

Citation:

Date:

File No: 2000-58570
Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Civil Division)

BETWEEN:

SUN YOUNG KIM

CLAIMANT

AND:

STEVE LEE and REGENT PARK FAIR CHILD REALTY INC.

DEFENDANTS



**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R. GALLAGHER**

Appearing in person:

Sun Young Kim

Counsel for the Defendants:

L. Howatt

Place of Hearing:

Vancouver, B.C.

Date of Hearing:

October 18, 2000 and January 24, 2001

Date of Judgment:

January 24, 2001

THE CLAIMANT

[1] The Claimant, Sun Young Kim, describes herself as a new person in Canada. She does not speak English. Her husband lives in Korea. Mrs. Kim has come to court, with an interpreter, because she was involved in the purchase of a condominium which did not work out. Mrs. Kim says she believed her realtor and signed the contract even though she did not understand the terms of it. She says she did not understand that the contract was subject to her husband's approval. Mrs. Kim says that she believes the contract did not work out because of racial discrimination. She feels that it is racial discrimination to not let a family move into a condominium because of the age of one of the family members. Mrs. Kim says her realtor should have known about the age restriction and should have advised her of that prior to her signing the contract. Mrs. Kim says that her realtor has never acknowledged his mistake and she is suing her realtor for the following costs:

Appraisal fee (by Mr. Steve Lee)	\$ 304.95
Appraisal fee (by the Bank)	\$ 150.00
Notary Public Fee	\$ 154.16
Lawyer's Fee	\$ 892.72
Mr. Kim's Air Ticket	\$1,200.00
Filing Fees	\$ 100.00
Service Fees	\$ 80.00
TOTAL	<u>\$2,881.83</u>

THE DEFENDANTS

[2] The Defendants, Mr. Lee and Regent Park Fairchild Realty Inc., say that the allegations are in negligence for failing to notify the Claimant of an age restriction in the

bylaws for the strata property located at 1201-5425 Yew Street, Vancouver, BC (the Property), and for failure to act in the Claimant's best interests.

FACTS

[3] The Claimant was looking for a property to purchase where she would live with her two daughters, one aged nine years old. Her husband resides in Korea. Mr. Lee assisted the Claimant as the Buyer's Agent.

[4] Mr. Lee obtained information on properties for sale that appeared suitable for the Claimant. He obtained written information about the Property from the Multiple Listing Service (Tab 1, Exhibit 5) and provided this to the Claimant. Under the section for "Condo Information," "Occupancy Influences," it indicated "Pets Not Allowed, Rentals Not Allowed." During one of the pre-offer showings of the Subject Property to the Claimant and her daughter, Mr. Lee asked the listing salesman, John McIntyre, if there were restrictions and was advised that there were restrictions for pets and rentals.

[5] The Claimant wrote an offer to purchase the Property on October 19, 1999 (Exhibit 5, Tab 2). It was subject to approval of the purchase by Mr. Kim Kun Il, the Claimant's husband, on or before October 29, 1999. Mr. Kim arrived in Vancouver on October 26, 1999. Mr. Lee attended the Property with Mr. Kim and an inspector. Mr. Lee obtained the by-laws and financial statements from Mr. McIntyre during this inspection, and provided them to Mr. Kim. Mr. Kim took the by-laws (Exhibit 6) with him overnight. He returned the by-laws to Mr. Lee the next day and, on October 28, 1999, the Claimant removed the subject clauses (Tab 3, Exhibit 5).

[6] After subject clauses were removed, Mr. McIntyre contacted Mr. Lee to advise him that the Strata Council was taking the position that the Claimant's nine year old daughter could not live in the Property as the bylaws restricted occupants to over sixteen. Mr. Lee advised the Claimant of this and requested a written ruling from the Strata Council (Tab 4, Exhibit 5).

[7] The only reference in the bylaws to age is in a heading before section 1. It says "A Strata Corporation oriented to adults over the age of sixteen years."

[8] The Claimant obtained legal advice from a lawyer, Mr. Jay Munsie. In a letter dated November 16, 1999, he advised the Claimant that "the reference contained in the bylaws may not be enforceable as not being an actual bylaw, but rather a recital of the strata corporation's intention" (Tab 7, Exhibit 5).

[9] The Claimant decided not to proceed with the purchase and her deposit of \$15,000 was returned to her. The Claimant and the seller signed a "Cancellation of Interim Agreement" in which they released each other (Tab 6, Exhibit 5).

DISCUSSION

NEGLIGENCE

[10] In order to succeed in a claim in negligence, the Claimant must establish the following elements:

- a) Duty of Care; and
- b) There has been a breach of the duty in that the Defendant has failed to comply with the standard of care required of him; and
- c) Damage has been suffered by the Claimant which is causally connected with the breach of duty to take care.

From *Riddell v. Reid*, [1943] A.C. (H.L.) at p.31 as referred to in Professional Liability in Canada, Campion, John and Dimmer, Diana (Toronto: Carswell Thomson Professional Publishing, 1994).

[11] As Buyer's Agent, Mr. Lee owed the Claimant a duty of care.

STANDARD OF CARE

[12] In order to prove her case, the Claimant must show that Mr. Lee fell below the standard of practice of a reasonably prudent real estate agent in performing his duty of care (*Haag v. Marshall* (1989), 61 D.L.R. (4th) 371 at 382 (BCCA)).

[13] In order to do that, the Claimant needed to provide some evidence of what the standard of care is that Mr. Lee had to follow (*Snijders et al v. Morgan et al*, (Unreported), October 9, 1996, Supreme Court of British Columbia, Action No. 4747, Nelson Registry). One way of doing that would have been to bring an expert in the real estate profession to court to explain what the standard of care would be in the particular circumstances. Mrs. Kim did not bring any witnesses to court.

[14] There is no evidence of the standard of care that a person, such as Mr. Lee, engaged in the business of listing and selling real estate should follow with respect to his failing to notify the Claimant of a possible age restriction in the bylaws for the Property. This evidence is an important part of the case (*Mileos v. Block Bros. Realty Ltd. et al*, (Unreported), September 30, 1994, Supreme Court of British Columbia, Action No. C913338, Vancouver Registry).

[15] Without this evidence, it is not possible to decide if Mr. Lee's actions fell below a reasonable standard of care.

CAUSATION

[16] When purchasers are given information on a property, it is their responsibility to review it carefully, and it is not reasonable for them to rely on others in those circumstances (*Manita Investments Ltd. v. T.T.D. Management Services Ltd, et al* (Unreported), October 6, 1997, S.C.B.C. Action No. 96-0096, Victoria Registry).

[17] I know that Mr. Lee obtained listing information and made a direct inquiry of the listing salesman about restrictions before the Claimant made an offer. There was nothing in this information to alert him to a potential age restriction.

[18] I also know that the Claimant was given the by-laws before subject removal. Her husband, who could read and speak English, took the by-laws home with him overnight, presumably to read them. Mr. Kim then returned the by-laws to Mr. Lee and instructed Mr. Lee to remove the subject clauses. Neither Mr. Kim nor his wife ever asked Mr. Lee to review the by-laws for them. Had Mr. and Mrs. Kim carefully reviewed the bylaws, in particular the heading "a strata corporation oriented to adults over the age of 16" a question would have arisen with respect to whether there was an age restriction. It would have been reasonable for the Kims to have made further inquiries to satisfy themselves with respect to the age restriction.

[19] Furthermore, it is not known whether there was a valid age restriction by-law. This is not known because after receiving a legal opinion on the point, the Claimant chose not to proceed with the matter with the strata. Instead, the Claimant chose not to proceed with the sale.

DECISION

[20] The Claimant says this is a case of not understanding what she has signed. In legal terms this translates into a plea of *non est factum*. There has been no evidence presented to establish a plea of *non est factum*. This is a case where the general rule of law applies. A person is bound by the terms of any contract that he/she signs. This is so even though the signer did not read the document or did not understand its contents. Based on the new information from the strata, the Claimant then chose not to proceed with the purchase of the condominium and her deposit was refunded to her.

[21] This is a case of negligence. The onus of proof is on the Claimant to establish all elements of negligence. There is no evidence before this Court that establishes that Mr. Lee's actions fell below those of a reasonably prudent realtor in the circumstances. There is no evidence to establish that a reasonably prudent realtor would have conducted himself any differently than Mr. Lee.

[22] Based on all of the evidence, the Claimant's case is dismissed as the Claimant has not established that Mr. Lee breached a duty in that he failed to comply with the standard of care required. Furthermore, in this case, any damages that were incurred after subject removal were caused by the Claimant's own failure to carefully review the bylaws.

[23] Each party will bear their own costs.


R. Gallagher
Provincial Court Judge