

2. Plaintiff purchased residential real estate and improvements located at 6508 Brazos Bend, North Richland Hills, Texas (the “Property”) from Bloxom Construction, Inc. d/b/a Lego Custom Homes (hereinafter called “Lego Custom Homes”) in December, 2002.
3. The Debtors, Joey Bloxom and Jana Bloxom, were the sole shareholders, directors, and officers of Lego Custom Homes. The Debtors owned and controlled Lego Custom Homes.
4. The Debtors built the Property through Lego Custom Homes.
5. The Debtors obtained the foundation design for the Property from Nortex Foundation Engineers. The Debtors poured the foundation in June, 2001. The foundation was inspected before it was poured by the City of North Richland Hills, Texas (the “City”). The foundation was not inspected by the City or Nortex Foundation Engineers between the time it was poured and the time that carpet and tile were laid covering the foundation. The framing of the slab, installation of the drywall, and laying of the carpet and tile occurred in January, 2002, long after the pouring of the foundation.
6. In the Fall of 2001, before carpet, tile, or other materials were laid on the floor, Brad Barron and Charles Rogers inspected the Property. At the time of their inspection, which was informal, they found that the foundation was cracked in three places, one running from the garage into the living room, and two other places on the ground. The cracks were at that time between one-eighth (1/8) of an inch and one-fourth (1/4) of an inch wide.
7. Joey Bloxom, one of the Debtors, was in and around the Property regularly, on a daily basis, between the time that Mr. Baron and Mr. Rogers inspected the Property and the

time of Plaintiff's purchase of the Property.

8. The cracks existed in the foundation in the Fall of 2001, at the time of Mr. Barron's and Mr. Rogers' inspection of the Property, before the foundation was covered with carpet, tile, and other materials and before Plaintiff's purchase of the Property.
9. Joey Bloxom would have known that those foundation cracks existed and would have observed them before they were covered with tile, carpet, and other materials.
10. Jana Bloxom, although less often in contact with the property, also would have had an opportunity to observe the foundation cracks and would have known that they existed before the cracks were covered with carpet, tile, and other materials.
11. Joey Bloxom testified and the Court finds that if he had known of the cracks, which the Court finds he and Jana Bloxom did, that they were obligated to disclose those cracks to the Plaintiff before her purchase of the Property.
12. The cracks were not disclosed to Plaintiff in this case before her purchase of the Property.
13. The Plaintiff would not have purchased the Property if she had known of the cracks.
14. Joey Bloxom testified and the Court finds that the failure to disclose the cracks constituted a material misrepresentation of fact.
15. The Plaintiff purchased the Property in reasonable reliance upon the Debtors' material misrepresentation.
16. The Debtors obtained money through the sale of the Property to the Plaintiff by reason of a payment of their guarantee.
17. The Plaintiff has been damaged from the Debtors' material misrepresentation in the amount of \$23,940.00 for the reasonable cost of necessary repairs to the foundation,

\$19,092.00 for the reasonable cost for necessary repairs to the structure, \$12,500.00 for the reduced market value of the Property following repairs due to the foundation defects, and \$30,000 for reasonable fees and other items of damage for a total of \$85,532.00.

18. The Court finds no damages for mental anguish.

CONCLUSIONS OF LAW

1. The Court will render Judgment in favor of the Plaintiff and against the Debtors, jointly and severally, in the amount of \$85,532.00, to bear interest at the federal rate from entry until such time as it is satisfied.
2. The Judgment shall constitute a debt which is not dischargeable in this bankruptcy case under Section 532(a)(2) for money, property, services, or an extension, renewal, or refinancing of credit obtained by the false pretenses and false representations of Joey Bloxom and Jana Bloxom, the Debtors in this bankruptcy case.
3. The Court will not award a mental anguish claim, which sounds like a personal injury claim. There is substantial authority that where it is not an independent tort, but is a corollary to other torts, that the Bankruptcy Court notwithstanding Section 157(2)(d) and 157(5) of Title 28 could not hear the claims.

###End of Findings and Conclusions###

Agreed to as to form:

/s/ John S. Jose

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CERTIFICATE OF SERVICE

I, Shawn K. Brown, do hereby certify that on the _____ day of _____, 2004, a true and correct copy of the above and foregoing Findings of Fact and Conclusions of Law has been provided to Ronald H. Traver, 307 W. 7th Street, Suite 1800, Fort Worth, TX 76102, Attorney for Defendants, by facsimile and first class, United States mail, postage prepaid, as applicable:

Shawn K. Brown