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October 4, 2008

## Always review purchase agreements with a lawyer

A recent decision of the Superior Court of Justice highlights the risks of a buyer failing to close a transaction to buy a new home or condominium from a builder.

Back in March 2003, Siavash Valizadeh signed an agreement to buy a Bay St. condominium, which was to be built as part of the Residences of College Park project. The purchase price was \$303,400 and deposits totalling \$30,340 were paid.

The agreement set a tentative occupancy date of March 15, 2005, but allowed the developer an extension of up to two years. The document also provided that if the purchaser defaulted, the builder at its option could declare the agreement terminated and forfeit the deposit monies.

The final occupancy date was set for Dec. 8, 2006. By that time, Valizadeh and his wife had moved to Montreal, apparently for employment reasons. He came to Toronto to inspect and take possession of the condominium, but claimed numerous deficiencies made it unfit for occupancy.

By August 2007, the condominium was registered and the builder kept pressing for Valizadeh to complete the final closing.

Over the course of almost a year ending in November 2007, Valizadeh retained three separate real estate lawyers in succession and repeatedly requested extensions of the final closing date. Eventually, the purchaser agreed to pay the builder a \$20,000 "reinstatement fee" to keep the deal alive until closing.

When Valizadeh failed to close by Nov. 19, 2007, College Park terminated the transaction and brought legal action to order the agreement at an end, evict the purchaser's tenant, forfeit the deposit money, and to require Valizadeh to pay \$150,000 in damages.

The builder's application came before Justice Darla A. Wilson in June.

By this time, Valizadeh had purchased a home in Montreal with a mortgage on it, and as a result was unable to secure a mortgage on the College Park condominium.

Valizadeh's position in court was that he was treated unfairly by the builder's representatives and the agreement was unfair to him.

The judge disagreed. "Valizadeh agreed to purchase a condominium that would not be ready for occupancy for a substantial period of time from the date of the agreement," she wrote. "He chose to enter into the purchase and sale agreement, knowing the occupancy date was not certain.

"He had ample time to review the contents of the agreement with a lawyer after he signed it to familiarize himself with the provisions of it. He must have been aware of his obligations to secure financing for the unit and the change in his personal circumstances is irrelevant. In any event, he was granted numerous extensions by the vendor yet at the end of the day, he was unable to close the transaction because he could not or did not secure the requisite financing."

In ruling against the buyer, the judge wrote that "the (builder's) imposition of an arbitrary 'reinstatement fee' of \$50,000 reduced to \$40,000 then subsequently reduced to \$20,000 on a purchaser who was in dire financial straits was inappropriate. It appears that this sum was added on at the whim of the vendor."

The judge ordered that the agreement be terminated, but because the builder could not show any losses, the deposit money (minus court costs) was to be returned to the buyer.

For buyers of new homes and condominiums, there are three lessons to be learned from the case of College Park v. Valizadeh.

The first lesson is that builder purchase agreements should always be reviewed with a real estate lawyer before they become binding.

The second and third lessons are the same as the first. They cannot be repeated often enough.

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