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## Can unhappy buyers post signs?

Homeowners must be sensitive to libel laws

*Claim for breach of Charter rights struck down*

If you're not happy with your builder, can you put a sign on the front lawn proclaiming your discontent to the whole world? If so, what can the sign say? And more to the point, what is the sign prohibited from saying?

These were the questions that faced Justice James Spence of the Ontario Superior Court of Justice in May.

The case before him involved a builder seeking to continue an injunction to restrain two home-owners from putting up a sign indicating dissatisfaction with the builder of their home.

At the same time, the homeowners counterclaimed for damages, alleging construction deficiencies and building code violations.

They also claimed damages for breach of their right to free expression under the Canadian Charter of Rights and Freedoms.

The ruling by Justice Spence in the case of Rosemond vs. Levy was published this month in the Ontario Reports, a weekly law journal sent to all Ontario lawyers, and on the Web site of the Canadian Legal Information Institute (<http://www.canlii.org>).

It all began in August, 1999, when David and Maureen Levy entered into an agreement with Rosemond Estates Inc. for the purchase of a new home on Gregory Scott Dr. in the Woodbridge area of the city of Vaughan. Rosemond is a subsidiary of Gold Park Homes Inc. Shortly after the Levys closed and moved in on Nov. 30, 1999, they became very unhappy with the home.

According to Justice Spence, during the summer of 2000, the Levys "harassed Gold Park's sales representatives, trades and service people frequently and voiced complaints in a manner that could be expected to intimidate potential purchasers."

This, said the judge, caused the disruption of potential sales activity with purchasers.

In September, 2000, the Levys erected a four-foot by eight-foot sign on their front lawn.

The sign read (all in capital letters):

"We moved in November 30th 1999. The exterior of our house was not even caulked for 2-3 weeks afterwards, the house was freezing inside, the builder still has not fixed all our deficiency list. Trades people do not show up, when they do it's at their own convenience. On Wednesday September 20, 2000 we waited all day for a trade person and he did not show up until 7 p.m. Buyer beware!!! No trespassing no trespassing."

For four days, the sign was visible to potential purchasers visiting the Gold Park sales office across the road and two houses down from the Levy home.

One day after the sign went up, Gold Park's lawyer, Larry Banack, obtained an injunction requiring the Levys to remove the sign and stop making defamatory comments about the builder. The injunction was later continued on consent of all parties.

Although the case has not gone to trial and no allegations have yet been proven, the proceedings were back in court again earlier this year. The Levys claimed damages for breach of their Charter rights to free expression, while Rosemond asked Justice Spence to strike out that claim. Rosemond also asked the court to continue the injunction until trial.

Does an unhappy homebuyer have a Charter right to damages where the builder obtains an injunction requiring a complaint sign to be taken down?

Apparently not, according to Justice Spence. He struck down the Levys' claim for breach of their Charter rights. The law is clear, Spence ruled, that no one can sue a private party for damages for breach of the Charter.

In any event, the court said it was not the builder who interfered with the Levys' right to free expression, but rather it was a court order that required the sign to be removed.

What about the wording of the Levy sign? Was it permissible?

In some cases, the law of defamation allows statements made about another party if they are what is known as fair comment.

In the Rosemond case, the judge ruled there was a strong case at first glance that the words "buyer beware" on the sign might be malicious and not acceptable as fair comment.

As a result, the Levys were allowed to restore their sign as long as it was restricted to factual allegations and the words "buyer beware" were deleted.

The Levys' lawyer, Yaroslav Mikitchook, told me this week that the court case is still ongoing three years after it started.

Putting a sign on the front lawn is a fairly low-tech way of expressing dissatisfaction with a new home. In recent years, I have received reports of various cyber-complaints about builders on Web sites and in discussion groups on the Internet.

As the Rosemond and Levy case indicates, disgruntled homebuyers who resort to going public with their complaints should be very sensitive to the laws of libel and defamation.