

Real estate agent not liable for opinion of value

Litigation | Litigation & Dispute Resolution | Real Estate

9 June 2023

Real estate agents are often asked by clients to assess the value of a property. There is a significant difference between an opinion of value as determined by an agent and a formal appraisal prepared by a certified appraiser, including the time and costs involved. Depending on the circumstances, a client may need to obtain a more expensive appraisal rather than relying on a rough ballpark estimate provided by a real estate agent.

In *Spencer v. Sutton-Harrison*, 2023 MBKB 16 (CanLII), the plaintiff and her husband owned six parcels of farmland ranging in size from 46 to 160 acres. The plaintiff telephoned her long-time real estate agent in March 2018 and informed him that she and her husband were separating and that she needed to obtain the value for the six parcels of land.

The agent explained that there is a difference between an opinion of value, which might cost about \$300, and a formal appraisal which would cost between \$2,000 to \$4,000. The plaintiff asked the agent to prepare an opinion of value in respect of six parcels of land.

In April 2018, the agent prepared an opinion of value which valued each of the six parcels ranging between \$200,000 and \$465,000, for a total value of approximately \$1.4 million. In doing so, he looked at the assessed values of the six parcels and perhaps one recent sale of local farmland. The agent emailed the opinion of value to the plaintiff's family law lawyer who was handling her separation.

The plaintiff then entered into a separation agreement with her husband. The separation agreement listed the six parcels and said that the two spouses owned the parcels as joint tenants. It mentioned that the plaintiff's husband would pay her an "equalization payment" and that her interest in the six parcels was "taken into consideration when reaching agreement on the quantum of equalization payment due and owing" to the plaintiff.

In November 2018, the plaintiff advised her agent that two of the six parcels, which had been assessed at a combined value of \$360,000, were listed for sale. The plaintiff subsequently asked her agent to prepare a further opinion of value of the two parcels.

The agent's opinion was that the combined value of the two parcels was between \$570,000 and \$595,000 (up from \$360,000 in April 2018). The agent emailed a copy to the plaintiff's family lawyer in January 2019.

The two parcels were sold in February 2019 for \$600,000.

The plaintiff came to feel that the agent's opinion of value was much too low and she sued the agent and his brokerage for negligence.

In the course of the litigation, the plaintiff hired a certified appraiser who reviewed the agent's opinion of value, produced a formal appraisal (which included photos, maps, charts and other materials), and concluded that the agent's opinion was deficient in various ways. The appraiser felt that the six parcels were worth over \$1.8 million.

At trial, the plaintiff argued that her real estate agent had violated the standard of care required by the Realtor Code of *The Canadian Real Estate Association* (the "Code"). In particular, she argued that he failed to enter into a written agreement with her as required by the Code; that he failed to deal fairly with her as a client; and that the Code required him to disclose all information, which he failed to do.

The plaintiff argued that due to the defendants' breaches of the Code she had suffered damages in the amount of half of the difference between the OOV (\$1.4 million) and the formal appraisal (over \$1.8 million). The "half" was based on the principle that family property is generally divided equally between former

spouses/partners after separation.

In the trial judge's view, however, the plaintiff got exactly what she paid for. Notwithstanding that she was neither a realtor nor an appraiser, she should be treated as a reasonable consumer. A reasonable consumer would have realized that a \$3,000 formal appraisal would be substantially different from a \$300 opinion of value, and that they would have governed themselves accordingly. For the low price of \$300, the plaintiff got a quick and rough ballpark set of estimated land values. Even if the values were at the low end of the ballpark, that did not constitute negligence.

The agent's evidence was that he told the plaintiff that, as a realtor, he could only provide an opinion of value and that he was not qualified as an appraiser. He said that he made the plaintiff aware of the difference in cost between an opinion of value and a full-blown appraisal, which would likely cost several thousand dollars. His evidence was that the plaintiff did not have or want to spend that amount of money for an appraisal. His text messages to the plaintiff confirmed that he was providing an "opinion of value in today's market". The opinion of value itself was a short document on the brokerage's letterhead and marked: "RE: Land opinion of value".

The plaintiff confirmed during her examination that the agent had said that she would probably be better off getting an appraisal. While she denied understanding the different amount of time that would be involved in preparing an opinion of value and an appraisal, she reluctantly admitted that she was at least aware there was a price difference between the two types of reports and that an appraisal would be prepared by a person with "more experience and more qualifications".

While the Code is a useful tool in determining what a reasonable realtor should do, it is not a codification of the law of negligence but rather could fairly be described as "a summary of best practices for diligent Canadian realtors".

In the circumstances, the plaintiff failed to establish that the agent's allegedly negligent conduct was the cause of any damages. She failed to show a connection between the opinion of value and what she had obtained as result of the separation agreement with her husband. The portions of the separation agreement introduced as evidence at trial mentioned an equalization payment, but did not mention the *amount* of that payment. Even though all realtors have a duty of care to their clients, and the standard of care is that of a reasonable realtor, the tort of negligence also requires damages: "there is no breach without proof of consequential damages."

Further, prior cases had shown that there may be legitimate differences, even large differences, even between formal appraisals since property appraisal is not an exact science: *Royal Bank of Canada v Westech Appraisal Services Ltd*, 2018 BCSC 473, at para 163. The fact that a plaintiff can obtain another appraisal much higher than the appraisal provided by a defendant does not mean that the defendant was negligent and does not mean that the quantum of damages is the difference between the two appraisals. The plaintiff had an independent family lawyer and could have challenged the values before agreeing to the separation agreement.

The plaintiff's claim for negligence was therefore **dismissed**.

At the end of the day, as noted by the trial judge, one pays more for services of higher quality: "In a capitalist society, it is accepted that one generally gets what one pays for". Given that the plaintiff was aware of the huge price difference between an opinion of value and an appraisal, a reasonable consumer in her place would have realized that a \$300 opinion of value would be a rough "ballpark" estimate of the values of the six parcels and that for an extra few thousand dollars, she could have obtained a much more precise estimate in the form of an appraisal from a certified appraiser. She would have been better off had she done so rather than suing her agent for negligence. A PDF version is available to download [here](#).

For more information please contact: **James Cook** at **416.865.6628** or jcook@grllp.com

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com