



Volume VIII Number 3

May 2013

Vendors Representations and Warranties that Can Bite You

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Abstract

Sellers and buyers must clearly specify what they are selling or buying in the agreement of purchase and sale. Ambiguous terms in the agreement of purchase and sale can lead to disagreements in the interpretation of the agreement and potential lawsuits.

Buyers and sellers must also watch what they say or do during the time surrounding the signing of the agreement of purchase and sale. In the event a matter goes to court, the actions and words of a buyer and seller will be examined by the court to help the court interpret the agreement of purchase and sale; this is the case even if the agreement has a "whole agreement" clause that expressly states that no representations outside of what is written in the agreement (including verbal contracts and promises) can affect the agreement.

Full Article

In *Klein v. Sedaghat-Chaffjiri*, a buyer and seller entered into an agreement of purchase and sale for a condominium and one double parking unit containing two spaces. When the seller initially showed the property to the buyer, the seller brought the buyer to one double parking unit containing two spaces and said that the buyer would be getting both spaces. The agreement of purchase and sale listed only one parking unit but based on the representations made by the seller, the buyer assumed the unit to be a double unit containing two spaces. On closing, the seller's lawyer transferred the condo and the double unit to the buyer. Soon after the transaction completed, the seller brought an action against the buyer to have one of the parking spaces in the double unit transferred back to the seller. The seller denied the existence of making any representations stating that the unit was a double unit and claimed her lawyer made an error in transferring more than one parking space on closing.

In order to transfer the title of the parking space back to the seller, the court required the seller to provide "convincing proof" that there was a mutual intention to include only one parking spot in the agreement. The seller was unable to meet the abovementioned evidentiary burden. Additionally, the court favoured the evidence of the buyer and his real estate agent who both testified that the seller had shown the buyer the double parking unit and had made representations that the entire unit was included with the condominium.



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The seller stated that despite any findings he made representations outside of the contract about the two parking spots, the seller relied on a “whole agreement” clause in the agreement of purchase and sale which stated that no representations outside of what was written in the agreement of purchase and sale could affect the agreement. The agreement had clearly stated that only one parking unit was included, but the court stated that the representations made by the seller demonstrated that both parties intended one parking unit to refer to one double parking unit containing two spaces.

The court dismissed the seller’s action.