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 848.)

B. Fehrman, Levy, and PVI

Because Standefer’s claims against defendants Levy and PVI derive entirely from their relationship to Fehrman, we focus on the viability of Standefer’s allegations and causes of action against Fehrman.

Standefer’s three causes of action against Fehrman—negligence, concealment, and intentional misrepresentation— all focus on two statements Fehrman made during his meeting with Standefer and Heinz at the Santa Rosa property just before Standefer submitted his original offer on October 24: (1) Fehrman’s statement in response to Standefer’s question as to the quality of the buildings that “they were in good condition,” and (2) Fehrman’s answer of “no” to Heinz’s question whether he “knew of any conditions of the property that would negatively affect its value.” Standefer alleges the statements were false, Fehrman knew or should have known they were false, and he relied on these statements in purchasing the property for a price in excess of its fair market value. According to Standefer, Fehrman would have fulfilled his duty of disclosure if he had told him “there was a local ordinance that might require the property to be earthquake retrofitted if a permit was pulled.”

The parties agree a seller’s real estate broker has a duty to disclose to the buyer “ ‘facts materially affecting the value or desirability of the property which are known or accessible only to him [when he] . . . knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer.’ ” (*Holmes v. Sumner* (2010) 188 Cal.App.4th 1510, 1518–1519 (*Holmes*); *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735 (*Lingsch*)). The duty of disclosure extends beyond physical defects in the property: “[R]eal estate agents or brokers have been held to have a duty to disclose matters that do not pertain to physical defects, but otherwise affect the desirability of the purchase. (See, e.g., *Alexander v. McKnight* (1992) 7 Cal.App.4th 973 [duty to disclose neighborhood nuisance]; *Reed v. King* (1983) 145 Cal.App.3d 261 [duty to disclose murders on the property]; [*Lingsch*,] at p. 737 [duty to disclose improvements that were constructed in violation of building codes or zoning regulations].)” (*Holmes*, at p. 1520.)

Fehrman maintains the existence of a potentially applicable local law that would require retrofitting is not a material fact subject to the disclosure rule stated in *Lingsch* and *Holmes*. We agree. The Court of Appeal in *Sweat v. Hollister* (1995) 37 Cal.App.4th 603 (*Sweat*), disapproved on other grounds in *Santisas v. Goodin* (1998) 17 Cal.4th 599, 609, footnote 5, addressed a closely analogous situation. *Sweat* arose from a suit by real estate purchasers against the sellers and their agents alleging negligence and misrepresentation based on a disclosure document stating there existed no “ ‘nonconforming use’ ” relative to the property. (*Id.* at p. 606.) The disclosure document revealed the property was in a designated floodplain. (*Ibid.*) Buyers asserted sellers and their agents were liable for failing to disclose that because of the floodplain designation, the local municipal code would prevent the property from being altered or enlarged in the event of destruction by fire or other calamity, which plaintiffs claimed materially reduced its value. (*Id.* at pp. 606–608.) The Court of Appeal found this created no triable issue of material fact: “The *factual* matter leading to the alleged defect in the house—that it was in a floodplain—was revealed to the plaintiffs. *The legal and practical effects of this state of affairs do not rise to the status of a fact—they are*

conclusions as to value resulting from the fact of situs in a flood plain. The existence and effect of city ordinances regulating rebuilding or improvement of a house in a floodplain constitute information as readily available to the plaintiffs as to the defendants.

Actionable nondisclosure relates to facts not discoverable by the plaintiffs.” (*Id.* at p. 608, italics added.)

We agree with *Sweat*’s analysis and find it to be directly on point in the factual scenario presented here.² The existence of the Santa Rosa earthquake retrofit ordinance and its potential applicability to the property in issue was fully discoverable by Standefer and his agent. Indeed, as Standefer acknowledges, the ordinance’s existence was common knowledge in the local real estate community.³ Standefer admitted in his deposition he also fully understood there was a substantial likelihood the 1928 property would not comply with current building code standards as to seismic issues. The potential or probable application of the retrofit ordinance was therefore no more than a “legal and practical effect[.]” of a fact disclosed to and known by Standefer—the age of the property’s structures. (*Sweat, supra*, 37 Cal.App.4th at p. 608.)

Standefer tries to distinguish *Sweat* on the grounds the seller in that case disclosed the “primary fact”—the house was in a floodplain—which allowed the buyers to determine the legal consequences of that fact. Standefer also points out *Sweat* recognized required factual disclosures could include legal facts concerning a property—such as a determination the structure was in violation of building codes or zoning ordinances, or the fact it had been condemned. (*Sweat, supra*, 37 Cal.App.4th at p. 608.) But, as the court also observed, if a buyer was accurately informed as to the zoning of the property, the seller need not advise the buyer about any detrimental effect of that zoning. (*Id.* at p. 609.) The court stated: “The legal ramifications of the factual nature of realty,

² *Sweat* involved the purchase of a residence. In a commercial transaction such as that in issue here, the seller’s broker has, if anything, a *lesser* duty of disclosure to the buyer than in a residential transaction. (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 876–877 (*Blickman*); *Easton v. Strassburger* (1984) 152 Cal.App.3d 90, 102, fn. 8.)

³ Heinz’s realty office was in Petaluma.

however, and a conclusion as to how they may adversely impact value, is not a ‘fact’ subject to required disclosure. . . . It is not the obligation of the seller to research local land-use ordinances and advise a buyer as to their effect on the realty.” (*Ibid.*)

Standefer’s attempt to distinguish *Sweat* fails. The possible future application of the Santa Rosa retrofit ordinance is not a fact about the property comparable to how the property is zoned. It is not equivalent to an official determination the property was in violation of an ordinance or zoning code, or to the actual pendency of legal proceedings against it—the types of facts found to be subject to disclosure in the case law cited in *Sweat*. Here, the ordinance’s application is a “legal ramification” or “legal and practical effect” of the disclosed and obvious fact the property was built many years before seismic standards were developed. (*Sweat, supra*, 37 Cal.App.4th at pp. 608, 609.)

Standefer further contends Fehrman had a duty of disclosure based on his assertedly partial disclosures the buildings were in “good condition” and he knew of no “conditions of the property” that would negatively affect the property’s value. “Deceit” under California law includes “[t]he suppression of a fact, by one who . . . gives information of other facts which are likely to mislead for want of communication of that fact.” (Civ. Code, § 1710, subd. 3.) “‘[A]lthough one may be under no duty to speak as to a matter, ‘if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells but also not to suppress or conceal any facts within his knowledge which materially qualify those stated. If he speaks at all he must make a full and fair disclosure.’” (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 613 (*Marketing West*)). Thus, Standefer must show there is a triable issue of material fact as to whether the disclosures in issue were likely to mislead him as to whether the property could require earthquake retrofit work if it came to the attention of the city.

We find no such nexus. There is no evidence that as a result of these very generic statements Standefer could have reasonably assumed the property had been earthquake retrofitted. There is equally no basis for Standefer to assume from Fehrman’s responses that he did not need to check for local ordinances that might require retrofitting for a

nearly 80-year-old building.⁴ (Cf. *McCue v. Bruce Enterprises, Inc.* (1964) 228 Cal.App.2d 21, 28 [misleading representation that properties were “ ‘on city utilities’ ” implied there was no need to inspect the construction plans to determine if they were connected to the city sewer system].) The statements in issue made no representations, express or implied, about earthquake retrofitting done or not done on the property, or about the existence or nonexistence of any law. Based on Fehrman’s statements, Standefer would only have been justified in assuming the property had no latent or unobservable defects or conditions not otherwise disclosed to him. (See *Lingsch, supra*, 213 Cal.App.2d at p. 742 [“as is” purchase means the buyer takes the property in the condition visible to or observable by him].) The lack of earthquake retrofitting was neither a defect in the property nor was it an unobservable fact. The existence of the retrofit law was a matter of public record, and was not a fact Fehrman could have concealed from Standefer. (*Sweat, supra*, 37 Cal.App.4th at p. 608 [existence of city ordinances potentially applicable to property constitutes information as readily available to buyers as sellers].) Standefer fails to cite any cases which he contends applied the partial disclosure doctrine in factually analogous circumstances.

Standefer’s intentional fraud cause of action against Fehrman based on the same facts also fails. Fehrman’s statements do not falsely represent the property had been earthquake retrofitted in compliance with current standards, nor that Fehrman knew of no earthquake retrofit ordinance applicable to it. As discussed, both the state of the property and the state of the law regarding earthquake retrofitting were readily discoverable by Standefer. In fact, he admitted he understood the 1928 buildings on the property would most likely not be in compliance with current building codes generally, or with seismic

⁴ In fact, the Advisory that Standefer and his agent received specifically warned him the building might not be in compliance with current building standards, future work on the property might trigger local retrofit requirements, and he should consult with agencies or professionals to determine what retrofit standards might apply to the property. Standefer testified at his deposition he understood (1) there was a substantial likelihood the property did not comply with the building code as it relates to seismic issues and (2) he could be required to bring it into compliance.

standards in particular, and he admitted knowing he might be required to bring the property into compliance. There is no requirement in law that the seller's broker in a commercial property sale spell out to the buyer everything he or the seller might know that could possibly affect the buyer's evaluation of the purchase. And it strains credulity to believe a buyer represented by his own agent in such a transaction would—in lieu of conducting his own inspection and investigation—rely on a generic statement by the seller's broker that he knew of no conditions of the property adversely affecting its value.

Standefer relies on *Jue v. Smiser* (1994) 23 Cal.App.4th 312 for the proposition that his receipt of disclosure statements after signing the purchase agreement is irrelevant because he would have been allowed under *Jue* to close escrow and sue for damages even if those documents had put him on notice of the true facts. We do not find *Jue* persuasive here. Standefer's purchase agreement was specifically made contingent on his examination of written disclosure reports and independent investigation of the property. In *Jue*, it was critical that no investigation by the buyers of the representation in issue—that Julia Morgan had designed the house—was contemplated when the contract was signed. (*Id.* at p. 318, fn. 6.) Moreover, the buyers in *Jue* were unable to confirm the seller's representation was false before escrow closed and had an “extraordinarily short” amount of time, a couple of days, to decide whether to go through with the purchase agreement after learning of the *possible* fraud. (*Id.* at p. 319.) Here, Standefer received the disclosure documents two weeks before escrow closed, and had an agreed period of 17 days to conduct his own investigation. Standefer's decision not to hire his own experts or conduct his own thorough investigation of the property cannot be laid at defendants' door.

In our view, Standefer failed to demonstrate the existence of triable issues of material fact with respect to any of his causes of action against Fehrman, Levy, and PVI.

C. *Burrows and BPM*

Standefer does not contest the court's ruling with respect to his fifth cause of action against Burrows and her dba, BPM, for breach of a third party beneficiary

contract. We focus on the viability of Standefer's causes of action against Burrows for concealment and negligence.

Standefer alleges that during his walk-through of the property with Burrows on November 16, 2006, he asked her whether there was any deferred maintenance at the property, and Burrows replied the property was in good condition, there was no deferred maintenance, and Ms. Bittman always kept the property in a good state of repair.⁵ Standefer alleges these statements were false, and further alleges Burrows never informed him or Heinz the property was subject to the Santa Rosa earthquake retrofit ordinance, which made her statements also misleading. In his negligence cause of action, Standefer alleges Burrows was negligent in making these statements because she knew or should have known the statements were false and likely to mislead him. In his appeal, Standefer also relies on Burrows's asserted response to Heinz's question during the walk-through as to whether there were any "major repairs" or "major problems" he and Standefer should know about. According to Standefer, Burrows referred to some loose toilets and electrical problems and then referred them to the WIN report, without disclosing what she knew about the earthquake retrofit issue.

The parties agree Burrows—who was not the seller's broker or the seller—had no duty of disclosure toward Standefer unless she had knowledge of facts that materially qualified the disclosures she allegedly made in response to Standefer and Heinz's inquiries. (See *Marketing West, supra*, 6 Cal.App.4th at p. 613.) In our view, the only duty that arguably arose from Burrows's limited interaction with Standefer and Heinz—assuming she made the statements alleged—was the duty to disclose any latent defects or conditions of which she might have been aware that she knew were not disclosed in the WIN report or other disclosure documents, or by Fehrman or Trevorrow. Burrows had no such knowledge and no duty of disclosure.

Burrows's knowledge of the retrofit ordinance was limited to a tenant's statement to her in 2000 that a city official told the tenant earthquake retrofit work might be

⁵ Burrows denies making the statements alleged.

required if a permit was pulled for the property. However, Burrows also knew she had heard nothing about retrofit requirements after applying for and obtaining building permits from the city. Santa Rosa's letter to Standefer in 2007 indicates the city made a decision to revitalize the earthquake retrofit program in 2006.

Burrows's role on November 16 was to provide access to the units so Standefer and Heinz could perform their own visual inspection of the property. Heinz testified in deposition, "[W]e didn't have a lot of conversation with [Burrows]." Standefer testified he perceived Burrows as being evasive when she told him in the first apartment they walked into that the apartment units were in good condition and did not have any deferred maintenance. He found Burrows's statement about deferred maintenance to be inaccurate at the time, based on his own observations of the apartments. After the walk-through, Heinz and Standefer discussed their belief Burrows's answers at the walk-through were evasive, and she had been unfriendly and uncooperative.

Burrows made no representations to Standefer about earthquake retrofitting or the property's compliance with seismic standards. Her representations, as alleged, concerned the physical condition and maintenance of the buildings. Whether the buildings were or were not in compliance with the earthquake retrofit ordinance is not an issue of deferred maintenance, repair, or physical condition. Even as to those distinct issues, rather than invite Standefer to rely on her statements, Burrows directed Standefer to the inspection and disclosure reports, which expressly disclosed among other things the buildings might not be in compliance with "current building codes and seismic hold down requirements" and might have "conditions non compliant with current local regulatory agency and structural requirements." Standefer testified he understood the property would likely not comply with building codes as to seismic issues, and he could be required to do something to bring it into compliance. Burrows knew nothing more than that. Further, by his own admission, Standefer did not find Burrows to be credible when it came to the condition of the property, nor did his agent. Given all of these facts, Standefer cannot show Burrows's alleged statements could have materially misled him about any relevant fact.

At bottom, Standefer complains Burrows did not alert him to the existence of a Santa Rosa retrofit ordinance. But the existence and possible application of that ordinance were not material facts requiring disclosure. That information was accessible to Standefer and his agent, and Burrows said nothing that would have reasonably led them to conclude no actual investigation of possible earthquake building or retrofit standards was necessary.

We find no triable issue of material fact as to Standefer's concealment and negligence claims against Burrows and BPM.

D. *Trevorrow/Fee Award*

Standefer alleged three causes of action against Trevorrow—breach of contract, common counts, and concealment. The breach of contract claim is based on provisions of the purchase and sale agreement imposing a duty on the seller prior to the close of escrow to “DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property . . . AND MAKE OTHER DISCLOSURES REQUIRED BY LAW,” and to correct any “material inaccurac[ies]” in information previously provided to the seller. The common count cause of action for moneys owed to Standefer is dependent on the breach of contract claim and stands or falls with it. The concealment cause of action against Trevorrow is based on her alleged liability for the statements and nondisclosures of Fehrman and Burrows, who Standefer alleges were her agents.

With regard to the concealment claim, since we have found no triable issues of material fact with respect to the liabilities of Fehrman and Burrows for their conduct, summary adjudication of Standefer's concealment cause of action against Trevorrow was also properly granted.

There is also no triable issue of material fact with respect to Standefer's breach of contract claim. Standefer makes no claim Trevorrow contractually assumed any greater duty of disclosure than sellers have generally at common law—the conditional duty to disclose “facts materially affecting the value or desirability of the property which are known or accessible only to [the seller]” *if* the seller “also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer.”

(*Lingsch, supra*, 213 Cal.App.2d at p. 735.) As discussed earlier, the existence of a potentially applicable local law that would require retrofitting is not a material fact subject to the foregoing disclosure rule. (*Sweat, supra*, 37 Cal.App.4th at p. 608.) Such information is readily discoverable by the buyer, especially one purchasing a commercial property and represented by his own agent. (*Ibid.*; see *Blickman, supra*, 162 Cal.App.4th at pp. 876–877.) In any event, the various disclosure documents provided to Standefer—the WIN report, the Hitmen report, and the Advisory—disclosed the 80-year-old property might not meet current building standards, including seismic standards, and might be subject to local retrofit requirements if work were performed on it. Standefer admitted he understood the building might not comply with applicable seismic building standards and he could be required to do something to bring it into compliance. Trevorrow was under no duty, contractual or otherwise, to inform Standefer that Santa Rosa actually had such an ordinance.

Standefer acknowledges Trevorrow was entitled to a contractual attorney fee award if the summary judgment in her favor is affirmed. We therefore affirm the fee award as well as the judgment in Trevorrow’s favor.

III. DISPOSITION

The judgments in favor of Fehrman, Levy, PVI, Burrows, BPM, and Trevorrow, and the attorney fee award to Trevorrow, are affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Banke, J.