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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Maynard, Justice, dissenting, in part, and concurring, in part:

I agree with the majority that a lender creates a special relationship with a borrower when the lender maintains oversight of, or intervenes in, the construction process. I also agree with the majority that once a special relationship is created, the lender must disclose to the borrower any information that would be critical to the integrity of the construction project. However, I do not believe that under the facts of this case, the bank created the requisite special relationship with the Glascocks which necessitated disclosure of the bank's second inspection report. Consequently, I concur, in part, and dissent, in part, to the majority opinion.

Initially, I note that the majority opinion details at least eight independent inspections which the Glascocks instituted. The bank's second inspection, performed by Robert Lemon, was completed after the Glascocks' third inspection was completed by Structural Concepts. The Glascocks had five inspections performed following the bank's second and final inspection. It appears to me that the Glascocks certainly should have had the same information available to them independent of the bank's report. In fact, the bank's second

inspection was completed in October 1995. The Glascocks had inspections performed in November 1995 and in December 1995.

There is no evidence presented in this case that would lead to a conclusion that the Glascocks had an agreement with the bank whereby they would rely on the bank's structural inspections to uncover defects in the construction of the house. In fact, the Glascocks signed a document which stated, "Inspections required with respect to this loan are solely for the bank's benefit; borrowers shall receive no comfort or rights with respect to such inspections or bank's evaluation thereof."

Under these circumstances, I simply cannot find that a special relationship exists between the Glascocks and the bank. I believe the circuit court properly granted summary judgment to the bank.