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## Leaky condo lawsuit offers lessons for all

When former MP and journalist Simma Holt bought a Port Moody, B.C., condo back in early 1999, she had no idea that the purchase of her modest retirement home would result in years of litigation against her real estate agent.

The case came to an end earlier this month when the B.C. Supreme Court ordered the agent to pay Holt almost \$20,000 in damages for negligent misrepresentation.

It all started when Holt met real estate agent Ada Van Leeuwen at a local shopping mall. During one of their early conversations, Van Leeuwen told Holt she had heard of problems in some condominium buildings. In her evidence at trial, Van Leeuwen admitted, "I assured her I would not sell her a leaky condo."

For years, British Columbia has been plagued with thousands of leaky condominium buildings. Poor construction led to water penetration through the building envelopes, and the moisture inside the units created toxic mould.

Repair bills for many buildings ran into millions of dollars, and many individual units had six-figure repair bills.

The widespread faulty construction took a huge human toll. Tens of thousands of B.C. families continue to suffer emotionally, financially and physically. They have been living for years with leaks, rot and mould in their homes, and thousands had declared bankruptcy.

A commission chaired by former premier Dave Barrett was critical of the bankrupt New Home Warranty of British Columbia Inc., which had assets of about \$22 million and faced claims from leaky-home owners totalling hundreds of millions.

Prior to closing, Van Leeuwen read the seller's property disclosure statement, which indicated that the sellers were aware of structural problems, leakage and unrepaired damage. She contacted the seller's real estate agent, who told her the answers referred to other buildings in the condominium complex, but not the building where Holt was purchasing.

Van Leeuwen testified that she read the minutes of the condominium board meeting, which reported on an engineering study that noted all five buildings in the complex had some degree of leakage problems.

At the time, everyone apparently thought New Home Warranty of B.C. would repair the problems. No one expected it to go bankrupt in March 1999.

Holt's purchase closed in May 1999. Two days later, she left on vacation. When she returned, she found a note from the condominium corporation advising her she owed special assessments in excess of \$40,000.

She later recovered \$16,000 from the municipality for approving faulty construction, and \$10,000 from a holdback the seller agreed to on closing.

Facing a loss of more than \$14,000, Holt sued her agent. At trial, Holt testified that she suffered coughing, breathing and eye problems from the mould in the unit. Wearing a mask didn't help, and she was eventually forced to move out.

Van Leeuwen testified that she acted reasonably in failing to warn Holt not to complete the closing, because it was reasonable to believe the New Home Warranty corporation would cover the problems.

After a three-day trial, Justice Victor Curtis of the B.C. Supreme Court ruled Van Leeuwen failed in her duty to her client.

"She told her she would not sell her a leaky condo and that is exactly what happened, in circumstances in which Ada Van Leeuwen either knew, or ought to have known, the condominium had significant water ingress problems," the judge wrote.

"I find that Ada Van Leeuwen negligently misrepresented to Simma Holt the state of the condominium being purchased, and that (Holt's) interests were properly protected when they were not," he added.

Ruling that Holt would not have purchased the unit if she had been aware of the problems, the judge awarded her \$14,527 for the remaining special assessments she had to pay, plus general damages in the amount of \$5,000. The issue of court costs has yet to be decided.

Holt, who is now 84, moved out of the condo to continue her writing career from another location.

"She really seduced me into buying this, and I trusted her implicitly," she told the *Vancouver Province*. "Never trust anybody."

Not bad advice.