

LACK OF SURVEY RESULTS IN COURT CASE

DRIESORNER V. ROMNEY ET AL

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IN SUMMARY this case involves a purchaser who engaged a solicitor to handle a land transaction and the solicitor did not obtain a survey to determine the quantity of land contained in the parcel of land being purchased, nor did he recommend to the client that a survey was necessary.

Facts

Driesorner was a visitor to Nova Scotia from West Germany who wished to purchase a parcel of seafront property for residential development. Tanner was a real estate agent and owner of a land holding company.

During 1980 Tanner obtained options to purchase a wooded tract of land on Rose Head Peninsula in Lunenburg County, Nova Scotia from three separate owners, none of whom were intimately acquainted with the lands in question. Tanner and another real estate agent prepared vague and ambiguous descriptions of the land being optioned. Tanner subsequently entered into an agreement for sale with Driesorner to sell the lands based on a sketch prepared as a result of a visit to the property by the

purchaser and a friend together with another realtor.

Driesorner then took the agreement to purchase and went to see Romney, a solicitor, who was told they wanted good title and a survey.

In preparing the deeds Romney told Power, his partner who was acting for Tanner, that the search of title was a "real mess" and that there should be a survey. Evidence was introduced that he had advised the plaintiff that he "didn't need a survey". There was no evidence of acreage or dimensions other than the vague descriptions prepared by Tanner which described the land as "a certain parcel of land on Rose Head Peninsula; 30 acres more or less bordering on salt water on the North and South end" and similarly for the other two parcels.

A survey completed subsequent to the conclusion of the sale revealed that the combined area of the three parcels was only 39 acres with less than 500 feet of shore frontage as opposed to 54 acres with a shore frontage of 1400 feet as proposed in the agreements for sale.

Issues

The question in this case is not one of boundaries but rather one of responsibility for the gross errors in dimensions and area and further whether reason-

able competence on the part of the solicitors would have alerted the purchasers to the deficiencies in the transactions.

Held

In deciding this matter, Justice MacDonald of the Division of the Supreme Court of Nova Scotia, concluded that "a combination of guile, carelessness and incompetence brought the final result." He berated all parties in the transaction; Driesorner for his naivety; the realtor, Tanner, for manipulating the owners and creating dimensions and acreages from old plans based on little substance in the pursuit of profit; and the solicitor, Romney, for "failing to point out the risks involved without a survey and by intimating a certificate of title without qualification, Romney did not meet the standard of performance to be expected of the ordinary competent solicitor."

Romney was held liable for damages related to the shortages in area and frontage as disclosed by the plan of survey together with costs. All actions against the other parties were dismissed.

This case together with the Manitoba case, Lac Mortgage v. Tolton, clearly establishes the responsibility of the legal profession to advise their clients of the need for a survey in real estate transactions. ●