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February 3, 2007

Buyer pays for pouncing on seller's error

An interesting case which was heard in the Superior Court in Whitby last year provides a classic example of why real estate deals belong in the registry office and not the courtroom.

Although it involved a commercial transaction, it could just as easily have happened in a residential scenario, and the lessons to be learned from it remain the same.

Marie Theresa Dol wanted to buy a commercial property in Bancroft to expand her stepson's chip wagon business. Through her real estate agent, she entered into an agreement of purchase and sale to buy a property owned by Marlene Musclow Insurance Agency Ltd.

The agreement, which had already been signed on a blank form before the details were filled in, inadvertently described the property as having a frontage of 165 feet (50.29 metres) and a depth of 54 feet (16.46 metres).

In fact, the figures were reversed. The property actually has a street frontage of 54 feet and a depth of 165 feet.

The agent who filled in the blanks on the offer form neglected to verify the dimensions of the land. In fact, when the case got to trial some 30 months later, Justice Hugh R. McLean said that the offer was either prepared "in a great hurry or that absolutely no thought was put into the exact terms."

Bancroft, in the offer, was described as "the City of Bank." The numbers and figures for the purchase price did not correspond to each other, and had to be corrected to read the intended price of $190,000.

The registered reference plan of survey showing the correct measurements was properly referred to in the offer but was not attached to the document.

"Obviously," wrote Justice McLean, "this was not a well-considered document."

The morning after the offer was signed and accepted, the seller's agent realized the mistake with the frontage and depth, and contacted the buyer's agent to amend the contract. At that point, the buyer refused to agree to any change.

In the days prior to the intended closing, the seller's solicitors were trying to get the purchaser to rectify the defective agreement, and the buyer's solicitors were trying to renegotiate the price based on the mistake.

The transaction was supposed to close Nov. 17, 2003. The buyer at that point was apparently willing to pay between $145,000 and $150,000, which was what she decided the reduced price should be.

No money was tendered by the buyer to the seller on the date of closing, and the deal died.

Notice of the agreement of purchase and sale was registered on title by Dol, effectively blocking Musclow from selling the property to anyone else.

Eventually, the buyer sued the seller, demanding the property be sold to her at a reduced price. The seller counterclaimed for damages as a result of the buyer's refusal to close and for preventing her from selling it by clouding the title with notice of the agreement.

It was left for the court to decide whether it would force the sale of the property at a reduced price, or declare the deal dead and award damages to the seller.

In his decision last year, Justice McLean found that the buyer did not come to court with "clean hands." She knew the dimensions were wrong on the day after the contract had been signed, and she should have known the correct dimensions by looking at the reference plan at the time the offer was presented.

The court concluded that when Dol became aware of the mistake, "she attempted to gain the maximum advantage" from the mistake made by Musclow and her agent. Under the circumstances, it would have been "unfair" to force the seller to convey the property at a reduced price.

That, however, did not end the matter. When the buyer decided not to close, the agreement was at an end. By wrongly registering notice of the agreement of purchase and sale on title to the property, the judge ruled that the buyer was responsible for "slander of title," and for the resulting damages suffered by the seller.

Those damages included ongoing property expenses such as mortgage payments, taxes, insurance and utilities, and came to slightly more than $40,000 plus interest. In addition, the buyer was ordered to pay costs of $32,000 to the seller, Musclow. At the same time, the seller was ordered to pay court costs of $17,323 to her agent.

In the end, the buyer who tried to take advantage of the mistake in switching dimensions has to pay the seller more than $72,000, along with her own lawyer's fees.

The real estate agents for both parties were sued, but were not held responsible. The seller who won the case against the buyer has now appealed the dismissal of her claim against the real estate agent.

There are several useful lessons which come out of the case of Dol v. Musclow.

- Trying to take advantage of the other side's mistake is risky.
- It's necessary to come to court in good faith, with "clean hands." Failure to do so invites harsh penalties at the hands of a trial judge.
- Know your real estate agent. Make sure he or she is competent, committed and detail-oriented.
- Never sign a blank offer.
- If a survey or reference plan exists, attach it to the offer.
- Haste makes waste. Have a lawyer review the offer before it becomes binding.
- And finally, real estate litigation can be risky to your bank account. If the defendant counterclaims, you could wind up losing both sides of the case. When the smoke clears, you have to pay damages to the party you sued, all of your own legal fees, and much of the other side's fees. At the end of it all, nobody really wins.

[ ] [ ]

WHITBY COURT FILE NO.: 27188/03

27188/03A

ONTARIO

B E T W E E N:	)	
	)	
MARIE THERESE DOL	)	Nigel Schilling, Q.C., for the Plaintiff
	)	
Plaintiff	)	
- and -	)	
	)	
MARLENE MUSCLOW INSURANCE AGENCY LIMITED	)	William W. Walker, for the Defendant
	)	
	)	
Defendant	)	
- and	)	
	)	
BOWES & COCKS LTD. REALTOR, BILL McCAW, FRANK REAL ESTATE LTD. o/a ROYAL LEPAGE FRANK REAL ESTATE, and MARY ANNE MURPHY Third Parties		George Corsianos, for the Third Parties, Bowes & Cocks Ltd. Realtor and Bill McCaw; Allen Wassermuhl, for the Third Parties Mary Anne Murphy, and Frank Real Estate Ltd. o/a Royal LePage Frank Real Estate and Mary Anne Murphy **HEARD:** April 10, 11, 12, 2006

REASONS FOR JUDGMENT

MCLEAN J.

[1] Bancroft is not known as a centre of commercial real estate. However, in October 2003, apparently there was much interest in the premises owned by the Defendant Darlene Musclow Insurance Agency Limited. Ms. Dol wished to purchase the property to expand her stepson s chip wagon business. Ms. Murphy was the agent for the purchaser and Mr. McCaw was the agent for the vendor.

[2] On the 1st of October 2003 an Agreement of Purchase and Sale was entered into. The dimensions of the lot owned by Musclow were reversed. The closing date for the transaction was 17th November 2003. The transaction did not close. Prior to the closing date, the purchaser was concerned about another offer being made on the property. She, therefore, caused the Agreement of Purchase and Sale to be registered.

[3] On or about the closing date, apparently $145,000 or $150,000 or some figure in between was tendered or was intended to be tendered. It is not just clear from the evidence what the amount was to be. The transaction was not completed and the action for specific performance was started by the purchaser, requesting an abatement of the purchase price.

[4] The issue for the court is whether the Agreement of Purchase and Sale was breached. If so, by whom, and if there are damages, who is responsible for them, the defendant or either or all of the third parties.

FACTS

[5] As said before, Ms. Dol was interested in the property owned by Musclow, for an expansion of her stepson s chip wagon business. They went to Ms. Murphy, a real estate agent in Whitby. The plan was for Ms. Dol to buy the property. Mr. Morelli, her husband, was authorized to some degree in a note, which is exhibit A-2, to enter into an agreement or to act on Ms. Dol s behalf. Ms. Murphy completed a blank Offer to Purchase, signed by Ms. Dol. The two set off for Bancroft where they met Mr. McCaw, the agent for the vendor. Apparently Ms. Musclow, the principal for the defendant corporation, was interested in selling her building because her insurance business had expanded and she had purchased or was purchasing a new building and wished to finance it with the proceeds from the sale.

[6] Ms. Murphy and Mr. Morelli met with Mr. McCaw, the agent for the vendor, who had the listing. The Agreement of Purchase and Sale was drawn up. Mr. McCaw showed the premises to Mr. Morelli and Ms. Murphy and apparently, when showing the property, showed a much longer frontage than was indeed the case. The Agreement of Purchase and Sale, exhibit A-1, was then filled in by Ms. Murphy for the purchaser, describing the property as having a frontage of 165 feet and a depth of 54 feet. In fact, these figures were reversed, the depth was 165 feet and the frontage was 54 feet. Mr. McCaw should have known that he was incorrectly describing the property by comparing the description with the listing in the file. He admitted as much.

[7] Mr. McCaw presented the offer to Mr. Musclow. The owner, Ms. Musclow, was in Las Vegas, but had left a power of attorney to Mr. Musclow to sign offers on the premises. The offer was presented and Mr. Musclow signed the offer by the power of attorney. The offer is very strange, to say the least. It is clear it was either done in a great hurry or that absolutely no thought whatsoever was put into the exact terms. Bancroft is described as the City of Bank . The sums of money in figures do not correspond to amounts expressed in writing. The lot, however, is correctly described as Plan 411, Lot 233, Plan 21R-10455, Part 1. As an aside, clearly the reference Plan 21R-10455, Part 1 shows the lot and has the proper dimensions on it. Apparently no one thought to look at the reference plan prior to executing the Agreement of Purchase and Sale.

[8] As a further digression, it is questionable whether such an authorization as exhibit A-2 would be sufficient to allow a valid Agreement of Purchase and Sale to be entered into, in that it is not an instrument under seal as is required to deal with real property. However, counsel have not pleaded on this point and are agreeing, for the purposes of the lawsuit, that the offer was valid and, therefore, it is not necessary to consider this.

[9] As said previously, Mr. McCaw, the vendor s agent, presented the offer to Mr. Musclow and it was accepted by power of attorney. The purchase price was changed from one hundred and seventy five to one hundred and ninety in words, although in the figures in the offer it states $190,000. Clearly the numbers and the figures do not correspond. The offer was agreed to. Obviously, this was not a well-considered document.

[10] The next morning Mr. McCaw, the vendor s agent, realized the error when he discussed the matter with his wife, the broker for the third party real estate company. They contacted Ms. Murphy and suggested the agreement be amended to show the proper frontage and sideage. However, the purchaser, Ms. Dol, refused any such change.

[11] As most matters are without dispute in this litigation, little comment needs to be made on the evidence. However, with regard to any differences between the evidence of the plaintiff and the evidence of the defendant or third parties, I have difficulty in accepting the evidence of the plaintiff and her husband. The plaintiff s evidence, from both Mr. Morelli and Ms. Dol, was not straightforward at all. They were unwilling to answer questions in a straightforward manner and seemed bent on tailoring their evidence to fit a view of the facts that was positive to their position in the litigation. This is the case even though Ms. Dol testified through a French interpreter. Even with this, it is the court s view that she was not being straightforward in her answers and, on many occasions, was not giving answers that were responsive to the cross-examiner s questions.

[12] To return to the facts, the transaction was to close on the 17th of November 2003. It is not clear on the evidence, however, that some sort of tender was contemplated or occurred. Ms. Dol instructed her solicitor to tender between $145,000 and $150,000. It is not clear whether this included the deposit. The purpose of the variance in funds was to allow for some negotiation at the time of tender. There was no evidence presented to the court as to what the abatement should have been. Simply put, a figure between $145,000 and $150,000 was what the plaintiff decided the abated purchase price should be. There is no evidence before the court as to how the amount was arrived at or what the actual amount was to be.

[13] When this agreement was put forward, there was apparently a contemporaneous offer of $185,000. A tender was certainly not made in the whole of the amount in the Agreement of Purchase and Sale, with a direction to withhold a sum for the abatement. There was, as said before, only an instruction to tender between $145,000 and $150,000. There was no evidence about how the solicitor was supposed to chose the exact amount. The court is left to speculate that the lower amount was preferable to the higher from the purchaser s (tendering party s) point of view.

[14] After the problem with the Agreement of Purchase and Sale became apparent, Ms. Dol directed her solicitor to register the Agreement of Purchase and Sale against the title to the property. This is found as exhibit A-2. The agreement was registered on the 7th October 2003, with a land transfer tax affidavit showing a consideration of $190,000. These monies were noted to be paid in the land transfer tax affidavit, not some lesser amount

[15] This, of course, had the effect of tying up the land for a considerable period of time. Later on, a certificate of pending litigation was granted by the court and filed. This court s view is that this certificate is merely confirmatory of the registration of the Agreement of Purchase and Sale.

The Law and Analysis

[16] *Young Estate v. 503708 Ontario Ltd.* , (1988), 67 O.R. (2d) 40, is a case where the property bargained for was smaller than that described in the Agreement of Purchase and Sale. Mr. Justice Southey deals with the matter of an abatement at p.6:

> The reasonableness of the $10,000 abatement suggested by Young was supported by the evidence of Barry Humphreys, an experienced real estate appraiser in Hamilton, who testified that the missing piece would have had a market value of $10,500, because of its contribution to the value of the whole property from the standpoint of the potential for future development. I find that if the purchaser was entitled to an abatement because of a shortage in the land that the vendor could convey, the amount of such abatement should be $10,000.

[17] Further, at p.12, he deals with tender:

> If the purchaser had been willing to close, Schnurr [the solicitor] would have been instructed to make a genuine tender of the balance due on closing, calculated by Rain as best he could on the basis of the limited information available to him, but with a deduction of $10,000 for the abatement to which the purchaser was entitled because of the area shortage.

[18] Clearly, in this case, where the tender was for a lesser figure, it was based on evidence before the court that that was a reasonable reduction. Indeed, this court finds on the evidence before it that the reasonableness of the tender is not established. There is simply no evidence on the point that a figure between $145,000 to $150,000 is a reasonable reduction in this case. Moreover, there is no evidence as to what the actual amount, itself, should have been.

[19] In the alternative, the plaintiff argues that tender was not necessary as there had been an anticipatory breach on the basis of the letters between solicitors.

[20] The court finds, from a construction of these letters, that what they intended to do was, indeed, rectify the Agreement of Purchase and Sale. The solicitors for the defendants were well aware that they could not convey the quantity of land (that is to say, in the dimensions comprehended by the Agreement of Purchase and Sale), as it was simply not available to them. Therefore, they sought to rectify the dimensions in the agreement, notwithstanding the fact that the R Plan, as stated before, correctly set out those dimensions. This was the only thing they could do because it was not within their ability to convey the land as described in the Agreement of Purchase and Sale. The only thing that could have transpired is that an abatement could have been contemplated for the error in the description set forth in the agreement.

[21] The court, therefore, does not find that the defendants, by their solicitors, committed an anticipatory breach. Indeed, it is this court s view that the tenor of the letters is

simply to rectify a defective agreement. Simply put, the transaction could not have been completed by the vendor as set forth in the agreement. It was impossible. Therefore, the court does not find that there is an anticipatory breach such that the requirement of tender was obviated.

[22] The court finds, as in the *Young* case, that by not tendering an appropriate amount the plaintiff repudiated the contract. Likewise, because of the error in the contract, the defendant also was not able to convey the quantity of land comprehended by the Agreement of Purchase and Sale. Indeed, what really occurred was, rather than complete the transaction both parties tried to renegotiate it. The defendant tried to rectify the agreement and the plaintiff tried to renegotiate the purchase price. Therefore, the contract was at an end and on this basis, there would be no damages payable by either party nor will equitable relief be awarded.

[23] I will deal later on with the assessment of damages.

[24] In addition, with regard to specific performance it is doubtful, even if the defendant had breached the agreement, that this remedy would be available for her. Clearly, the plaintiff does not come to the court with clean hands . She knew that the description was wrong as of the day after the agreement had been entered into. Indeed, from the Agreement of Purchase and Sale itself, - that is, the description with regard to the R Plan she, through the knowledge of her agent, ought to have known that the dimensions were wrong when the agreement was presented and negotiated. From the plaintiff s evidence, the court cannot but conclude that when she became aware of the mistake she attempted to gain the maximum advantage from the defendant s blunder. It is a situation that might be termed refusal on the basis of unfairness of specific performance.

[25] To quote the learned author Trietel, The Law of Contracts, 11th ed. (2003) Thomson, Sweet and Maxwell Limited, London, England, at p.1027:

(b) Unfairness: The court can refuse specific performance of a contract which has been obtained by means that are unfair, even though they do amount to grounds on which the contract can be invalidated. Thus in *Walters v. Morgan* the defendant agreed to grant a claim for a mining lease over land which the defendant had only just bought. Specific performance was refused because the defendant was surprised and was induced to sign the agreement in the ignorance of the value of his property .

[26] Moreover, the court notes that there is no specific evidence before it that indicated the property in itself was unique. In *Semelhago v. Paramadevan,* , [1996] 2 S.C.R. 415, (S.C.C.) at para.22 of the decision it states:

Specific performance should, therefore, not be granted as a matter of course absent evidence that the property is unique to the extent that its substitute would not be readily available. The guideline proposed by Estey J. in *Asamera Oil Corp. v. Seal Oil & General Corp.*, , [1979] 1 S.C.R. 633, with respect to contracts involving chattels is equally applicable to real property. At p.668, Estey J. stated:

Before a plaintiff can rely on a claim to specific performance so as to insulate himself from the consequences of failing to procure alternate property in mitigation of his losses, some fair, real and substantial justification for his claim to performance must be found.

[27] This principle is entirely applicable to the case at bar.

[28] However, this does not complete the matter. Not having closed, the plaintiff is thereby liable under the claim of slander of title by registering the Agreement of Purchase and Sale as set forth in the counterclaim. Perhaps the registration of the agreement was valid up to the 17th of November, the closing date. However, when the agreement was determined by the plaintiff failing to close, then damages are available at least after that date. When a closing did not take place, the contract was at an end. In effect, this ended the validity of the Agreement of Purchase and Sale, thus its continued presence on the title to the property was a cloud on title that should have been removed. This, in and of itself, amounted to a slander of the title of the defendant/plaintiff by counterclaim. Therefore the counterclaim will succeed.

DAMAGES

Damages of the Plaintiff

[29] Though no damages are obtainable by the plaintiff in this action, the court must go on to find, nevertheless, what damages would be assessable. The damages claimed for breach of contract by the defendant for failing to close, as stated, are not available.

[30] Even if there had been a breach, it would seem on these facts that the proper measure would be the tort measure hereafter described, as the Plaintiff was informed of the misrepresentation immediately. Moreover, the misrepresentation was entirely innocent. Indeed, since the plaintiff was aware the next day of the problem, she could have taken steps to mitigate, which she did not. She seems to have wanted specific performance and nothing else.

[31] The damages, if any, suffered by the plaintiff should be assessed on the tort basis for negligent misstatement, as said, not the contractual basis. Indeed, an alternative claim for tortious misrepresentation is alluded to in the statement of claim. In fact, there was no evidence led as to what the value of the land would have been if the dimensions were true.

[32] The measure of damages in such a case as set forth in *Parna et al. v. G & S Properties Ltd. et al*, [1969] 2 O.R. 346-348 (C.A.), is the proper measure here. At the second page of the report the court states:

The plaintiffs are entitled to be put in the same position they would have been in if the representations had not been made, but not to be put in the position they would have been if the representations had been true. I am of the opinion that the proper measure of damages is the difference between the purchase price paid for the property and the actual value of the property at the time of sale: *Bedard et al. v. Junkin*, [1956] O.W.N. 287; *Hepting et al. v. Schaaf*, [1964] S.C.R. 100, 43 D.L.R. (2d) 168, 46 W.W.R. 161.

The evidence as to actual value led at trial is rather fragile; proceeding as he did, the learned trial Judge made no finding as to the actual value of the property as at April 1, 1967. In my opinion the evidence does support an assessment of damages, on the proper basis I have outlined above at $4,000.

[33] Thus, damages should be assessed on the basis that the misstatement had not been made, not on the basis of damages suffered if the statement were true. This is particularly the case on these facts in that the plaintiff was advised of the misstatement as soon as it became apparent to the defendant s real estate agent. Indeed, when we consider the matter as a whole, there is very little effective evidence with respect to damages. There is no expert evidence at all as to property values. It would seem that the appropriate basis for assessing the evidence is as follows: When this offer was entered into, there was a contemporaneous offer of $185,000 on the basis of a true acknowledgement of the depth and frontage. The instant offer was for $190,000. Therefore, damages if the statement were not made would likely amount to $5,000. This would also be the measure of damages of any claim against the third party McCaw and the real estate company, in that this claim is clearly one of tort and the damages would be $5,000 on the basis that the statement had not been made.

[34] However, we also have to consider the fact that no attempt was made by the plaintiff/ defendant by counterclaim to, in any way, mitigate her damages. She was of the view that she should have the land as described or have a substantial abatement in purchase price. The exact amount was to be a matter of negotiation. This is seen in the fact that she authorized tender in the two amounts or an array of amounts, as said. Once they placed the Agreement of Purchase and Sale on title it not only prevented the defendant/plaintiff by counterclaim from mitigating its damages on the basis of breach of contract, it also ran up the damages themselves in that as the plaintiff only wanted specific performance, they ran up interest costs, etc., as claimed (see, exhibit 12), without any thought whatsoever to mitigation.

[35] For these reasons and her failure to mitigate, clearly any damages must fail on that basis alone. This is particularly so when the full extent of the damage based on the misstatement was known within 24 hours of the agreement being signed and no further steps were taken.

[36] Here, as stated, the only evidence we have is that there was an actual Agreement of Purchase and Sale accepted, although conditional, in the amount of $185,000. This

was contemporaneous to the instant Agreement of Purchase and Sale. Therefore, the only evidence the court finds that is available is that the difference in value at the time would be $5,000. Therefore, if there are damages to the plaintiff, they would be in that amount.

[37] With respect to the other amounts claimed, I find that on the basis of the contract they could have been entirely mitigated, which was not done.

Damages of the Defendant/Plaintiff by Counterclaim

[38] Clearly, the evidence supports the fact that the defendant/plaintiff by counterclaim intended to sell the property and use the proceeds to pay off the business property that the company had already purchased. This was entirely prevented by the Agreement of Purchase and Sale registered on title. Therefore, given this, it was impossible for the defendant/plaintiff by counterclaim to mitigate their damages by selling to a third party buyer. Indeed, the plaintiff/defendant by counterclaim, by registering the Agreement of Purchase and Sale and refusing to close with any reasonably determined abatement, essentially ran up its damages.

[39] Exhibit 16 sets forth the damages requested by the defendant/plaintiff by counterclaim. The summary is found at tab 1. Generally, they cover ongoing expenses such as mortgage interest, property taxes, hydro, insurance, and water and sewer. They also claim a sum of $26,160.82 for legal fees and a deduction in the amount of $4,000 for the Board of Education monthly tenancy.

[40] The court finds that the amounts for mortgage, property taxes, hydro, insurance, water and sewer are reasonable and, therefore, takes those figures as pleaded. However, the legal costs are due mostly to the litigation and not to the fees for the aborted real estate sale. Therefore, the amount is reduced by $23,473.30, being the legal fees that are directly attributable to this litigation. The remainder of the legal fees is attributable to the aborted sale.

[41] There is also a question about the rental for the residential part of the premises. The defendant/plaintiff by counterclaim take the position that the $3,000 rental would be needed to make repairs to the damage to the premises. Certainly there was no evidence called on this and, therefore, the damages will be reduced by the amount of $3,000. Damages will, therefore, total $40,135.19.

[42] There was a question taken with regard to the fact that the premises were not rented for a period of time. The court finds that no further reduction should be made for this, on the following basis: That the problem with the registered Agreement of Purchase and Sale for prospective tenants was that the property could not be rented on a long-term basis because of the nature of the litigation it faced, particularly the fact that, if specific performance would be granted, then vacant possession would have to be delivered. Therefore, because of the action, the certificate of pending litigation and the Agreement of Purchase and Sale, the plaintiff/defendant by counterclaim was put at a substantial disadvantage by the defendant/plaintiff by counterclaim as to renting the premises. Therefore, the court finds that the rents deducted are reasonable and no further reduction should be made.

Third Party Claims

[43] As I have found that there was no breach or liability in the plaintiff, it is not strictly necessary for me to determine the third party claim. However, I found in regard to the third party Murphy that there was simply no duty of care. In *Wypych et al. v. McDowell, et al.* (1990), 11 R.P.R. (2d) p.89, at p.96 the court sets forth the duty of an agent to the other party to the transaction:

> I conclude that the Simpsons owed no duty of disclosure to the Wypychs, and they owed no duty to them to exercise reasonable care and skill in arranging the mortgage. They were the agents of the McDowells, not the Wypychs.
>
> I do not think that the Simpsons duty to the plaintiffs can be put any higher than that they had a duty not to deceive or mislead.

[44] There is no evidence that Ms. Murphy made any attempt to deceive or mislead, she is simply swept along with Mr. McCaw s description of the land.

[45] With regard to McCaw, clearly McCaw made a mistake and he had a clear duty of care towards Musclow. However, he advised the Musclows the next day of the problem. Indeed, he advised them as soon as he became aware of it himself. There was no expert evidence with respect to what a reasonable real estate agent should have done. However, on these facts it is clear that he should have been more careful towards his client with regard to obtaining a proper description of the property. This he did not do, so if there is any liability which I have specifically not found - then he would be liable for it on the same basis as the defendant, in the amount of $5,000, being the difference between the $185,000 and the $190,000, as stated above.

[46] For these reasons, the action by the plaintiff, therefore, fails and judgment will issue as follows:

(a) The plaintiff s claim is dismissed

(b) The defendant/plaintiff by counterclaim is awarded damages in the amount of $40,135.19, with prejudgment interest thereon from the date the counterclaim was delivered.

(c) The deposit in the hands of the real estate broker will be paid to the defendant/plaintiff by counterclaim, together with any interest thereon, to the credit of the above damages.

(d) Third party claims will be dismissed.

(e) The Agreement of Purchase and Sale and certificate of pending litigation are both hereby directed to be deleted from the title to this property.

[47] Counsel have 30 days in which to address the court in writing with respect to costs in this matter.

_____ Mr. Justice H.R. McLean

McLEAN J.

Released: June 6, 2006.

WHITBY COURT FILE NO.: 27188/03

27188/03A

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARIE THERESE DOL

Plaintiff

- and

MARLENE MUSCLOW INSURANCE AGENCY LIMITED

Defendant

- and -

BOWES & COCKS LTD. REALTOR, BILL McCAW, FRANK REAL ESTATE LTD. o/a ROYAL LEPAGE FRANK REAL ESTATE, and MARY ANNE MURPHY

Third Parties

REASONS FOR JUDGMENT

McLEAN J.

Released: June 6, 2006.
