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## Case must be strong if you decide to sue lawyer

Sonia James learned the hard way that it's not always a good idea to sue your lawyer and blame your misfortunes on him or her.

In late 2002, James signed an agreement to buy a house under construction in Whitby. Just before closing the following September, two mortgage commitments were cancelled due to her poor credit rating.

Closing was postponed so that a new mortgage could be arranged. That mortgage, which eventually resulted in litigation, was for \$232,000 with interest at 8 per cent for the first month, and 9 per cent for the rest of the one-year term.

Legal and brokerage fees came to about \$3,600. Lender's fees on the mortgage were between \$10,000 and \$20,000, depending on when the mortgage was paid off. If the mortgage was renewed, the interest rate went up to 12 per cent, and a 5 per cent renewal fee was payable.

The year after closing, the mortgage went into arrears and the lenders sued James to recover payment of the outstanding loan. She, in turn, sued her lawyer, alleging that he deliberately sabotaged her ability to finance the purchase using traditional lenders.

In the claim against her lawyer, James alleged that he made false or misleading statements to the builder, and that he was negligent in carrying out the transaction and not arranging better financing. She also claimed that he exercised undue influence, and that he failed to warn her of the risks of entering into the mortgage agreement.

The trial was held in May 2008 in Whitby before Justice Myrna Lack, and her decision was given orally at the end of the trial. She found that none of the allegations against the lawyer was supported by the evidence, and dismissed the claim against him.

She found that the lawyer "explained the terms of the subject mortgage to Ms James and warned her of its risks."

"In doing so," the judge said, "he met the requisite standard of care of an ordinary reasonably competent solicitor. (He) was not negligent and did not breach his contract with Ms James."

In a subsequent ruling on court costs, the judge was not kind to James for alleging breach of duty against the lawyer. She stated, "These types of allegations go to the basic foundation of the duties of a solicitor and can rock, if not destroy, his career."

The judge awarded costs of \$110,000 to the real estate lawyer's counsel, who was retained by LawPRO, the Lawyers' Professional Indemnity Company. LawPRO is owned by the Law Society of Upper Canada and provides compulsory insurance to 21,500 Ontario lawyers. (Full disclosure: I am an elected director of the Law Society, but have no role in governing LawPRO.)

James appealed the court decision, but her appeal was dismissed for delay in March of this year.

In its 2008 annual report, LawPRO notes that last year Ontario lawyers reported 2,175 claims against them. Of the 2,006 files it closed in 2008, 48 per cent were closed without any payment for the claim or legal costs, and 87 per cent were closed without any claim payment being made.

In 2008, LawPRO went to trial with 19 claims against lawyers, and won 18 of them. On 12 other matters headed to court, the claimants capitulated on the eve of trial. LawPRO also won all 11 cases in which claimants had appealed earlier decisions.

Of course, when claims against lawyers are well-founded, LawPRO settles without going to court. Last year, the company spent almost \$82 million in resolving client claims.

The bottom line is this: If you want to sue your lawyer, make sure you've got a good case before heading off to the courthouse.

Sonia James didn't do that, and it cost her \$110,000 plus her own legal fees.

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