IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: Harrison v. Corbett, 2006 NSSM 15

Date: 20060814
Claim: SCCH 263828
Registry: Halifax

Between:

Diana Harrison

Claimant

v.

Justin Corbett

Defendant

AND

Between:

Claim: SCCH 265688
Registry: Halifax

Justin Corbett

Claimant

v.

Alan Minasian and Royal LePage Atlantic Limited

Defendants

Adjudicator: W. Augustus Richardson, QC

Heard: May 31 and June 26, 2006 in Halifax, Nova Scotia.

Counsel: Kent Nosworthy, for Diana Harrison, Claimant in SCCH 263828
William MacInnes, for Justin Corbett, Defendant in SCCH 263828 and Claimant in SCCH 265688
Allan Fownes, for Defendants Alan Minasian and Royal LePage Atlantic Limited in SCCH 265688

By the Court:

[1] This matter came on before me on May 31st and June 26th, 2006. I heard the evidence of Diana Harrison, her father Guy Harrison, Justin Corbett and his witness Jason Gallant, and Alan Minasian.

[2] This is a case of buyer's remorse. It arises out of an abortive agreement of purchase and sale for a residential premises known municipally as 73 Farrell Street, Halifax, between the Claimant Diana Harrison ("Ms Harrison") as vendor and the Defendant Justin Corbett ("Mr Corbett") as purchaser. Alan Minasian (Mr Minasian) and Royal LePage Atlantic Limited ("Royal LePage") acted as Mr Corbett's agent. Mr Corbett entered into the agreement on September 20th, 2006, which he then purported to terminate on September 22nd, 2006. Ms Harrison resold the house a few months later, at a lesser price, and now claims the difference in the purchase prices as well as her carrying costs until the closing of the subsequent agreement.

[3] In the event that he is found liable to Ms Harrison, Mr Corbett as Claimant in the second action claims against Mr Minasian and Royal LePage as Defendants on the grounds that "at all times he relied upon Mr Minasian to do the proper documentation and carry out the proper steps to terminate the Agreement;" and that he was "relying upon the expertise, knowledge and guidance of Mr Minasian and [Royal LePage] in his dealings with the property."

[4] The issues thus become the following:

a. was Mr Corbett entitled to terminate the Agreement?

b. if not, did Mr Minasian and Royal LePage fail in their contractual or common law duties to Mr Corbett with respect to the advice if any they gave him regarding the purported termination of the agreement? and,

c. what are the damages, if any?

The Facts

[5] Ms Harrison owned the house at 73 Farrell Street. She has been a realtor for roughly 14 years, and at the relevant time worked with Quest Realty in Bedford. Her father, Guy, occupied the house as a tenant. She decided to sell the property and listed it on the MLS system in the spring of 2005 for $129,900.00. There was at least one price reduction by the time Mr Corbett saw it.

[6] When viewed from the street 73 Farrell is bounded by two driveways. The one on the right serviced the neighbouring property at 75 Farrell. The one on the left serviced 73 Farrell, and also the property to the left, being 71 Farrell. That house had a right-of-way agreement permitting its owners to use the left-hand driveway for certain limited purposes, which will be described later in more detail.

[7] Mr Corbett was a first-time home buyer.

[8] Mr Corbett saw the property on Channel 13, the "Real Estate Channel." He was interested in it. He asked Mr Minasian to set up a viewing of the property for him. Mr Minasian himself was new to the business of real estate, having received his license three and a half months before.

[9] Ms Harrison, an unidentified man, Mr Corbett, his girlfriend "Tammy" and Mr Minasian visited the property on Monday, September 19th, 2005, at about 10 a.m. The witnesses are in basis agreement that Ms Harrison showed them around, inside and out. She explained that the driveway which separated 73 Farrell from 71 Farrell was subject to an easement or right of way in favour of the occupants of 71 Farrell.

[10] Ms Harrison had been aware of the right of way when she purchased the house in 2002. She testified that she understood that the left driveway was part of 73 Farrell's property, but that the occupants of 71 Farrell had a right of passage across it, and permission to park two cars, back to front, along the left side of the driveway, next to the side door and patio of 71 Farrell. She told this to Mr Corbett and Mr Minasian. The evidence of Mr Corbett and Mr Minasian was essentially to the same effect.

[11] While he was there Mr Corbett noticed a truck parked on the side of the driveway, next to the back door porch of 71 Farrell. He was reasonably certain that he knew the owner of the truck. He did not mention this to anyone.

[12] Shortly after this visit, and still on September 19th, Ms Harrison faxed to Mr Minasian the Property Condition Disclosure Statement ("PCDS") and a plot plan for 73 Farrell Street: see Ex. C10.

[13] The PCDS contained this question: “Are you aware of any limitations with the property such as: Restrictive or Protective Covenants, Easements and Rights-of-Way, Shared Wells, Driveway Agreements, Encroachments on or by adjoining properties. If yes give details.”

[14] In answer Ms Harrison had stated as follows: “Yes. Left hand driveway I give right of way for 71 Farrell St to cross driveway and to park 2 cars next to their side patio deck only – entire rear yard, double car garage & rear of garage belongs to 73 Farrell Street:” see Ex. C9.

[15] The plot plan showed the existence of a driveway encroachment by 73 Farrell onto 75 Farrell; but did not show anything with respect to 71 Farrell: see Ex. C11.

[16] The next morning, Tuesday, September 20th, Ms Harrison got a call from Mr Minasian indicating that he had an offer for her. He faxed it to her office at about 10:26 a.m.: see Ex.C6. It was expressed to be open until 1:00 p.m. that same day. It contained inspection and mortgage financing clauses that gave the purchaser the right to terminate in the event that they were not satisfied by September 27th.

[17] Ms Harrison prepared a counteroffer, dated September 20th, 2005. It was to remain open until 9:00 p.m. that day. Attached to it was a Plot Plan that showed the existence of a right of way in favour of 71 Farrell Street. It appears to have been faxed from Quest Realty (her agent) to Royal LePage at approximately 2:39 p.m.: see Ex.C7. Mr Corbett accepted the Counteroffer on the same day. It was faxed back to Ms Harrison on September 20th at 2:30 p.m. (One supposes that the fax stamps were not completely accurate as to the time.)

[18] At this point Mr Corbett and Mr Minasian still had not seen the actual, legal Right of Way (“ROW”) Agreement that existed in favour of the owners of 71 Farrell Street. Ms Harrison herself could not locate a copy, so she asked her lawyer (Mr Noseworthy) to fax her a copy. The documents filed show that the ROW Agreement was faxed from Mr Noseworthy’s office to Quest Realty at 23:38 on September 20th: see Ex. C2 and C10.

[19] The ROW Agreement also had attached to it a Plot Plan that was somewhat more detailed that the earlier Plot Plan. In particular, this Plot Plan showed the encroachment of a portion of 71 Farrell’s side door patio and step onto the lands of 73 Farrell (although such encroachment was within the boundary of the right-of-way shown on the plan).

[20] The ROW Agreement with the attached Plot Plan was in turn faxed by Ms Harrison (or her agent Quest Realty) to Mr Minasian on Wednesday, September 21st: see Ex.C10, p.2.

[21] The ROW Agreement granted the owners of 71 Farrell Street two rights:

a. an easement permitting the concrete step located on the eastern side of civic 71 Farrell Street, or any replacement step which does not exceed the size of the step as presently located at the premises, to remain in its present location, providing access to civic 71 Farrell Street through its east side entry; and

b. a right-of-way over the driveway located on Lot 67 (civic 73 Farrell Street), with the right to park at the northern end of the driveway so as not to obstruct access to the garage or parking area behind civic 73 Farrell Street. This includes the right to turn a vehicle on the parking area behind 73 Farrell Street so as to be able to back into the parking area described in Schedule "C" and avoid the necessity to back a vehicle out along the right of way.

[22] The owners of 71 Farrell in turn agreed that no vehicle of theirs, or of any guest, "will be allowed to park on the right of way so as to obstruct access to the garage or parking area behind civic 73 Farrell Street."

[23] Mr Corbett in his evidence testified that he saw the ROW Agreement and Plot Plan on September 21st, in the mid afternoon. He went through the agreement with Mr Minasian. In particular, he discussed the two clauses or rights referred to above.

[24] He stated in cross examination that this discussion took place in the afternoon, before he went to work at 8:00 p.m. that evening. Mr Corbett testified that later that evening, after he went to work, he met his friends (including his cousin Jason Gallant). He told them that he had purchased the house at 73 Farrell Street. Mr Gallant said that he knew the house next door (71 Farrell). He told Mr Corbett "I don't know if you should, it's a party house." Mr Corbett was dismayed. He thought that "I'm going to have to share the driveway, if they're parked there on the weekends I going to have to kick them off my driveway." He didn't want to deal with this problem.

[25] Jason Gallant also testified about this conversation. He said that he told Mr Corbett that he knew the house at 71 Farrell Street. He was a friend and cousin of Mr Corbett's. When Mr Corbett told him about his purchase of 73 Farrell he recognized the address. He knew the occupants of 71 Farrell, "Derrick and Andrew." He thought that they were "OK, but the company they keep are not great people." He was not specific about what it was that made such

company suspect; he just knew “the type of people they were, based on their appearance;” he didn’t want to “hang with them;” “just based on their appearance they were not good people.” Derrick and Andrew had had, he understood, frequent parties, a few of which he had attended (about two years before).

[26] Mr Gallant passed on his thoughts to Mr Corbett. He could not remember exactly when he had this discussion with Mr Corbett. He testified that Mr Corbett did not at the time tell him that he had actually purchased 73 Farrell, so he thought it possible that the conversation had taken place *before* the agreement was entered into. I pause here to state that I think this extremely unlikely. Mr Corbett was clear in his evidence that he developed his desire to “get out of the agreement” only after he spoke to Mr Gallant. That being the case, the conversation had to have happened sometime after he signed the counteroffer (and therefore after he entered the agreement).

[27] Mr Corbett then called Mr Minasian from work (which I find would have been some time after 8 p.m.) and left a message that he did not “want to move in there.” Mr Minasian called him back that same evening and told him that “he would get on with it ... he’d get on doing the termination.”

[28] I pause here to note that the evidence is clear and I so find that it was the identity of one of the occupants of 71 Farrell, and not the ROW agreement itself (or even the fact that it differed in detail from what Ms Harrison had told him or what was disclosed about it on the PCDS) that caused Mr Corbett to change his mind. He admitted that if “a little old lady” had been living there he “would not have had a problem.” Indeed, it wasn’t even “Andrew” that caused him any concern. He had seen a truck parked by 71 Farrell when he’d visited 73 Farrell, and he had known it to be Andrew’s truck. Notwithstanding that knowledge, he put an offer in on the house. But it was different with “Derrick.” Once Mr Corbett learned that “Derrick” was to be a neighbour he decided that he had to get out of the deal.

[29] Mr Minasian testified that Mr Corbett told him he wanted “to terminate the deal.” Mr Minasian said that he’d speak to his broker to determine the best course of action. He testified that she told him that he should send a Notice of Termination as soon as possible, and cite as a reason what he’d found out about the easement. According to Mr Corbett, she told him that he should use as a reason “due to knowledge obtained by the purchaser.”

[30] Ms Harrsion testified that on Thursday, September 22nd Mr Minasian called to tell her that Mr Corbett had spoken to a friend, and that the friend had told him that 71 Farrell was a

"party house," which had concerned Mr Corbett. She told him that she would contact her father to see "if it was still the case." Her father said that there had been no disruptions within the past year. She then called Mr Minasian back and passed on that information. She testified that he said he would pass the information on to Mr Corbett.

[31] Shortly thereafter Mr Minasian called her back to say that Mr Corbett did not want to proceed with the transaction. There was, according to her, no discussion or indication of any concern about the right-of-way. The focus was on the occupants of 71 Farrell, and the fact that they were (as Mr Corbett understood) heavy partiers. She said that she told him that she would be "upset if he didn't proceed as per the agreement." Mr Minasian testified in cross that he told her (based on his discussions with his broker) that if she didn't let Mr Corbett out of the deal because of the neighbours, "there were other things we could do to get out of the deal."

[32] Mr Minasian then faxed the "termination + mutual release" to Ms Harrison at approximately 5:28 p.m. on Thursday, September 22nd, with the words "Sorry we couldn't get together on this:" see Ex. C12, D18. He was aware at this time that Ms Harrison was scheduled to leave the city for a week on September 22nd. He also admitted on cross examination that he understood that Ms Harrison had to sign the Notice "to release Mr Corbett from his obligations on the deal."

[33] The Termination and Mutual Release of Agreement of Purchase and Sale is a standard form prepared by the Nova Scotia Association of Realtors for use by its members. It recites the existence of a particular agreement of purchase and sale, and then states: "In accordance with the terms of the above Agreement of Purchase and Sale, I/we hereby advise that it has not been possible to fulfill the condition(s) pertaining to," with a blank space for the person preparing the form to fill out the reason for lack of completion. In this instance Mr Minasian, after consultation with his broker Valerie Folk, inserted these words: "due to knowledge obtained by purchaser, the neighbourhood does not meet his needs."

[34] Ms Harrison did not have time to respond to the document that Mr Minasian had sent to her, since she was preparing to go out of the country on Friday, September 23rd.

[35] Ms Harrison did not sign the Termination Notice. She did not tell Mr Minasian that she would sign it. In fact, Mr Minasian admitted that she had told him, before he sent her the notice, that she would not let Mr Corbett out of the agreement. He also admitted that she never at any point told him that she *would* sign it. Indeed, in his conversation with him before he sent the Notice she told him that "she would not let us out [and] that she wanted the [house] inspection to

go ahead." Nevertheless, he proceeded on what he understood (or hoped) to be the "industry practice"–that anyone could get out of deal if they wanted to, and that if one reason didn't work there were always lots of others that could be relied upon. He told Mr Corbett that the Notice had been sent "and we were waiting for it to be signed." He also testified that he told Mr Corbett that "he might lose his deposit; that she [Ms Harrison] might take legal action." He did not, however, say when he had passed this information or advice on to Mr Corbett.

[36] Mr Minasian understood at this time that Ms Harrison was going away for the weekend. He testified that he was "under the impression" that Ms Harrison was going to sign the Notice, though he could offer nothing by way of evidence of any statement or action by Ms Harrison that she would sign it. Indeed, notwithstanding that Ms Harrison had not given any formal response to the Mutual Release Mr Corbett proceeded as if the agreement had been terminated. He put an offer in on another house on Friday, September 23rd. Mr Minasian acted as his agent on that deal as well. Mr Corbett agreed on cross examination that "no one" had told him that Ms Harrison had signed the release. He "just went ahead on the basis of my agreement being terminated ... I didn't know the rules, I didn't think that there would be a problem." He did not seek legal advice.

[37] Ms Harrison left the city on September 23rd. She spoke to Mr Minasian twice on Saturday, October 1st, upon her return. She told him then that she would be consulting with her lawyer about the situation. About this time Mr Minasian himself left the city for several days.

[38] On October 6th Mr Noseworthy, on behalf of Ms Harrison, wrote to Mr Minasian to put him on notice that Ms Harrison did not accept the termination or the reason given therefor: see Ex. C19. He indicated that Ms Harrison would take the notice as an anticipatory breach relieving her of the need to tender. He also recommended that Mr Corbett "reconsider his position in this matter and close pursuant to the Agreement of Purchase and Sale."

[39] Mr Corbett testified in cross examination that he did not see the letter from Mr Noseworthy. The other house that Mr Corbett had purchased had a closing date of October 10th. Neither Mr Minasian nor anyone else told Mr Corbett that Ms Harrison was going to accept the purported termination. In fact, he understood that she "might" take action against him, but he did not think anything would in fact happen until the action was commenced.

[40] On cross examination Mr Corbett also stated, notwithstanding the pleadings of his claim, that Mr Minasian "fairly represented my position [regarding the termination]," and that he was "totally on the ball." He also stated, however, that there had never been any discussion with Mr

Minasian about the need for a lawyer; nor was there any evidence that his rights (or more importantly his potential liability) were discussed with Mr Minasian prior to his putting in an offer on the other property.

[41] The house at 73 Farrell Street remained on the market. In fact, matters had moved too quickly for the necessary paperwork to be done to ever take it off the MLS system. Ms Harrison eventually entered into an agreement of purchase and sale with another buyer. That sale closed January 31, 2006. She then commenced this claim.

Specific Findings

[42] Based on the above, and in addition to any findings already made, I make the following specific findings:

a. there was a binding agreement of purchase and sale between Ms Harrison and Mr Corbett as of the late afternoon of September 20th, 2005;

b. in the afternoon of September 21st Mr Corbett learned of that there was a difference between the right of way as described to him by Ms Harrison and as contained in the PCDS, and the actual, legal right of way;

c. that discrepancy did not concern him; he made no attempt to terminate the agreement at that point, or to contact a lawyer;

d. however, during the late evening of September 21st, upon learning of the identity of one of his neighbours, he decided that he wanted out of the agreement;

e. Mr Corbett told his agent Mr Minasian that he wanted out;

f. Mr Minasian communicated that desire to Ms Harrison the morning of September 22nd and later that day faxed to her a notice of termination which, on its face, required her signature to be binding on her;

g. Mr Minasian had been told by Ms Harrison that she would not let Mr Corbett out of the deal, and she never said that she would sign the notice;

h. Mr Minasian and Mr Corbett nevertheless both proceeded on the basis that the termination was a *fait accompli*;

i. Mr Corbett put a new offer on a different house on September 23rd before obtaining any response from Ms Harrison, even though he (or at least his agent Mr Minasian) knew that she would be away for a week; and

j. Mr Corbett was bound and determined to get out of the deal, and had no intention of following through with it, once he learned of his neighbour's identity.

The Issues

[43] To repeat, the issues in these two claims are as follows:

a. was Mr Corbett entitled to terminate the Agreement?

b. if not, did Mr Minasian and Royal LePage fail in their contractual or common law duties to Mr Corbett with respect to the advice if any they gave him with respect to the purported termination of the agreement?

c. what are the damages, if any?

Issue A: Was Mr Corbett Entitled to Terminate the Agreement?

[44] At the outset it has to be said that I am satisfied that Mr Corbett did not purport to terminate the Agreement for the reason advanced in the Termination Notice. He admitted in cross-examination that had there been a little old lady living next door there would have been no problem. The ROW Agreement, or the alleged discrepancy between what it said and what Ms Harrison reported it to be, did not in and of itself concern him. It was rather the fact that "Derrick" was to be his neighbour.

[45] If that was the only reason available to Mr Corbett to terminate the agreement I am satisfied on the law that he would not have been entitled to terminate. The fact that one might not like a particular neighbour is not, *in and of itself alone*, sufficient reason or cause to terminate an Agreement of Purchase and Sale (subject of course to any contractual right to that effect in the

Agreement). No case was cited to me to that effect. And there is nothing in the Agreement of Purchase and Sale that makes the Agreement conditional on the identity of the vendor's neighbours.

[46] Counsel for Mr Corbett and Mr Minasian submitted that even if this reason was not a good one, there were other reasons or grounds for termination that *would have been* valid and enforceable; and which would have permitted Mr Corbett to terminate the Agreement.

[47] The first potential ground for termination they relied upon were the clauses involving financing, the house inspection and insurance. These provided the Buyer with the right to terminate the Agreement on or before September 27th in the event that he could not get financing or insurance; or if the inspector's report did not meet the Buyer's "satisfaction:" see clauses 1(b), 1(c) and 3(a) respectively.

[48] The difficulty here is that all of these rights require reasonable, good faith efforts to discharge them: *Norfold Motor Hotel (1974) Ltd v. Graves* [1988] NSJ No. 298, 86 NSR (2d) 293, at NSJ p.5*ff*; *Mishra v. Metlege* [1978] NSJ No. 785 at para.30*ff*. In other words, a party who relies on a financing clause must show that he or she made reasonable, good faith efforts to obtain that financing and failed in the attempt. That being the case, the onus lies on the defendants to establish that Mr Corbett, acting in good faith, would have been able to rely on those provisions. But there was no such evidence. Indeed, the evidence was all to the contrary. Mr Corbett did have financing. There is no evidence that he could not get insurance. And the house inspection that had been arranged was cancelled by Mr Corbett (or Mr Minasian) after the Notice of Termination was sent. It cannot be said then that any such inspection would have revealed a fault or defect in the property that would have entitled Mr Corbett to rely on clause 3(a).

[49] The defendants also relied heavily on clause 1(A) of the Addendum to the Agreement, which provided that the Agreement was subject to "[t]he buyer's and seller's lawyers approving this agreement within 3 business days of acceptance." Mr MacInnes, on behalf of Mr Corbett, submitted that the ROW agreement was "one of the worst ones I'd ever seen." He submitted that the difference between the scope of the easement described in the ROW agreement, and that set out in the PCDS, would have led him to advise Mr Corbett to terminate the agreement. That is, he would have withheld his approval and thereby permitted Mr Corbett to walk away from the agreement.

[50] This argument found some support in the evidence of Ms Harrison. She agreed in cross examination that if the Mr Corbett had said that the ROW was not acceptable to him (in part because it gave the occupants of 71 Farrell slightly different rights than those she had disclosed verbally and in the PCDS), he could have terminated the agreement. (I pause here to note that I find that this difference was not intentional, but was based on the actual practice that had existed between the two prior owners, a practice which had been continued–and which had been described–by Ms Harrison.)

[51] The difficulty however is that that is *not* what Mr Corbett did. He chose not to rely on this contractual right. He did not seek counsel. He did not submit the agreement to a lawyer to obtain his or her approval. And not having done that I do not think he can now be allowed to say that he should be treated *as if* he had gone to a lawyer for "approval."

[52] The other difficulty with this submission is that it assumes that had Mr Corbett gone to a lawyer the lawyer would have failed to approve the agreement (thereby giving Mr Corbett a right to terminate the agreement). But there was no evidence as to what a lawyer *would have* done (and in particular, whether he or she would have "approved" the agreement) had Mr Corbett taken that step.

[53] Nor can I accept the implication in the submission that had Mr Corbett gone to a lawyer in the circumstances of this case any such lawyer would have refused to approve the agreement simply to suit Mr Corbett's clear desire to get out of the agreement. As noted above, such clauses require good faith in their exercise. Clause 1(A) cannot in my view have been intended by the parties to confer a blanket right on a party's lawyer to terminate the agreement for any reason (which is to say no reason). Such a construction would render the entire agreement effectively useless, since any party could get out simply by having his or her lawyer refuse to "approve" the agreement. It seems to me that if clause 1(A) means anything, it is that either of the parties may terminate the agreement if their lawyer, acting in good faith on reasonable grounds related to legal issues (else why would a *lawyer's* approval be necessary), fails to approve the agreement.

[54] However, it is not necessary for me to decide the true meaning of clause 1(A) in this case, because there was no evidence of what would have happened had a lawyer been presented with the agreement for his or her "approval." In this regard, I think it would be improper for me to accept Mr MacInnes's submission as to what *he* would have done had he been consulted, inasmuch as he is counsel for a party (and as such is generally precluded from giving evidence on behalf of a client). I am left then with what Mr Corbett did in fact; and what he did was fail to exercise his right to have the agreement reviewed and "approved" by a lawyer. And having

failed to do that, he cannot now say that if he had he would have gotten what he wanted: out of the deal.

[55] The last line of defence proposed is based on clause 6 of the Agreement of Purchase and Sale. That clause provides that the buyer was entitled to investigate title and, if a "valid objection to title is made in writing, to the Seller, which the Seller is unable or unwilling to remove, and which the Buyer will not waive, this Agreement shall be null and void and the deposit shall be returned to the Buyer." The difficulty here is that, once again, there is no evidence as to whether the seller would have been unable or unwilling to remove the objection. On the evidence it is clear that the ROW between the owners of 71 and 73 Farrell had been amended by agreement at least once (if not more). Ms Harrison, had she been provided with the opportunity to respond to an objection based on the discrepancy between the description of the ROW contained in the PCDS and the actual agreement may have been able to obtain another amendment. She was not given the chance.

[56] Based on the above I conclude that Mr Corbett is liable to Ms Harrison for failing to complete the agreement of purchase and sale. In the circumstances I do not think that it was necessary for the claimant to tender on Mr Corbett: see, for e.g., *Davis v. Prince* [1976] NSJ No. 515; *Syl-Nor Realties Ltd v. Keramaris* [1973] NSJ No. 139. Mr Corbett was very clear in his evidence that he wanted out of the deal and that he did not want to close it. He indeed acted in complete disregard of it, entering into a second, binding agreement of purchase and sale within a day of his Notice of Termination.

Issue 2: Claim Against the Real Estate Agent

[57] The evidence of both Mr Corbett and Mr Minasian was, in essence, that the former left it to the latter to get him out of the agreement. The agreement was a binding, legal document, and any advice or steps Mr Minasian took were taken at his peril. He knew that Mr Corbett was relying on him. Instead of obtaining legal advice he employed a wholly invalid reason (lack of suitability of the neighbourhood) to purport to terminate the agreement. He prepared a notice which he knew to be ineffective *unless* it was signed by Ms Harrison. He then permitted Mr Corbett to make an offer on a new property before getting a response from Ms Harrison, even though he knew that he needed her signature to free Mr Corbett from his obligations. His only excuse was that he "expected" or "thought" or "had the impression" that Ms Harrison would sign, even though she had told him verbally that she would not let Mr Corbett out of the

agreement. He operated on the assumption that if he couldn't get Mr Corbett out of the deal one way, there was always another way. In this I think he was mistaken.

[58] To say that one can "always get out of a real estate deal" is to misconceive the nature of an agreement of purchase and sale. It is not a consumer contract. One cannot simply return the item purchased for "a full refund, no questions asked." An agreement of purchase and sale is a contract of moment. To enter into such an agreement is to assume serious commitments and obligations, commitments which are (and are intended to be) relied upon by the parties. It is a contract whose affect extends beyond the ambit of the two parties to the contract. The vendor may, in reliance upon the agreement, enter into an agreement to purchase other property, thereby assuming another set of serious commitments and obligations. The purchaser may agree to sell his or her existing property. In either case a new circle of people, while not themselves parties to the agreement in issue, are brought into the universe of people whose actions and legal obligations are affected by whether or not the commitments made in the agreement of purchase and sale in issue are honoured.

[59] In my opinion real estate agents, being professionals in the purchase and sale of real estate property, are and should be expected to understand these points. Their clients may be first time home-buyers (as in the case at bar). They may not understand the serious nature of the agreement they have entered into. They may not understand that such agreements, once entered into, are not easily discarded. They may need to understand that while there may indeed be grounds for termination, such grounds are *specific* grounds based on *legal* reasons that arise out of the agreement itself.

[60] In my opinion a real estate agent in Mr Minasian's position was under an obligation to make perfectly clear to Mr Corbett that as of September 20th, 2005, when he executed the acceptance of Ms Harrison's counteroffer, that:

a. he was subject to a binding agreement to purchase the property at the purchase price;

b. *Ms Harrison* could voluntarily agree to let him out of the agreement, but until she did he was bound to go ahead with it;

c. since Ms Harrison had not given her consent to the "Release" Mr Corbett was bound to complete the agreement unless there were rights that arose either in the facts leading up to the agreement being entered into, or contractual rights in the

agreement itself which, *if exercised*, might give him the right to terminate the agreement; but that

d. in the absence of such rights, or if any such rights were not exercised, he would be bound to go ahead with the agreement; and finally,

e. if Mr Corbett was serious about exploring his rights, if any, to get out of the deal he should seek immediate legal advice and representation.

[61] Instead, on the evidence he appears to have told Mr Corbett that:

a. he thought or had the impression that Ms Harrison would probably let him out of the deal; and

b. if "this reason" (*i.e.* the neighbourhood reason) didn't work, they could always find another reason because a purchaser can "always find a reason to get out of a deal."

[62] In my opinion such "advice" was misleading. It fostered in Mr Corbett the view that he was in effect discharged from the agreement; that he didn't have to worry about it; and that he could go ahead and purchase different property without concerning himself about the existing agreement.

[63] Mr Fownes submitted on behalf of Mr Minasian and Royal LePage Atlantic Canada that even if Mr Minasian's advice fell below the standards expected of real estate agents, it did not matter in this case because Mr Corbett himself knew that he might be sued, or that he could have retained a lawyer to give him advice. In effect, he was submitting that there was no duty to warn Mr Corbett about the need for legal advice because he already knew that such was necessary or at least available.

[64] There are two difficulties with this submission.

[65] The first involves timing. For the submission to have any weight there must have been evidence that Mr Corbett himself had that understanding during the time period when he could have acted upon it, that is either:

a. before he entered into the new agreement for a different property on September 23rd; or

b. before the closing date of the agreement with Ms Harrison.

[66] However, it was not clear on Mr Minasian's own evidence when Mr Corbett had garnered the understanding he says he had. In particular, no one brought out whether Mr Corbett was given this information at a time when he could have acted upon it (as noted above); or later, after the date for closing had passed, in which case such knowledge was useless. Moreover, Mr Corbett's evidence was that no one told him about the need for a lawyer at the time. On this evidence, and having seen the witnesses, I am satisfied that Mr Minasian did not tell him about the possible need for a lawyer until after it was too late.

[67] Second, even if Mr Corbett understood (independent of anything Mr Minasian told him) that legal action was a possible risk before he entered into his new agreement, I find that any such knowledge was counterbalanced and overborne to some extent by Mr Minasian's statements (which amounted to reassurances) that Ms Harrison would probably let him out of the deal, and that he could always find a reason to get him out. The latter representation in particular would have made the need to seek legal advice and representation unnecessary. Mr Minasian was the expert. He held himself out as a professional. Indeed, he told Mr Corbett that he had sought a second opinion from his broker, and that that advice was that he could in fact get out of the deal, either based on:

a. the unsuitable neighbourhood reason given in the Notice; or

b. some other reason if that one didn't work.

[68] It cannot be too surprising then that Mr Corbett decided not to seek the advice of a lawyer. He was told, in effect, that he didn't need a lawyer. Mr Minasian could and would find a way to get him out of the deal.

[69] Having said that, I cannot absolve Mr Corbett of all responsibility for his bad decision. It seems to me that had he exercised more reasonable caution he would have sought legal advice regardless of what Mr Minasian was telling him. It was his name, not Mr Minasian's, on the agreement of purchase and sale. He surely understood that a lawyer would have to get involved in a real estate deal at some point, at least if it was going to go ahead. The agreement did contain a clause making it conditional on obtaining a lawyer's approval. And Mr Minasian was not a

lawyer, and would not be the one representing him if he got into trouble on the deal. With these points in mind I think it reasonable to conclude that Mr Corbett should bear 25% of the responsibility for the loss that he has sustained.

Issue 3: Damages

[70] The plaintiff claimed the difference in the sale prices, as well as the carrying cost of the house for an extra four months, as follows:

a. difference in sale price $8,510.37

b. mortgage carrying cost $1,156.32

c. electricity $140.00

d. property tax $302.51

[71] All counsel agreed on the calculation of the difference in the sale prices. However, Mr MacInnes (joined by Mr Fownes) criticized the mortgage and property tax claims as being based on the wrong formula. Mr Noseworthy used a per month approach. Mr MacInnes submitted he should have used a *per diem* rate, since that is how they are calculated by the creditors in question. I agree. On that basis, the mortgage carrying cost should be $946.20; and the property tax should be $236.07. I am satisfied that the electrical cost is reasonable and will allow it.

[72] Added to that are the costs of the filing fee, $160.00.

[73] I accordingly conclude that the total damages are $9,832.64. Of that amount, Mr Corbett is liable to Ms Harrison for $9,832.64 plus filing fee costs of $160.00. Mr Minasian and Royal LePage Atlantic Ltd are in turn liable to Mr Corbett for $7,374.48 plus a filing fee of $160.00. I will make orders in each of the two actions to that effect.

Dated at Halifax, this 14th day of August, 2006

Original: Court File)
Copy: Claimant)
Copy: Defendants)

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W. Augustus Richardson, QC

ADJUDICATOR