

No misrepresentation or conflict of interest by mortgage agent (Dhanoo v Ramnarine)

Conflict of Interest | Litigation | Litigation & Dispute Resolution | Misrepresentation | Mortgage

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In Ontario, mortgage brokerages and agents are governed by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*. This statute sets out disclosure obligations and the standards of practice for brokerages and mortgage agents. One of these standards requires disclosure of whether they are acting for the lender, the borrower, or for both.

In *Dhanoo v. Ramnarine*, 2025 ONSC 3621 (CanLII), a borrower argued that a mortgage contract was void because the mortgage agent had failed to disclose that he was also representing the lender.

The litigation involved a loan of \$650,000 from the plaintiff, a private lender, to the defendant borrower in 2021. The mortgage was arranged by a mortgage agent who was a family friend of the lender.

The borrower had initially contacted the agent's brokerage about getting a mortgage for a property in which she was living under a "Rent to Own" agreement with an option to buy. The borrower had agreed to buy the property from her landlord for \$617,000, and a portion of the rent was set aside as credit towards the down payment.

The lender and borrower entered into a mortgage contract for an interest-only loan, with a principal of \$650,000, and an annual interest rate of 9% for a term of 12 months. The mortgage agent was authorized to sign the agreement on the lender's behalf.

In April 2022, the borrower attempted to sell the house for \$900,000. The sale did not close.

In December 2022, the borrower's cheque for the last monthly payment towards the mortgage bounced. She made no payments thereafter.

The lender sued to recover the unpaid debt and sought possession of the mortgaged property. By the time of the trial in 2025, the total unpaid principal and interest was over \$800,000.

The borrower's main defence to the claim was that the mortgage agent who brokered the transaction misrepresented his role and acted in a conflict of interest by jointly representing the lender and the borrower, and that the agent misrepresented the terms of the mortgage to her. As a result of agent's misrepresentation, the borrower argued, that the mortgage contract was void and that she should only be liable to repay the loan principal.

The trial judge referred to the general principle that in normal debtor/creditor relationship, a lender does not owe a borrower a duty of care, citing *Bank of Nova Scotia v. Villafuerte*, 2007 CanLII 1911, at paragraph 20.

However, a principal may be held liable for an agent's fraud or misrepresentation made in the course of their employment, even if the principal was unaware of the acts: *jjBarnicke Ltd. v. Commercial Union Assurance Co. of Canada*, 1998 CanLII 14862 (ON SC), at paragraph 10. A contract obtained through a fraudulent misrepresentation is voidable: *Tran v. Chung*, 2016 ONCA 378 (CanLII), at paragraph 62.

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At trial, the borrower argued that the mortgage agent never told her that he was also representing the lender. She referred to the borrower disclosure statement which stated that “The Brokerage is representing The Borrower, not the Lender in this transaction.” Further, the agent signed the mortgage contract as the “Lender”.

The trial judge commented that the borrower’s position was not unreasonable at first glance. The agent’s paperwork was undeniably “shoddy”.

However, the overall evidence demonstrated that the borrower knew that the agent was not the lender. The mortgage contract and documents sent between the parties’ lawyers referred to the lender as well as the directions and acknowledgements signed by the borrower. The borrower provided 12 post-dated cheques for the interest payments which were payable to the lender by name.

Further, the trial judge preferred the agent’s evidence over the borrower’s. Even though the agent’s business practices were described as “questionable,” that did not detract from his honesty. He admitted making mistakes and had a good recollection of the events, which accorded with the documentary evidence.

Conversely, the borrower was not a credible witness and was found to have made several dishonest claims that were disproven at trial by documents or her prior inconsistent discovery evidence.

As a result, the trial judge concluded that the agent had disclosed that he was jointly acting for the lender and the borrower even though the disclosure statement said otherwise. The brokerage made a mistake on the form but the agent did not misrepresent his role in the transaction or his relationship with the lender.

As to the terms of the mortgage, the borrower argued that she told the agent that she needed a loan option that would be more advantageous than her current rent-to-own agreement and that he promised a better mortgage arrangement that would allow her to own the property faster through larger monthly payments. Instead, the total monthly payments were higher under the new mortgage than the rent-to-own agreement and were interest-only rather than reducing the principal.

The agent denied promising a “better mortgage arrangement”. Rather, his evidence was that the borrower’s objective was to transfer the house from rent-to-own to her own name. She was self-employed and recently finished a consumer proposal, so she was at risk of defaulting on the lease.

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The shoddy paperwork was again an issue. However, the trial judge noted that to the extent that the disclosure statement was unclear as to whether the mortgage was interest-only, the mortgage contract made clear the terms of the loan.

Further, the borrower’s evidence at examination for discovery confirmed that she understood that payment under the mortgage would not be applied to the principal and that she would have to pay back \$650,000 at the end of the mortgage.

In the trial judge’s view, it made sense that the borrower would agree to this type of loan, even with higher interest payments and no principal payments, since she bought the house for \$617,000 and it was valued at \$900,000 five months later. The trial judge inferred that the borrower intended to flip the house for a substantial profit and that her main objective was to buy the house at the agreed-upon price as soon as possible, regardless of the cost of the loan.

Lastly, the trial judge found that the mortgage agent did not act in a conflict of interest or prefer the interests of the lender. The evidence was that negotiations for the mortgage took almost two months and the borrower had legal counsel. All of the paperwork that she signed was for an interest-only loan, which is what she got.

In the result, the trial judge determined that there was no conflict of interest or misrepresentation by the mortgage agent. The borrower was ordered to pay \$807,809.06 to the lender and deliver possession of the property. The case demonstrates how courts will assess the overall circumstances of a transaction rather than one or two instances of shoddy paperwork. Mortgage brokers and agents should nevertheless take all reasonable steps to comply with the *Mortgage Brokerages, Lenders and Administrators Act, 2006* as a measure to respond to claims from disgruntled clients that they have not done so. A PDF version is available for download [here](#).

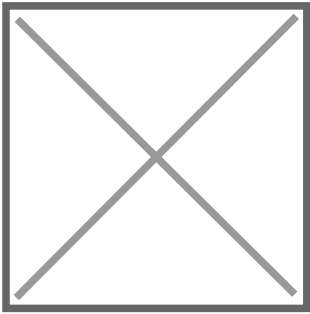
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