

## Acting for both buyer and seller: Court finds no conflict of interest by mortgage agent

By **James R.G. Cook**

Law360 Canada (July 25, 2025, 1:58 PM EDT) -- In Ontario, the *Mortgage Brokerages: Standards of Practice* (Ontario Regulation 188/08) requires that mortgage brokerages and agents disclose in writing to a prospective borrower or lender whether they are acting for the lender, the borrower, or both. While there is no prohibition against acting for a lender and borrower in a transaction, steps should be taken to ensure the paperwork accurately describes the involvement of the broker or agent.

In *Dhanoa v. Ramnarine*, 2025 ONSC 3621, 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.



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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 nine per cent 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 the agent's misrepresentation, the borrower argued, the mortgage contract was void, and she should only be liable to repay the loan principal.

The trial judge referred to the general principle that in normal debtor/creditor relationships, a lender does not owe a borrower a duty of care, citing *Bank of Nova Scotia v. Villafuerte*, [2007] O.J. No. 330, at para. 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] O.J. No. 2365, at para. 10. A contract obtained through a fraudulent misrepresentation is voidable: *Tran v. Chung*, 2016 ONCA 378, at para. 62.

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 acknowledgments signed by the borrower. The borrower provided 12 postdated cheques for the interest payments, which were payable to the lender by name.

Further, the trial judge preferred the agent's evidence over that of the borrower. 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 had recently finished a consumer proposal, so she was at risk of defaulting on the lease.

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 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 to the lender and deliver possession of the property.

Fortunately for the mortgage agent, the court assessed the overall circumstances of the transaction to determine liability rather than focusing on the shoddy paperwork. While claims may be inevitable in cases where a borrower is seeking to avoid liability, ensuring that written disclosure obligations are satisfied will assist with a defence.

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