



## Negligent Misrepresentation:

# Realtors and Owners: Be Careful What You Say and Do. You May End up Being Liable

In *Issa v. Jarrah*, 2019 ONSC 6744, a 26-year-old inexperienced first-time homebuyer was attempting to buy a home for his six-member family of his parents and three sisters. It was especially important to him that his new home should be able to accommodate his entire family, so he was looking for a larger home with a minimum size of at least 2,000 square feet.

After many unsuccessful offers on large properties, one day back in April 2017 his realtor recommended he visit a house in Stouffville, Ontario that had just come on the market. The MLS Listing stated the house was in the size range he was looking for, 2000-2500 square feet. At his first visit, the owner who was there as was the selling agent who also happened to be acting for this novice buyer. The agent confirmed that the size of the house was, as stated in the MLS listing, about 2,100 feet. After paying another visit, this time with his whole family, who all thought the house small, the buyer was nevertheless satisfied and proceeded to buy the house. A couple of months later, however, a mortgage appraisal revealed the house was actually smaller, just 1,500 square feet. As a result, the buyer refused to honour the agreement of purchase and sale, demanded rescission with return of the deposit and sued the seller along with the realtor.

At trial, the judge agreed with the buyer and found that his real estate agent, who had also acted for the seller, had been negligent in stating in the MLS listing that the house was in the range of 2,000-2,500 square feet. The agent had not measured the house himself and had instead relied on an earlier listing from 12 years ago. His representation as to the house's size constituted negligent misrepresentation despite there being a clause in the purchase agreement stating that any representation or statements outside of the contract did not affect its validity or enforceability. In this case, the remedy for negligent misrepresentation is rescission and return of the deposit with accrued interest, which was duly awarded to the purchaser.

The realtor appealed the judgment, arguing that as the buyer had inspected the property on two occasions, he had been made aware of the actual square footage of the house and was not entitled to rely on the MLS listing where the size of the house was misstated. The appellate court disagreed with the broker and instead upheld the judgment of the trial court. In what is welcome news for would-be first-time home buyers, the appellate court found that as the buyer was young and inexperienced, he had been unable to ascertain the square footage himself and was entitled to rely on the MLS listing for that information.



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In conclusion, this case highlights the perils of inducing another party to enter into a contract through false and misleading marketing, though it is perhaps reassuring that the buyer ended up being the one protected. However, it may also serve as friendly advice to realtors, that you need to be careful when representing the square footage of a property because you may be negligent either for failing to measure the property yourself or verify the actual square footage. Finally, the decision also highlights the fact that homeowners can be held liable for the negligent misrepresentations of their agents and they should, therefore also be extremely cautious when it comes to the veracity of the representations made in their MLS listings.

