

No reliance on zoning misrepresentation in MLS listing (Mino et al. v. Foster)

Litigation & Dispute Resolution | MLS

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The zoning designation of a property may be a relevant consideration for a buyer who is contemplating major renovations after closing. While a listing for a property may contain statements concerning permitted current or potential uses, a buyer should take steps to independently verify the information. In most cases, investigations of zoning for intended future uses of the property should be conducted prior to entering into an agreement to purchase the property or the buyer may not be able to resile from the transaction.

This situation was illustrated in *Mino et al. v. Foster*, 2026 ONSC 838 (CanLII).

During the peak of the Ontario real estate market in 2022, the plaintiffs listed a single detached dwelling in LaSalle, Ontario for \$299,000. The plaintiffs received at least five offers ranging from \$350,000 to an offer of \$557,000 received from the defendant. The defendant's offer was accepted, forming a binding Agreement of Purchase and Sale (APS).

The APS contained a standard term stating that the "Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by the Buyer is or will be lawful except as may be specifically provided for in this Agreement." The APS did not contain any terms dealing with the future intended use of the property and was not conditional on financing.

The initial closing date was extended at the defendant's request to June 30, 2022. However, the defendant refused to complete the purchase on the grounds that her offer was based on the MLS listing which identified the property's zoning as "residential". The property was actually zoned as "W2" based on a comprehensive zoning by-law for the entire town of LaSalle that came into effect in 2021. The W2 zoning provided for additional uses, including residential, and specifically "Single-Detached Dwellings that existed prior to the date of this By-law."

The plaintiffs subsequently re-sold the property to another buyer for \$329,000 in December 2022. Litigation ensued with the plaintiffs seeking damages from the defendant for the lower sale price, additional mortgage payments, taxes, lost rent, and utilities.

The plaintiffs took the position that they were able to convey good title to the property and that the APS reflected the deal that the parties chose to make.

Of note, the defendant's real estate lawyer had sent a requisition letter within the timelines required by the APS that made no mention of zoning issues but on June 29, 2022, the day before the extended closing date, the defendant's lawyer advised that the defendant no longer wished to purchase the property "due to the fact that it was misrepresented as residential property on the Agreement of Purchase and Sale and the property is zoned as W2."

This letter was inaccurate since there was in fact no such representation in the APS. Rather, the APS provided that the present use was residential and could be continued, which was accurate. The only source of the misrepresentation allegedly relied upon by the defendant was the MLS listing.

The court ordered a mini-trial court under Rules 20.04(2.2) and 37.13(2)(b) of the *Rules of Civil Procedure*, to determine whether the defendant relied on the representation in the MLS concerning the residential zoning.

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To be successful in her defence, the defendant would have to prove that the plaintiffs, or their agent, made a false statement; that she relied on the statement when she entered the contract to purchase the property; that the reliance was reasonable in the circumstances; and that the representation was material.

The defendant's evidence was that she suffered from autoimmune diseases and that she planned to downsize from her home to one that was wheelchair accessible. She planned to renovate the property but claimed that the W2 zoning may not have allowed the renovations.

The defendant's evidence was that after her offer was accepted, she sought the advice of a mortgage broker to arrange financing and was told that the land was not zoned residential but rather commercial. As a result, the down payment, mortgage interest rate, insurance, and mortgage payments would be substantially more than anticipated. However, the APS was not conditional on financing.

The defendant's real estate agent gave evidence concerning the events surrounding the APS. The agent's evidence was that although listing identified the zoning as residential, he did his own investigation and discovered the zoning had been changed to W2, an enhanced form of rezoning. He accessed the municipality's website and found a description of W2 zoning. He conveyed the information to the buyer on the phone and by email on the offer presentation day. His evidence was that the buyer did not want to include any conditions in the offer and that financing was not an issue.

The agent further stated that the defendant contacted him before the closing date and asked him to arrange an extension to June 30, which was accepted, as she was having difficulty with her financing. The agent arranged for her to meet with a mortgage broker who presented three different options for financing. None of the options were acceptable to the defendant. He then sought a release of the APS from the plaintiffs, which was refused.

The trial judge noted that there was clear animus between the defendant and her agent and that she had complained about the agent to the Real Estate Council of Ontario, which was dismissed.

In the circumstances, the trial judge found that although the plaintiffs and/or their agent made a false statement in identifying the zoning in the MLS listing as residential, rather than W2, the defendant did not rely on the statement when she entered into the APS. Contemporaneous text messages showed that the defendant did her own investigations into the zoning of the property and learned that the zoning was W2 on the day she viewed the property and before she made the offer. The trial judge commented that this was not surprising as the ability to renovate the existing dwelling unit and build a second dwelling unit on the property was important to her.

Moreover, the defendant was an experienced property buyer, having previously been involved in 13 real estate transactions. Accordingly, the trial judge concluded that she did not rely on the zoning information in the MLS listing. She knew it was zoned W2 and was content with this information, at least before she investigated her financing options.

The plaintiffs' claim was therefore allowed and the defendant was found to be liable for the damages claimed, totaling \$213,175.41, after crediting the deposit of \$20,000.

While financing issues may have been the true reason for the defendant's refusal to complete the transaction, the issue of zoning is a matter that ought to have been fully assessed prior to making a binding offer. During heated real estate markets, buyers may not wish to include certain conditions or take the time to conduct due diligence before entering into a transaction. This decision illustrates the potential consequences of failing to do so. A PDF version is available for download [here](#).

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