Legally Speaking

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Limited Duty of Care in Limited Dual Agency

There have been numerous articles on the legal concept of limited dual agency. Recent decisions of BC courts provide interesting judicial comment on the subject.

What is evident from the cases is that buyers and sellers entering into Limited Dual Agency Agreements (LDAA) still rely on REALTORS® to fully protect their interests. While courts in other jurisdictions have considered the existence of the limited dual agency relationship to impose an even higher duty on the REALTOR® acting for both parties in the transaction, BC courts recognize the duty of care owed by a REALTOR® in that relationship is limited.

In a 2006 Provincial Court decision, a buyer sued the REALTOR® acting as a limited dual agent for failing to properly protect his interests. The transaction involved the sale of a unit in a condominium complex. The strata council minutes indicated the building had problems with windows. After the buyer purchased his unit, a large special assessment was passed. The buyer complained that he relied on the REALTOR® to read the minutes and strata documentation, and to inform the buyer of any "important information." The court found the buyer's reliance on the REALTOR® was unreasonable as the REALTOR®, in acting for both the seller and the buyer, was simply a conduit of information between the parties without truly representing either party.[1]

In a later Provincial Court decision the buyer sued the REALTOR®, acting as a limited dual agent, for breach of contract, breach of fiduciary duty and/or negligence in failing to discover and disclose the difference between the water system approved by the original Conditional Water Licence in 1980, and the water system that existed at the time of the sale. In determining the liability of the REALTOR®, the court followed its earlier decision and commented as follows:

> [The purchasers] laboured under the belief that the agent had a duty to investigate on their behalf the land being sold. No authority was provided for this proposition. The authorities go the other way. In British Columbia, a limited dual agent is little more than a conduit of information.[2]

In a decision rendered earlier this year, the Provincial Court again reiterated this position. The case involved a claim by a seller, against a defaulting buyer, who in turn asserted a claim against the REALTOR® due to the dual agency relationship. Again, as in the decisions referred to above, the buyer purported to "totally" rely on the REALTOR® to assist him in

his purchase.

The judge quoted directly from the wording in the *Working With a REALTOR®* brochure, which describes the limitations on the duty owed by a REALTOR® in a limited dual agency position, in explaining why the REALTOR® acting in that capacity was simply a "go-between" or a "conduit."[3]

The BC Supreme Court has similarly upheld the wording of the LDAA as limiting the duty imposed upon a dual agent.[4]

It should be comforting to REALTORS® to hear that the LDAA is accomplishing its objective of protecting REALTORS® acting for both parties. However, it goes without saying that liability will depend upon whether the parties have given *informed* consent to the REALTOR® acting as dual agent, and whether the court considers, on the facts, that the REALTOR® fulfilled his or her duties under the LDAA.

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1. *Merry v. Re/Max Sabre Realty Group*, Unreported April 19, 2006, Provincial Court of BC Action No. C5174, Port Coquitlam Registry.
2. *Siemens v. Willis et al.*, Unreported September 29, 2006, Provincial Court of BC Action No. 36093, Kamloops Registry.
3. *Allan v. Daser et al.*, Unreported April 9, 2008, Provincial Court of BC Action No. 20080409, Surrey Registry.
4. *Summit Staging Ltd. v. 596373 B.C. Ltd.* [2008] B.C. J. No. 262 (S.C.).

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