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REAL ESTATE AGENT LIABILITY: HIGHLIGHTING THE POTENTIAL CAUSES OF ACTION AGAINST THEM

By Bryan Skolnik and Stephen Thiele[1]

INTRODUCTION

A real estate agent can be defined as any individual who is licensed to represent a buyer or a seller, and sometimes both in the case of dual agency, in a sales transaction involving residential, commercial or vacant land.

Within this general definition, real estate agents are often subcategorized as either a "listing agent" or a "selling agent".

A "listing agent" is the agent of the seller. The listing agent and the seller in general enter into an agreement under which the agent will market the seller's property for a fixed period of time. Among other things, this agreement will also establish the rate of commission and establish when a commission by the agent can be claimed.

A "selling agent" is an awkward term since he or she, in general, represents the buyer. The "selling agent" is the agent who presents an offer of purchase and sale to the vendor. Regardless of these sub categorizations, the licensing requirement, which is established by statute, results in real estate agents being viewed as a profession.

As members of a profession, real estate agents must act accordingly when representing their clients.

Like any other profession, when a real estate agent fails to meet his or her duties and obligations vis-à-vis a client, he or she can face professional liability.

Real estate agents can be held liable for breach of contract, negligence, including negligent and fraudulent misrepresentation, and breach of fiduciary duty.

While whether the conduct of a real estate agent will attract liability in any particular case is, of course, a matter of the factual circumstances at issue, the kinds of cases in which real estate agents have been held liable offers some guidance to someone assessing if a cause of action exists against a real estate agent in another set of unique factual circumstances.

Based on the foregoing, the purpose of this paper is to highlight the main causes of action that are usually brought against real estate agents and to identify some of the most common themes in which courts have held real estate agents liable. In highlighting the main causes of action and the common themes, this paper will further delineate those cases in which a real estate agent has been held liable to a vendor and those cases in which the agent has been held liable to the purchaser.

BREACH OF CONTRACT

As a matter of law, the relationship between an agent and his or her principal is contractual. Accordingly, the agent is required to comply with the duties and responsibilities found in the contract. He or she may also be required, however, to comply with implied terms.

One of the terms normally implied into the agency contract is that the agent will carry out

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his or her services with a reasonable degree of skill, care and diligence.[2] Indeed, this is the general duty every agent possesses vis-à-vis his or her principal. As noted in *Phelan v. Realty World Empire Realty Ltd.*, citing from secondary sources on the law of agency:

> Every agent acting for reward is bound to exercise such skill, care and diligence in the performance of his undertaking as is usual or necessary in or of the ordinary or proper conduct of the profession or business in which he is employed, or is reasonably necessary for the proper performance of the duties undertaken by him.[3]

The requirement to provide services with a reasonable degree of skill, care and diligence applies to both listing agents and selling agents, and will be part of both written contracts and oral contracts.

With respect to written contracts, in the buying and selling of real estate the only written contract which generally exists is the listing agreement. With respect to these agreements, many of the disputes between the contracting parties revolve around the entitlement to a commission. A typical case is where the listing agreement expires, but the vendor eventually sells the property to a buyer who was introduced to the vendor during the period of the agreement. These cases, however, generally involve the real estate agent bringing a claim against the vendor and are beyond the scope of this paper.

In other cases, vendors have attempted to argue that one of the implied terms in the contract with the listing agent is that the listing agent is required to obtain the best price possible for the property to be sold. In *Phelan*, however, the court rejected that such a term could be implied into the listing agreement. In this case, the vendors claimed entitled to damages as a result of believing that their home had been sold for a price that was less than its actual value.

At the time of entering the listing agreement, there was a discussion between the vendors and the listing agent with respect to price. The agent advised the vendors that a listing price of $200,000 was reasonable, but that at this price the home would take a long time to sell. Accordingly, a lower listing price was recommended and eventually the vendors' home was listed for sale at $190,000. The home sold for $186,000. Even though the vendors accepted the offer at this price, they claimed that this was not the best possible price they could have obtained. Months after the sale, the vendors commissioned an appraisal which valued their property at the time of sale at $235,000. This appraisal was later revised to a value of $220,000.

The theory of the vendors was that the duty of a real estate agent was to obtain the highest possible selling price for his principal and that where the best possible selling price was not obtained, the agent breached the contract. The court simply disagreed.[4] There was no express term that the agent agreed to obtain the highest possible selling price for the vendors and no such term could be implied into the contract.

In a more recent case[5], a developer of land sought to sue the listing agent for a portion of costs incurred to market and advertise a commercial condominium project which never ultimately proceeded. Although the main responsibility of the agent under the listing agreement was to market and sell the commercial condominium units that were to be built, the court rejected the developer's argument that the agent was required to reimburse it for the costs of marketing materials it had independently contracted with a third party to produce and had provided no information to the agent about.

In rendering its decision, Justice Edwards made some significant general comments with respect to listing agreements and their interpretation. The judge stated that listing agreements are to be interpreted in accordance with sound commercial principles and practice.[6] Furthermore, the interpretation of the agreement was subject to the usual

rules of contractual interpretation. Citing from the decision of Justice Winkler in *Salah v. Timothy's Coffees of the World Inc.*:

> The basic principles of commercial contractual interpretation may be summarized as follows. When interpreting a contract, the court aims to determine the intention of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said. The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective. In interpreting the contract, the court must have regard to the objective evidence of the "factual matrix" or context underlying in negotiation of the contract, but not the subjective evidence of the intention of the parties. The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity. If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.[7]

While the failure of a real estate agent to exercise reasonable care, skill and due diligence in representing a client can result in a claim for breach of contract, the usual circumstances in which real estate agents have been held liable to a vendor or purchaser involve findings of negligence, including negligent and fraudulent misrepresentation, and breach of fiduciary duty.

NEGLIGENCE AND MISREPRESENTATION

Wherever there is a duty of care, there is an ability to sue the party who breaches such duty.

With respect to real estate agents, it is well-established and accepted that such an agent owes a duty of care to his or her client, measured by the standard of a reasonably competent real estate agent.[8] This general standard, is a question of law, not a question of fact, and therefore it does not vary from case to case.

Real estate agents can also be held liable for negligent misrepresentation and fraudulent misrepresentation. The required elements for a successful claim with respect to each of these torts is well-established.

To succeed in a claim for negligent misrepresentation:

1. there must be a duty of care based on a "special relationship" between the representor and the representee;
2. the representation in question must be untrue, inaccurate or misleading;
3. the representor must have acted negligently in making said misrepresentation;
4. the representee must have relied in a reasonable manner on said negligent misrepresentation; and
5. the reliance must have been detrimental to the representee in the sense that damages resulted.

The leading authority in Canada with respect to negligent misrepresentation is *Queen v. Cognos*.[9]

Similarly, to succeed in a claim for fraudulent misrepresentation, the following elements must be established:

1. that the defendant made a false representation of fact;
2. that the defendant knew the statement was false or was reckless as to its truth;
3. that the defendant made the representation with the intention that it would be acted upon by the plaintiff;
4. that the plaintiff relied upon the statement; and
5. that the plaintiff suffered damages as a result.[10]

Claims against agents by purchasers

In general, buying a residential home probably represents the most significant purchase an

individual will ever make. Accordingly, it is not surprising that in this area of law there are many cases where purchasers have claimed damages for defects to their "newly" acquired property. Indeed, one of the leading cases in this area of law involves such a scenario.

In *Krawchuk v. Scherbak*[11] a purchaser sued both the vendors and her agent, who also had acted on behalf of the vendors under a dual agency, for serious latent structural and plumbing defects discovered post-closing. At the time of sale, the vendors had completed a Seller Property Information Sheet ("SPIS") in which they stated, in response to whether they were aware of any structural problems, that the northwest corner was settled and that they had not had any further problems in 17 years. With respect to whether they were aware of any plumbing problems, the vendors answered "No". These answers, however, were inaccurate to the knowledge of the agent, who as a matter of fact, among other things, was aware that the house had a reputation of experiencing settlement problems, and that the house was being offered at a price that reflected the settlement concerns.

On viewing the property, the purchaser identified certain structural problems with the home and made specific inquiries to the agent about her observations. Yet the agent only repeated the information that had been provided by her other clients, the vendors. The purchaser alleged that the agent had negligently misrepresented the fact that there were no structural problems, that she failed to recommend that she have a qualified inspector provide an opinion about material issues affecting the house and failed to explain the risks of not making her offer conditional on a home inspection.

The Ontario Court of Appeal determined that the real estate agent was liable for the problems encountered by the buyers as a result of defects. The court found that based on numerous case law a buyer's agent had a duty to verify a vendor's information about a property. In this case, the agent had to either verify the assurances made by the vendors herself or recommend, in the strongest terms, that the buyer get an independent inspection either before submitting her offer or making the offer conditional on a satisfactory inspection. The failure to do either was an egregious error.[12]

In *MacDonald v. Gerristen*[13] a real estate agent acting on behalf of purchasers was similarly held liable for defects discovered after closing. In this case, the buyers had attended the offices of the brokerage that had listed the property at issue for sale. The buyers made it known after viewing the property that their biggest concern was whether the house had any water problems. While the buyers noticed a crack in the floor and water staining on an exterior wall, they were assured by their agent that they should not worry. There were no qualifications placed on her statements and despite the concerns expressed by the buyers, the agent failed to include a clause in the agreement that would have made the offer conditional on a non-leaking basement or further inspection.

Three weeks after closing a massive rainstorm resulted in severe flooding in the basement of the home.

In the circumstances, the court held the agent liable for negligent and fraudulent misrepresentation. The court determined that the agent had misrepresented crucial facts to the buyers which were sufficient to induce them to make an offer to buy the property. Among other things, she lied about her experience and that the fact that the house had been re-inspected to determine if it had been soundly constructed. She gave the impression that she had knowledge of the particular house, the vendor and the area in general. Lastly, although not duly qualified, she instructed the purchasers on what to look for to determine if there was any water damage and provided an explanation for all of their inquiries to allay any concerns that they had respecting water in the basement of the house.[14]

In *Blais v. Cook*[15] the purchasers' real estate agent was held liable for failing to inform his clients about the special risks of a transaction. In this case, the buyers purchased a home that was supplied by water from a well and a cistern. While the water in the well was "salty" (something that the buyers expressly did not want), this fact was never brought to the attention of the buyers by their agent. Instead, the buyers' agent had undertaken to test the well water and revealed to them that following a test the water was "okay" or "zero zero". Based on this advice, the buyers waived a condition to satisfy themselves as to the "quality and quantity of water" being produced by the well.

However the well water had been tested for bacteria only. Furthermore, the agent did not discuss with his clients the significance of the fact that the water was "salty" and that the presence of the cistern and additional wells on the property was an indicator of potentially poor water quality or quantity problems. He also did not discuss with the buyers the well record.

In the circumstances, the court determined that the agent was negligent for not fully apprising the purchasers about the problems of salt in the water supply and the difficulty that the purchasers might face on re-sale of the property.

Just like the quality and quantity of water available on the property, re-sale was an important factor in this case since the purchasers were members of the military who were frequently posted both in and outside Canada.[16] This fact was known to the agent. Agents can also be held liable for failing to ensure that appropriate terms are included in an agreement of purchase and sale, thereby leaving their clients unprotected against certain events. In *Wemyss v. Moldenhauer*[17], the court stated that a real estate agent has a duty to act with reasonable care and skill in reviewing the terms of a purchase agreement with his or her client. That duty includes the obligation to specifically draw to the client's attention, any provisions in the agreement that are contrary to the client's interest or instructions given by the client.[18]

In this case, prior to entering into an agreement to buy a residential property the buyer noticed a large area in the backyard near a septic system which was wet and soggy despite the fact that it had not rained in days. The buyer discussed this situation with his real estate and told him that he wanted to be able to get out any deal if there was a problem with the septic system. Although the buyer's real estate agent inserted a broadly worded inspection condition clause into the offer to protect his client, the seller, on a counter-offer amended the clause to only permit the buyer an out where there were no structural defects.

A problem with the septic system did not constitute a structural defect.

The court found that the buyer's agent never brought the change to his client's attention, and thus committed an act of negligence. In the context of the case, the court found that:

> it was incumbent upon [the agent] not only to show his client the change, but to specifically advise him that the inspection clause had been fundamentally altered. He should also have specifically explained to him that this amendment could mean that he might not be able to get out of the deal even if the inspection disclosed a problem with the septic system.[19]

In *Wong v. 407527 Ontario Ltd.*[20] the purchasers of a commercial building sued their real estate agent for failing to negotiate adequate security for a warranty on rental income given by the vendor, a numbered company. While the agent had included a clause that warranted the gross rental of the income from the property for the year to be a specific amount, in the year following closing the buyers had lost rental income. The buyers turned to the numbered company for compensation, but the numbered company was unable to satisfy the warranty.

The court concluded that the buyer's agent should have recognized the special risk posed by contracting with a numbered company. The agent should have explained the danger of accepting an unsecured warranty from the seller and sought instructions from the buyers to try to obtain security.[21] By failing to do any of these things, the conduct of the agent fell below the requisite standard of care.

Unlike a claim for breach of contract, a claim in negligence is not hampered by the issue of privity of contract. Accordingly, a listing agent can be held liable for negligence or negligent misrepresentation to a buyer even though he or she is not considered to be the buyer's agent.

In *Paglia v. Triolet*[22] a listing agent was held liable for negligent misrepresentation to a buyer even though it was determined that the buyer was not his client. The facts of this case showed that when listing two vacant lots for sale, the listing agent posted a sign on the lots which stated that they were "fully serviced". With respect to hydro servicing, the listing agent had made this determination independently by viewing the immediate neighbourhood and noticing that hydro polls ran across the front of the lots and that adjacent homes were serviced from these polls.

The buyer, who purchased the lots without the benefit of an agent, relied on this sign to enter into an agreement of purchase and sale. However after constructing a home on one of the vacant lots, the buyer discovered that hydro service thereto could only be obtained by running a line some distance away from the lot. The cost of this line was over $10,000.

In finding that the listing agent was liable for negligent misrepresentation the court found that pursuant to the REALTOR Code, the listing agent owed a duty of care to prospective buyers and that the statement made on the agent's sign was inaccurate and misleading. Furthermore, the buyer reasonably relied on the sign and suffered damages.

With respect to whether the listing agent specifically committed an act of negligence, the judge found that the agent had a clear obligation to ensure that the advertising was accurate and to avoid misrepresentation. Moreover, the manner by which the listing agent reached the conclusion that the lots were "Fully Serviced" was negligent. The agent had not been told that the lots were fully serviced, and he never made inquiries to verify what services to the lot were immediately available.

Claims against agents by buyers

Although there appear to be more instances where buyers sue real estate agents for negligence, sellers have also successfully been able to sue their listing agents in tort.

In *Krawchuk*, for example, the court determined that sellers who had made negligent misrepresentations in their SPIS and were accordingly liable to the buyers, had a valid negligence claim of their own against their agent. They alleged that when completing the SPIS, the listing agent had failed to provide them with adequate advice concerning their obligations to complete it. The court agreed.

As a basic proposition, the court stated that a real estate agent has duty to provide a certain level of guidance when a client is filling out or receiving a property disclosure statement. Such guidance includes warning the seller that an SPIS may be providing information that the seller is not legally obligated to provide. Further, if the seller chooses to complete an SPIS, the agent must emphasize the importance of providing information that is complete and accurate. Where the agent plays a role in the completion of the SPIS, the agent must exercise reasonable care and skill in ensuring its accuracy.[23]

The listing agent was held liable to the sellers in this case because the agent had been put on inquiry about structural defects in the house, yet did nothing to question them further about those issues. She also failed to appropriately counsel the sellers with respect

to the implications of the representations made in the SPIS.

In *Lovell v. Century 21 Dome Realty Ltd.*[24] the court held that a listing agent was liable in negligent misrepresentation to his seller client by insisting that the seller's home was worth a certain value, which was below its actual value. While the seller had asked to list his property for $40,000, the agent asserted that he would never get that price and that there was not a hope. As a result, the property was listed for $34,900, and sold for $34,000.

Less than three months later, the listing agent marketed the property for sale again. However this time, without evidence that the property had been renovated, the listing price was $49,900. It sold for $42,500.

The court found that the listing agent knew about the property values and that it was incumbent upon him to fully explain the low value of $30,000. Yet, he was unable to do so with any evidence. The court further found that if the listing agent had not made his representations about the value of the property, which were relied upon by the seller, the seller would have listed it for much more than $34,900 and sold it for more than $34,000.

In the circumstances, the court questioned whether the listing agent was really working for the buyer and re-seller rather than the original homeowner.[25]

The facts in *Lovell* are disturbing, particularly at a time of hot real estate markets where homes are bought and sold at a rapid pace and the listing of a property attracts multiple offers. Rogue agents can certainly profit in this kind of market. Indeed, recently the B.C. government has opened an investigation into how real estate agents in Vancouver are profiting from speculation. According to an investigation conducted by the Globe and Mail, real estate agents and speculators are making significant profit, flipping Vancouver-area homes, by finding buyers willing to pay more for properties before deals close. Through a series of contract assignments, the last buyer takes over the contract and pays more than the original seller receives. Meanwhile real estate agents and other speculators are making millions.[26] As will be discussed below this kind of conduct on the part of a real estate agent may attract liability for breach of fiduciary duty.

BREACH OF FIDUCIARY DUTY

As a matter of law, the relationship between a real estate agent and his or her client attracts fiduciary obligations. Indeed, it is well-recognized that the relationship of principal and agent is presumed to carry with it such obligations.[27]

The presumption is rebuttable, and therefore in assessing in any given case whether a real estate agent stands in a fiduciary relationship with a client a court will examine certain characteristics, including whether:

1. the fiduciary has scope for the exercise of some discretion or power;
2. the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiaries legal or practical interests; and
3. the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.[28]

As stated in *Valiquette v. Re/Max Realty Specialists*,

> Even though real estate agents fall within the traditional category of fiduciaries in their relationships with vendors, one cannot characterize all legal claims arising out of their legal dealings with the vendor as a breach of fiduciary duty…[s]ome actions may legitimately trigger claims of breach of fiduciary duty, while others will lie in negligence.[29]

It has further been noted that the cases in which fiduciary duties have most often been found in this area of law occur when an agent

acts for both the vendor and the purchaser. In an article about the duties of real estate agents, now Justice Perell wrote:

> [T]he situation [of dual agency] is inherently problematic for the agent because of his or her contract, tort, and fiduciary obligations owed simultaneously to both the vendor and the purchaser. An obvious problem is that a dual agent has two masters, who themselves have conflicting aims – the vendor to maximize his purchase price, and the purchaser to minimize it – and therefore it may be impossible for the agent to properly serve and be loyal to both masters. Another obvious problem of dual agency is that they may be conflicts between the fiduciary's duties to keep confidences and his or her duty to disclose information. Typically the competing parties would like to keep their own confidential information secret while obtaining disclosure of their rival's information.[30]

CLAIMS MADE BY VENDORS

As stated above, the most obvious case in which a vendor might have a claim for breach of fiduciary duty against his or her agent is where the vendor's property is "flipped" shortly after sale and the vendor's real estate agent makes an additional commission or, potentially a profit.

In *D'Atri v. Chilcott*31, the court stated:

1. that the relationship between a real estate agent and the person who has retained him to sell his property is a fiduciary and confidential one;
2. that there is a duty upon such an agent to make full disclosure of all facts within the knowledge of the agent which might affect the value of the property;
3. that not only must the price paid be adequate but the transaction must be a righteous one and the price obtained must be as advantageous to the principal as any other price that the agent could, by the exercise of diligence on his principal's behalf, have from a third person; and
4. that the onus is upon the agent to prove that those duties have been fully complied with.[32]

In circumstances where a listing agent is involved in the purchase of his or her client's real estate, and then flips the property it is arguable that such a transaction may not be "righteous one".

In *Phelan*, the court, in rejecting a breach of fiduciary duty claim against an agent, essentially highlighted the "red flags" that should be looked for when assessing whether a vendor has a claim against his or her agent for breach of fiduciary duty in the following passage:

> Although breach of fiduciary duty has been alleged, no one has suggested that Realty World, or Allen and Cirillo (the agents), had any conflict of interest, or put their own interests ahead of the interests of the Phelans (the sellers). There is no evidence of a secret commission or secret profit. There is no evidence of any special relationship between Realty World and the Archers (the buyers). There is no evidence that the Archers "flipped" the property for a profit, or even that the Archers have resold the property at all. There is no suggestion that the Phelans were operating under any disability, or did not understand the bargain they made. There is no evidence that Mr. Allen or Mr. Cirillo used any high-pressure sales tactics, behaved unethically, or exercised any undue influence over Mr. and Mrs. Phelan.[33]

CLAIMS MADE BY PURCHASERS

Actions by purchasers against a real estate agent for breach of fiduciary are also possible and as already mentioned generally occur where there is a dual agency.

1505986 Ontario Inc. v. Surma is an example of case where buyers successful sued their real estate agent (who also acted for the seller) for breach of fiduciary duty. In this case, the buyers considered expanding their business interests and asked their friend, who they believed was a real estate agent, to help them look for something suitable. Although the friend was not a real estate agent, his wife was.

The friend eventually recommended that the buyers consider obtaining a specific motel in Niagara Falls. The listing agent for the motel was the wife.

Notwithstanding that the wife had knowledge that the motel was only "breaking even" and that annual expenses totalled approximately $200,000, the buyers were told that the revenues were $400,000 annually and that each of the 52 rooms, based on rooms in other Inns in the area, were going for $50,000 without a Jacuzzi and $100,000 with a Jacuzzi. The buyers based their offer on this kind of information which later proved to be significantly over-estimated.

Approximately six months after closing the deal, the buyers noticed that revenues for the hotel were much lower than expected. A new buyer was sought without success, and eventually a legal proceeding was started against the seller, the friend and his spouse, the real estate agent.

The real estate agent was held liable for breach of fiduciary duty since she had failed to disclose all material facts known to her. While the agent admitted that she was concerned about the discrepancy between financial statements and what she had been told about the revenues by the seller, she failed to either alert the buyers about the discrepancy or recommend that they obtain an independent evaluation. In addition, it was found that the real estate agent recommended a purchase price which they knew or ought to have known far exceeded the motel's value. In the circumstances, the court drew the irresistible inference that the real estate agent and her husband had misrepresented both the value and the revenue of the motel in order to earn the sizeable commission which equalled $91,000.[34]

CONCLUSIONS

The foregoing discussion is intended to highlight the various circumstances in which real estate agents have been found liable in the purchase and sale of real estate.

The cases mentioned above and the facts scenarios are not necessarily comprehensive of the law in this area or the fact scenarios in which real estate agents have been held liable.

However, this discussion demonstrates that there are three main areas of law under which real estate agents can be held liable to either a seller or buyer for damages caused by the conduct of a real estate agent.

Accordingly, when considering whether a seller or buyer has a cause of action against his or her agent, it will be important to review any contract between the agent and the seller and/or buyer, whether written or oral, and to gather as many facts as possible to support a potential claim in either negligence, including negligent and fraudulent misrepresentation and/or breach of fiduciary duty.

Lastly, it may also be helpful to be aware of the duties and obligations that govern the conduct of real estate agents either under relevant statutes or self-regulating bodies or associations. These duties and obligations will offer guidance in assessing whether a real estate agent has been negligent or acted improperly.

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1. Mr. Skolnik is the Managing Partner of Gardiner Roberts LLP and a member of its Dispute Resolution Group. Mr. Thiele, is a Partner of Gardiner Roberts LLP and is the firm's director of legal research. This paper is intended for educational purposes only and does not reflect the view of Gardiner Roberts LLP.

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2. Professional Liability in Canada, chapter 8, Real Estate Professionals, s. 5.1(b) (Carswell: eReference Library)
3. *Phelan v. Realty World Empire Realty Ltd.*, 1994 CarswellBC 803 (S.C.) at para. 45
4. *Phelan, supra*, at para. 44
5. *1598223 Ontario Inc. v. Behar Group Realty Inc.*, 2014 CarswellOnt 17467 (S.C.J.)
6. *Ibid.*, at para. 16
7. *The Behar Realty Group Inc.*, at para. 16
8. *Wong v. 407527 Ontario Ltd.*, 1999 CarswellOnt 2867 (C.A.)
9. 1993 CarswellOnt 801 (S.C.C.)
10. *1505986 Ontario Inc. v. Surma*, 2010 CarswellOnt 5329 (S.C.J.), citing Mariani v. Lemstra, 2004 CarswellOnt 5126 (C.A.), leave to appeal to S.C.C. refused, 2005 CarswellOnt 90
11. 2011 CarswellOnt 3015 (C.A.), leave to appeal to S.C.C. refused 2011 CarswellOnt 13567
12. *Krawchuk*, at para. 154. The finding that the agent's error was egregious is significant because it avoided the need of the plaintiff to introduce expert evidence. As a general rule, courts require expert evidence when determining whether a standard of care has been breached. However, there are two exceptions to this rule. The first exception applies to cases in which it is possible to reliably determine the standard of care without the assistance of expert evidence. This exception applies where the matters at issue are non-technical in nature. The second exception applies to cases in which the impugned actions of the defendant are so egregious that it is obvious that his or her conduct has fallen short of the standard of care, even without knowing precisely the parameters of that standard. See *Krawchuk* at paras. 130-135.
13. 1994 CarswellAlta 438 (Q.B.)
14. *Ibid*, at para. 24
15. 2005 CanLII22210 (S.C.J.)
16. *Ibid.*, at para. 50
17. 2003 CarswellOnt 38 (S.C.J.), aff'd 2004 Carswell 5190 (C.A.)
18. *Ibid*., at para. 18
19. *Ibid.*, at para. 20
20. 1999 CarswellOnt 2867
21. *Ibid.*, at para. 25
22. 2014 CanLII 67124 (ON SCSM)
23. *Krawchuk, supra*, at paras. 164-165
24. 2004 CarswellSask 390 (Prov. Ct.)
25. *Ibid.*, at para. 34. This comment raises the inherent concern that a real estate agent is always in a conflict of interest when acting for a client, whether it is buyer or seller, since in general the agent is paid on a commission basis and will only earn that commission when a property is sold. In circumstances where a house is listed and sold at one price, and shortly thereafter relisted and sold at a higher price certainly raises the alarm that the agent may not have acted in the best interests of his or her client.
26. Kathy Tomlinson and Sunny Dhillon, "B.C. to investigate profiteering by Vancouver realtors", The Globe and Mail, February 8, 2016.
27. Professional Liability in Canada, supra, Chapter 5, s. 5.1(c)
28. *Ibid.*, s. 5.1(c)
29. 1997 CarswellOnt 5724 (Gen. Div.) at para. 31
30. Paul M. Perell, "The Duties of Real Estate Agents", 2004 RPR-ART 20
31. 1975 CarswellOnt 357 (S.C.)
32. Professional Liability in Canada, *supra*, Chapter 5, s. 5.1(c)
33. *Phelan, supra*, at para. 29
34. *1505986 Ontario Inc., supra*, at para. 68

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