



Bob Aaron bob@aaron.ca

September 27, 2003

Appliance switch was costly for vendor

Fridges, stove replaced with older units

Home's seller fined \$10,000 for fraud

It happens from time to time to virtually every real estate lawyer. The day after closing, the purchaser calls up to complain that the fridge or air conditioner or furnace isn't working, or that one or more of the appliances were switched before closing.

The result can be some agitated phone calls between buyer and seller, and, occasionally, a small claims court action for the value of the defective or missing appliances.

When it happened to Toronto lawyer Wayne S. Laski, however, the dispute over misrepresentations and switched appliances ended up in a seven-day trial in Superior Court, and a judgment not only for the value of the appliances, but another \$10,000 in punitive damages for fraud. It's enough to make any vendor think twice about switching appliances or other included personal property before closing.

Laski is a lawyer who practises corporate and commercial law, and commercial real estate. He and his family had looked at more than 200 homes before putting an offer in on a house near Yonge St. and Finch Ave. in early 2000.

The offer signed by Laski and vendors Kwong Cheung Chau and Oi Shing Mak required the house be left in "clean condition" and itemized all of the fixtures and appliances included with the house. Among them were two fridges, two stoves, washer, dryer, dishwasher, window coverings, broom, central air conditioning, light fixtures, central vacuum, built-in oven and sprinkler system.

Before each item, the word "existing" was written. In fact, the word appeared no less than 18 times in one paragraph alone.

After Laski and his family took possession, they had a litany of complaints over what he thought he was getting and what was in the house on closing. When the case went to trial earlier this year, he testified that the appliances he saw before signing the offer looked new, but they had been replaced with old ones on closing.

The downstairs fridge, he told Justice Susan Greer, was not the one originally viewed. It had been replaced with an old one made in Hong Kong, which could not be plugged into a North American electrical socket. The other fridge, the washer and the dryer were also older than the ones he originally saw.

Laski showed the court a videotape he had made in January, 2000. It clearly showed white drapes in the front hall. A tape he made after closing showed green drapes in place of the white ones, as well as a hole in the library wall, garbage in the driveway, back stairs and backyard, the disconnected Chinese fridge, and a sauna with no heater.

The lawn sprinkler system was inoperative and parts were welded shut. The central vacuum had parts missing and sparked when it was turned on.

The original built-in wall oven had a clock on it, but the old one delivered on closing did not.

Laski's evidence was that, during negotiations, Chau told him the appliances were of "good quality" and "worked."

In contrast, Chau testified he did not switch the appliances, and that they were all in good working order. He denied telling Laski that the sprinkler system worked.

Chau produced a hand-written list for the court, detailing the included items. The document was dated Jan. 22, 2000 but was written on the back of a multiple listing sheet for another property, which bore a date of March 4, 2000 on it.

In her ruling in July, Greer found that this list of included items was obviously "falsely dated," and that it was "the most egregious and shocking misrepresentation." Referring to the dating of the list, she wrote that Chau and his real estate agent John Trac "both lied to the court."

Greer ruled that Chau and Trac made "negligent and/or fraudulent misrepresentations to Laski regarding the house and the condition of the various chattels."

She also found that certain items were in fact switched with cheaper or non-functioning ones. The house was not in "clean condition" and there were "fraudulent misrepresentations" regarding the draperies and the sprinkler system.

She ruled that Laski was "fraudulently deprived of having a working sauna and a working sprinkler system, as well as having the appliances he bargained for."

Laski was awarded \$4,505 for the drapes, \$7,309 for the switched appliances, and \$2,542 for repairs to the sprinkler, vacuum and sauna.

Perhaps the most unusual aspect of the case was that the judge awarded an additional \$10,000 in punitive damages against Chau, for conduct "so extreme in its nature that it is deserving of full condemnation and punishment."

Standard form agreements of purchase and sale contain an "entire agreement" clause, which provides that there is no other arrangement or representation between the parties except what the document contains.

The Laski v. Chau decision now means that where a vendor makes a fraudulent or negligent misrepresentation, the purchaser can seek damages despite the "entire agreement" clause.

For purchasers, the lesson from the case is to be as detailed as possible in describing exactly what is to be included with the house, and to use the word "existing" in front of every single item.

Vendors and their agents are now on notice that misrepresentations about the condition of the house or switching any included items may be very costly indeed.