

Citation: ☀ deBoer v. Neuman et al
2014 BCPC 0174

Date: ☀ 20140801
File No: 99655
Registry: Kelowna

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

LAURIE deBOER

CLAIMANT

AND:

**HORIZON REALTY LTD. dba COLDWELL BANKER HORIZON REALTY
and
MURRAY NEUMAN**

DEFENDANTS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE E.M. BURDETT**

Appearing on their own behalf:

Laurie deBoer

Counsel for the Defendants:

Wanda Simek

Place of Hearing:

Kelowna, B.C.

Dates of Hearing:

June 30, July 28, 2014

Date of Judgment:

August 1, 2014

[1] In this action Laurie deBoer has sued Murray Neuman and Horizon Realty seeking damages of \$25,000. Ms. deBoer alleges that Mr. Neuman was negligent as her real estate agent when he failed to warn her of a number of impending special levies on the strata property she was buying. Mr. Neuman works for Horizon Realty Ltd.

[2] The facts are these. Ms. deBoer was interested in purchasing a condominium at 106 - 265 Snowsell in Kelowna, B.C. Mr. Neuman had acted as a real estate agent for Ms. deBoer five times in the past. Included in the work he did was the handling of the sale of her mother's condominium, and the selling of a townhouse and a house, both owned by Ms. deBoer. These transactions all took place after her accident. Ms. deBoer has also bought and sold other real estate a number of times in the past, but not with Mr. Neuman's assistance.

[3] Ms. deBoer is disabled due to a car accident. She has post concussive syndrome and visual vestibular mismatch. According to her, these conditions make it difficult for her to read and to remember what she has read, unless she takes the time to write down what someone has read out to her. There was no expert medical evidence lead concerning Ms. deBoer's condition and the limitations it places upon her. While I accept her evidence generally about her condition, I do note that she appeared to have little difficulty accessing and referring to documents during the course of the trial.

[4] In past real estate transactions she has relied on her lawyer, Doug Bailey, to read out certain documents to her.

[5] Before her accident, Ms. deBoer worked as an accountant, and also for a company which did corporate financial work. Ms. deBoer is an intelligent woman who is

very knowledgeable about financial matters and familiar with spread sheets and other financial documents. She has less trouble reading numbers than letters. She now sits on the Strata Council and acts as Treasurer.

[6] The condominium building in question was built in 1993, making it 18 years old at the time of the transaction. Ms. deBoer made an offer to purchase, and a contract of purchase and sale was entered into on June 7, 2011. That offer to purchase had a number of subject conditions. The offer was subject to the claimant approving the property disclosure statement by June 17, 2011. That subject stated the following:

Subject to the Buyer on or before June 17, 2011 approving the Property Disclosure Statement - Strata Title Properties, dated June 4, 2011, with respect to information that reasonably may adversely affect the use or value of the strata lot, including any bylaw, item of repair or maintenance, special levy, judgment or other liability, whether actual or potential. If approved such statement will be incorporated into and form part of this contract. This condition is for the sole benefit of the Buyer.

[7] Other subjects were the claimant obtaining and approving an inspection report against any defects whose cumulative cost of repair exceeds \$500; the claimant obtaining and approving the title search results; and the claimant arranging a first mortgage.

[8] Another term in the contract provided:

If a special levy is approved before the completion date, the Seller shall credit the Buyer with the entire portion of the Special Levy that the Buyer is obligated to pay under the Strata Property Act and the Seller hereby directs the Buyer's lawyer or notary public to hold back such credit from the sale proceeds and to remit it to the strata corporation.

[9] The Property Disclosure Statement, dated June 16, 2011, had the standard questions which the seller had to answer, including the following questions and answers:

3Q: Are you aware of any special assessment(s) voted on or proposed?
Yes. How much? \$1200 already paid

3R: Have you paid any special assessment(s) in the past five years? Yes.
How much? \$1200.

[10] The seller indicated that the strata bylaws, rules, year-to-date financial statements, current year's operation budget, and all Minutes of the last 24 months were available. The subjects were to be removed on Friday June 17.

[11] Mr. Neuman read the Property Disclosure Statement to Ms. deBoer, line by line, and had her initial it.

[12] Ms. deBoer elected not to have a property inspector look at the unit or the building.

[13] Mr. Neuman called Ms. deBoer on the day the strata documents arrived, June 13. Ms. deBoer's and Mr. Neuman's evidence differ on what happened when Ms. deBoer arrived in the real estate office in response to the call. Ms. deBoer testified that her intention was to take the documents to her lawyer and have him go over them with her. She testified that her lawyer did not work certain days of the week, and she expressed concerns about not getting the documents read before the subjects were to be removed. According to Ms. deBoer, Mr Neuman offered to come to her home the next evening and read the documents to her. According to Mr. Neuman, Ms. deBoer arrived in the office about 3:00 p.m. and the two of them went into a meeting room,

where he read out the Form B Information Certificate (exhibit 11). This document specifically addresses special levies (both past and future), contingency fund reserves and special resolutions. Mr. Neuman testified that he went over the strata bylaws as well. He handed Ms. deBoer the Minutes of the Strata Council and the financial documents and told her to go home and read them. He testified that Ms. deBoer asked him three times to read these documents to her, as she was concerned she couldn't get in to see her lawyer. Mr. Neuman told her that she should go over the documents with her lawyer. Finally, after Ms. deBoer's third entreaty, Mr. Neuman reluctantly agreed, and made plans to visit Ms. deBoer that evening at her home.

[14] Ms. deBoer maintained that she did not go over any documents in the real estate office on the day she picked up them up. She testified that it was late in the day, around 5 pm, and she was going out for dinner. She testified that Mr. Neuman readily offered to read the documents to her, and that they made plans he would come to her home the next day.

[15] Megan deBoer testified about the meeting at the home. Unfortunately, her evidence is quite vague and not at all helpful with respect to when the documents were reviewed.

[16] I prefer Mr. Neuman's testimony to that of Ms. deBoer's on this point. First, Ms. deBoer acknowledged that she was uncertain of the actual date - at first she testified this meeting took place on June 7 and later she changed her evidence. Second, if she has mixed up the dates, it is likely that her dinner plans were not on the evening she thought they were. Finally, Mr. Neuman appears to have a clear recollection of what

happened at the real estate office. That recollection accords with common sense - that he would go over the documents with his client as she was in the office and he was available. I conclude that the meeting at the office occurred, and Mr. Neuman went over the Form B with Ms. deBoer. Later that day he went to the deBoer home to go over the Minutes and financial documents.

[17] Both Ms. deBoer and Mr. Neuman testified that the two of them sat at the kitchen table and went over the documents. Mr. Neuman read some parts of the Minutes word for word, other parts he summarized. Ms. deBoer was aware that he was not reading the documents word for word.

[18] One document which was reviewed was Exhibit 3. This document is entitled "The Owners, Strata Plan K1214 Glendavid Place 10-year Capital Plan". Ms. deBoer's evidence was that she specifically asked what the document was, and Mr. Neuman told her that it was a maintenance schedule. According to Ms. deBoer he said "It is all planned out, they have \$40,000 in the contingency fund, and had a special levy last year to do the roof rather than taking it out of the monthly strata fees". Ms. deBoer could clearly see that the document was in the form of a spread sheet, and it had numbers on it.

[19] Mr. Neuman's evidence was that he provided the Capital Plan to Ms. deBoer and he read it to her, summarizing what the Strata Council had planned for each future year in terms of repairs and replacements. Ms. deBoer asked where the money was to come from and Mr. Neuman told her that it would come from the contingency fund, and if

there was insufficient money in the fund, a special levy would be imposed on each owner of the units. Ms. deBoer had no other questions about any of the documents.

[20] Mr. Neuman agreed that he could have called the Capital Plan a “maintenance schedule”, but testified that he used both the terms. It was his evidence that he went over the issues of the contingency fund and special levies a second time when Ms. deBoer removed her subjects, three days later.

[21] It was Mr. Neuman’s evidence that he specifically went over the Minutes of April 14, 2010 and read word for word the following paragraph:

The cedar hedge at the front entryway otherwise known as the “green roof” is too close to the retaining wall causing damage to the retaining walls. The cedars will eventually impact the membrane of the “green roof” and the professional landscapers believe that these cedars need to be removed to maintain the integrity of the “green roof”. Many of the large trees are leaning over and their root systems appear to be impacted by the depth of the space available on the green roof side of the building, with no room for further expansion. Many trees and plants are too large for the space they were planted in, and could pose a threat to the green roof as well as the regular roof.

[22] Mr. Neuman testified that he also went over the Minutes of the October 26, 2010 AGM which discuss the five year capital plan changing into a ten year capital plan. The Minutes also note the approval of a special levy for \$49,280.00 for a project outlined in Schedule A on the 10 year Capital Plan. Mr. Neuman testified that he went over these Minutes, but mis-identified the project as a replacement of a roof, rather than replacement of air conditioners.

[23] Mr. Neuman left the Minutes, Capital Plan and other documents with Ms. deBoer after reviewing them with her. She did not look at them, including the Capital Plan after

he left. Although she had three days in which to meet with her lawyer to go over these documents, she did not do so.

[24] The subjects were removed a day earlier than they needed to be, and Ms. deBoer completed the sale.

[25] Frank Buckland is a real estate agent and works for the defendant Coldwell Banker. He and his wife live in the Glendavid condominium. Although his wife owns the unit, Mr. Buckland served on the Strata Council as President from November 2011 to October 2011. He often attended Strata Council meetings before taking on the role of President. It was his evidence that the Capital Plan was introduced at the 2010 AGM. He described the Capital Plan as a maintenance schedule created by the then manager, who was attempting to anticipate items and areas that might need attention. The Capital Plan was not passed by any motion of the Strata Council and any item listed on it could not be repaired or replaced unless a 2/3 majority of the owners passed a resolution to do so. Mr. Buckland testified that, prior to June 2011, the only special levy which arose out of the Capital Plan document was done in 2010, and it was for air conditioners.

[26] Mr. Buckland testified that the issue of the green roof arose in discussion at the June 7, 2011 Strata Council meeting. The Minutes from that meeting were not prepared and distributed until about two weeks after the meeting. It was Mr. Buckland's evidence that in 2012 a Special General Meeting was held to discuss a levy to replace the green roof. All owners were invited to the Meeting and everyone had an opportunity to vote on two levies to pay for the green roof, which passed. Mr. Buckland testified that while the

condominium market has been depressed for three or four years, it now appears to be picking up, with four units in the complex selling in the last year and a half.

[27] Ms. deBoer maintained that she has now paid over \$ 9,000 in special levies and interest. She has had to re-mortgage her condominium because of these costs, and has lost her mortgage insurance. Ms. deBoer testified she cannot sell her condominium to minimize her losses because the real estate market has dropped and she has lost \$25,000 because of the deterioration of the market.

[28] Ms. deBoer maintains that the Minutes from the Strata Council, specifically the 2010 AGM Minutes, elaborated on a special levy and Mr. Neuman did not read these to her. She argues that because the Capital Plan was extensively discussed in the Minutes, a logical inference to draw would be that more special levies would be forthcoming. She argues that Mr. Neuman was negligent because he mislabelled the Capital Plan as a maintenance plan and had she known it was a capital plan, she would have realized that special levies would occur. She argues that he was negligent in not reading out the Minutes completely.

ISSUES

[29] Has Ms. deBoer proven on the balance of probabilities that Mr. Neuman owed her a duty of care? If so, what was the standard of care expected of him in these circumstances? Has Ms. deBoer proven that Mr. Neuman breached that standard of care? If so, did Ms. deBoer suffer damages as a result of that breach, and has she proven those damages on the balance of probabilities?

ANALYSIS

[30] Counsel for the defendants provided the following authorities: *Kim v. Lee*, unreported, January 24, 2001, British Columbia Provincial Court, Vancouver Registry No. 2000-58570; *Merry v. Re/Max Realty Group et al*, unreported, April 16, 2006, British Columbia Provincial Court, Port Coquitlam Registry No. C5174; *Manita Investments Ltd. v. T.T.D. Management Services Ltd. (c.o.b. Realty World Capital)*, [1997] B.C.J. No. 2260 (S.C.); and *Perrault et al v. North Vancouver (District) et al*, 2010 BCSC 506.

[31] The defendants acknowledge that Mr. Neuman owed Ms. deBoer a duty of care.

[32] Has Ms. deBoer proven that Mr. Neuman acted negligently in breaching that duty of care by not reading out the Strata Council Minutes word for word, and by misidentifying the Capital Plan as a maintenance plan?

[33] I accept Mr. Neuman's evidence that he summarized the Minutes in some areas, and read a few portions out word for word. I accept he went over the Form B (exhibit 11) word for word, and similarly went over the Property Disclosure Statement very carefully. Both these documents clearly disclosed a special levy had been assessed, and that \$44,129.00 was to be taken out of the contingency fund in the near future. I accept that he discussed the issues of special levies and the contingency fund generally with her. Were these actions sufficient to discharge his duty of care?

[34] In my view this is a case where the negligence alleged is not blatant.

[35] *Perrault v. North Vancouver* discusses the need for expert evidence to establish the standard practice of realtors in situations where negligence is not egregious or

blatant. Ms. deBoer has not lead any evidence of what the industry standard is for real estate agents vis-à-vis their responsibility to read Strata Council Minutes in order to advise their clients about the possibility of future levies. There is no evidence before me to conclude that this is a duty which realtors must take on, or if they do take it on voluntarily, what they must do to fulfil their duty of care.

[36] Ms. deBoer has failed to prove what a prudent realtor would have done in this situation. Without that evidence, I cannot conclude that Mr. Neuman was negligent.

[37] If I have erred on this point, I would have found that Ms. deBoer has not proven her case on other grounds. The decisions of *Kim v. Lee* and *Merry v. Re/Max* present facts similar to this case, and both conclude that a purchaser of real estate should carefully review all the documents before signing them. A purchaser has some responsibility to protect their own interests, and cannot simply put their trust totally in a real estate agent. Here, Ms. deBoer knew that Mr. Neuman was summarizing large portions of the Minutes. She knew of the existence of the “maintenance plan” which purportedly set out a schedule for repairs and replacements for an 18 year old building for a number of years. She knew of the existence of a prior special levy, and the fact that a large amount of money was to be withdrawn from the contingency fund in the near future. Although Ms. deBoer suffers from a disability, she is an experienced purchaser of real estate. Not only has she bought and sold numerous residences over the years, she conducted a number of those transactions after her accident. Included in those transactions were the purchase and sale of other strata property. She was, or should have been, well aware of the issues surrounding contingency funds and special levies. She declined to get an independent property inspection. Given all of these

facts, her responsibility was to ensure that the Minutes were properly read. She could have insisted that Mr. Neuman read the Minutes word for word, or have her lawyer go over the documents in more detail.

[38] I also find that Ms. deBoer had not proven that the damages she suffered (the two levies she has paid) were caused by Mr. Neuman's actions. Mr. Neuman did not know of the contemplated replacement of the green roof at the time he went over the documents with her as the Minutes had not yet been prepared. In fact, the special levy was not voted on and passed until 2012. Ms. deBoer has failed to prove her case on the balance of probabilities. This action is dismissed.

[39] Both parties shall bear their own costs and expenses.

The Honourable Judge E.M. Burdett