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January 17, 2009

Should suicide have been disclosed to homebuyer?

Is a builder obligated to disclose to a purchaser the fact that a suicide occurred in the house just before the sale closes?

That was the question posed to me recently by my colleague Howard Litowitz, who practises real estate law in Richmond Hill. He told me that his client, a builder, had a new home about to close when one of his staff discovered a deceased intruder in the premises.

The police and coroner agreed that the person had broken in and had committed suicide.

Litowitz and his client asked for my opinion on whether they had to disclose the incident to the purchaser who was about to close on his brand new home within the next few days.

Even though the intruder left no physical evidence of his gruesome visit, there is a belief in the real estate industry that a suicide may render the property stigmatized. This is a code word for the perception that the value of a property has been reduced by non-physical, non-scientific or even irrational perceptions by the buyer.

My own view is that, under Ontario law, there was no obligation on the builder to disclose the fact of the suicide. Just to make sure, however, I decided to ask two other industry gurus if they agreed.

Barry Lebow is a well-known real estate appraiser, broker and educator based in Toronto. He has testified as an expert witness in more than 500 trials. Lebow's view was that the seller likely does not have to disclose, although the agent, if there was one, must disclose.

Even if the vendor was obliged to disclose, Lebow mused about whether the death created a stigma or a reduction in value. Of course, proving this might be difficult.

Lebow added, "Could make for a good lawsuit after the fact, though."

Merv Burgard is a London, Ont., lawyer who lectures to real estate agents. He reminded me of a similar case which went to court in Quebec back in 2006.

In 2003, Sylvie Knight bought a house on Larivi re St. in Saint-Constant from Marcel Dionne for \$122,000. Several months after closing, Knight learned from neighbours that the son of the former owner had committed suicide by hanging himself in the basement of the residence that she now occupied.

Knight sued Dionne, and when the case went to trial, she told Judge Gabriel de Pokomndy that she never would have bought the house had she known about the suicide.

Under Quebec law, unlike ours in Ontario, the seller of a house must declare that he or she is not aware of any undisclosed fact relating to the property that is liable to significantly reduce its value.

The issue the court had to decide, in this case, was whether a suicide in a residential building is a factor that the seller ought to have disclosed, and if he did not do so, whether that justifies awarding damages.

After carefully reviewing the facts, the court concluded that "the story of Marcel Dionne's son, who committed suicide by hanging himself in one of the rooms of the house more than 10 years ago, cannot be considered to be the kind of factor liable to affect the value of the building."

The suit was dismissed.

In the case of the Richmond Hill-area builder, Litowitz reported to me last week that the new home sale finally closed. He told his client that he was not aware of any disclosure requirement. As a result, neither the purchaser nor the real estate agent was advised of the incident.

Should the Richmond Hill builder have disclosed the suicide? Was the court right in not penalizing the seller? What do you think?

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Knight c. Dionne, 2006 QCCQ 1260 (CanLII)

Date: 2006-01-27

Docket: 500-32-081945-042

URL: <http://www.canlii.org/en/qc/qccq/doc/2006/2006qccq1260/2006qccq1260.html>

Noteup: [Search for decisions citing this decision](#)

Unofficial English Translation

Knight c. Dionne

2006 QCCQ 1260

COURT OF QU BEC

Civil Division

CANADA

PROVINCE OF QU BEC

DISTRICT OF MONTREAL

LOCALITY OF MONTREAL

Small Claims Division

No: 500-32-081945-042

DATE: January 27, 2006

PRESIDED BY THE HONOURABLE GABRIEL DE POKOM NDY, J.C.Q.

SYLVIE KNIGHT

Plaintiff

v.

MARCEL DIONNE

and

FR D RIC LE BUIS

and

FLB INC.

Defendants

JUDGMENT

[1] The plaintiff is suing the defendant Marcel Dionne and his real estate broker and brokerage firm for damages she claims to have suffered as the result of the purchase of a

home because the defendants failed to disclose to her that a tragic death had occurred in it.

[2] Marcel Dionne disputes the claim, submitting that the death was not a latent defect that could in any way affect the quality of the building, and furthermore that, in all good faith, it had never occurred to him that he had an obligation to disclose this tragic event.

[3] The broker Fr d ric Le Buis and his brokerage firm FLB Inc. also contest the claim, maintaining that they have committed no fault.

[4] It was established that Marcel Dionne sold Sylvie Knight a residential building located at 37 Lariv re Street in Saint-Constant for the sum of \$122,000.

[5] This purchase took place through the agency of Nicole Poupart, the plaintiff's broker. The listing agent with whom Marcel Dionne had placed the sale was Fr d ric Le Buis, a real estate agent affiliated with FLB Inc., a chartered real estate broker. The asking price was \$130,000.

[6] On May 24, 2003, Sylvie Knight signed an offer to purchase for \$122,000, which was accepted by the defendant Marcel Dionne.

[7] The notarial deed of sale was signed on June 23, 2003, and possession was taken on the same day.

[8] After moving in, the plaintiff made certain renovations to the building, which seemed to suit her.

[9] On November 6, 2003, she learned from neighbours that the son of the former owner, Marcel Dionne, had committed suicide by hanging himself in the basement of the purchased residence that she now occupied.

[10] The plaintiff was disturbed by this disclosure, and on November 17, 2003, she sent notice to Marcel Dionne, the broker Le Buis, and the brokerage firm, faulting them for having failed to disclose a fact that she considered to be very important, so much so that she would not have purchased the house if she had been aware of it.

[11] Having invested more than \$15,000 in the building since her purchase, she does not seek rescission of the sale, but considers that damages caused by the failure to disclose the suicide amount to \$23,000, for which she holds the defendants personally liable.

[12] On November 27, Marcel Dionne replied in a letter simply stating that the fact referred to by the plaintiff does not constitute a latent defect in the building.

[13] The broker and the brokerage firm also deny any liability.

[14] Consequently, the plaintiff is suing for damages. Although she assesses the prejudice suffered at \$23,000, she has reduced the amount to \$7,000 in order to be able to file her suit in the Small Claims Division of the Court of Qu bec.

[15] Both Sylvie Knight and her spouse Pierre Bouchard affirm that they would never have purchased the house if they had known that a suicide had occurred on the premises.

[16] They believe that this fact may affect the value of the building upon resale because they now feel obliged to reveal it to any future buyer.

[17] The plaintiff submits that, in response to paragraph 6.1(a) of the Promise to Purchase, Marcel Dionne ought to have disclosed that his son had taken his own life in the house more than ten years earlier.

[18] This passage of the document reads as follows:

6.1 DECLARATIONS The SELLER declares, unless stipulated otherwise hereinafter, that:

a) he is not aware of any factor relating to the immovable and liable to significantly reduce the value thereof, reduce the income generated thereby or increase the expenses relating thereto:

[19] The defendant explained to us that, when asked about any factors related to the building liable to significantly reduce its value, he never thought of anything other than problems that he might have experienced with respect to the quality of its construction or the working of its accessories. It had never occurred to him that he ought to mention the death of his son in tragic circumstances more than ten years earlier.

[20] After this sad event, the defendant continued to live in the house, and his decision to sell was in no way related to it. He had simply decided to move in with his girlfriend.

[21] Contrary to what is affirmed by the plaintiff on the basis of rumours, the house had not been successively entrusted to a number of brokers for sale. Only Fr d ric Le Buis had been hired for the sale, which took place within two months time.

[22] Le Buis was never informed by the seller that he is also being blamed for his failure to disclose in the documents.

[23] Both of the real estate brokers or agents who appeared before us, namely, Fr d ric Le Buis and Nicole Poupart, informed us that the seller is not usually asked whether there has been a death in the house.

[24] What is usually covered by paragraph 6.1(a) are factors related to the title to the property, privileges and encroachments, zoning, the use of the premises, or the quality of the building.

[25] Therefore, the issue in dispute is whether the occurrence of a suicide in a residential building is a factor that the seller ought to have disclosed, and if he has not done so, whether he has committed a fault that justifies awarding the damages claimed.

[26] In the section pertaining to the obligations of the seller, article 1716 of the *Civil Code of Qu bec* stipulates as follows:

1716. The seller is bound to deliver the property and to warrant the ownership and quality of the property.

These warranties exist of right whether or not they are stipulated in the contract of sale.

[27] Article 1726 of the *C.C.Q.*, which pertains to the warranty of quality, stipulates as follows:

1726. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

[28] In this instance, we have seen no evidence or heard any allegations to challenge the delivery, title, or quality of the building sold. On the contrary, the plaintiff declared herself to be satisfied and even made renovations to make it more comfortable and better suited to her taste.

[29] Rather, the defendants are faulted for failing to disclose the tragic death of the seller's son that occurred in the sold building, with the possible consequence that it would be difficult to find a buyer upon resale or that the building would lose some of its value, an amount that the plaintiff assesses to be \$7,000.

[30] The *Civil Code of Qu bec* stipulates that *every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.* (Article 1457).

[31] The issue then is whether the defendants, by failing to disclose information concerning the death, either in response to paragraph 6.1 of the Promise to Purchase or otherwise, breached their duty and committed a fault.

[32] In Quebec the seller is subject to a pre-contractual obligation to inform the buyer. In some circumstances, the rule even implies that it is not enough to answer the other party's questions honestly, but that the seller must take the initiative to disclose to the buyer all facts that are normally liable to affect his consent in a significant way. [1]

[33] There are a number of examples where reticence is considered to be fraudulent and significant. This is so when the owners of a house do not inform the buyers that there has been a fire or when the seller does not disclose the existence of a court prohibition, a zoning bylaw affecting the use of the building, or the actual figures of a commercial transaction. The same is true if a seller fails to mention that the sewage and plumbing system has not been installed according to appropriate standards.

- [34] The failure of the seller of an automobile to inform the buyer that it has been damaged in an accident or used as a demonstrator car, or of any serious defect affecting it, has also been considered a fault.
- [35] It is noteworthy that the failures to disclose that are generally considered to be wrongful are directly related to the intrinsic quality of the object being sold and not to the subjective considerations of the buyer.^[2]
- [36] In this case, the seller is faulted for failing to disclose an event that occurred in the life of the occupants of the house.
- [37] Should Marcel Dionne have known that this tragic event was likely to significantly diminish its value? The Court does not think so.
- [38] In everyone's life, happy, unhappy, and sometimes even tragic events occur in the home. Unless there are exceptional circumstances, however, these events have no impact on the intrinsic value of the building.
- [39] Certainly, if there had been a fire or another event that damaged the building, its value could be affected by the damage caused, but in general, the conduct, lifestyle, and behaviour of the occupants are not factors that can significantly increase or decrease the objective value of a residential building.
- [40] Needless to say, there are subjective and purely personal grounds that, in the eyes of an individual, may significantly affect the value that he or she can assign to a building. It is important, however, to avoid confusing this subjective value, which can be assigned for reasons of taste, sentiment, design, or personal perception, with the objective and intrinsic value of the property.
- [41] Therefore, for a hockey fan, buying a house that a star player once lived in might be a subjective reason for paying a higher price. Conversely, someone might not wish to buy a house that had previously belonged to a political opponent, regardless of the selling price. None of these considerations, however, constitutes an objective factor that increases or decreases the value of the building.
- [42] Similarly, the fact that the former occupants of a building died as the result of an attack or a disease does not appear to us to be a factor that can affect the value of the building.
- [43] The story of Marcel Dionne's son, who committed suicide by hanging himself in one of the rooms of the house more than 10 years ago, cannot be considered to be the kind of factor liable to affect the value of the building.
- [44] It may be that, for some individuals, including the plaintiff and her spouse, the fact that a death especially a death in tragic circumstances has occurred in a home constitutes a subjective obstacle to the purchase or occupation of this house.
- [45] In such a case, it appears to us that it is up to buyers to ask specific questions reflecting the phobias, fears, or other subjective considerations that could, in their view, interfere with their full enjoyment of a building or even with their purchase of the home in the first place. Once such a question is asked, the seller's obligation to make full disclosure is heightened, and the seller must not induce erroneous consent through silence or a failure to disclose an element that appears to be important to the buyer, at the risk of having the validity of the sale contested in cases where the other party would not have contracted or would have contracted on different terms had all the information been known (article 1401, *C.C.Q.*).
- [46] The Court is of the opinion that the events and facts of the life of the residents of a residential property cannot normally be considered to be liable to significantly influence the consent of the adverse party, unless there have been questions asked about those events and facts.
- [47] A death, suicide, or even a murder in a house cannot be considered to be something the seller is obliged to disclose to the buyer,^[3] just as there is no obligation to disclose domestic violence, trespasses, births, marriages, baptisms, or other life events, whether happy or sad, that may have occurred there.
- [48] This conclusion appears obvious to us, because if the compulsory disclosure of facts or events in the lives of the residents that are liable to significantly influence the buyer's decision became a rule governing the sale of residential buildings, it would be extremely difficult to determine where the line should be drawn, and this could create a risk of unnecessary uncertainty.
- [49] Would sellers have to disclose domestic violence or domestic arguments? And if so, starting at what level of violence? Could the divorce or separation of the sellers be a factor that affects the value of a house and therefore important to disclose so that the buyer can make an informed decision?
- [50] In the case of a death, could the value of the residence be affected differently depending on whether the death had occurred suddenly, during sleep or after a long illness, or as the result of a suicide or a murder? And would the obligation to disclose vary accordingly?
- [51] The Court has a great deal of difficulty in agreeing that elements whose importance depends on sensitivity, phobias, sentiments, or purely personal and subjective apprehensions that are not related to the quality of the building should be subject to compulsory disclosure.
- [52] Imposing such rules would place an impossible burden on the shoulders of the seller in assessing which of the events that had occurred in the house might be important in the mind of the buyer and therefore of consequence in terms of his decision.
- [53] That is why it seems more logical to us that it should be buyers who have the obligation to ask questions that will enable them to ascertain that nothing that would prevent their full enjoyment had occurred in the house.
- [54] We are therefore of the view that, by not disclosing the fact that his son had taken his own life in the house 10 years earlier, Marcel Dionne did not breach his pre-contractual obligation to inform. His behaviour appears to us to have been in good faith and in compliance with the law. It is not possible to attribute any fault to him whatsoever.
- [55] Real estate agent Frédéric Le Buis and real estate broker FLB Inc. also cannot be found liable because no wrong action attributable to them has been proved.
- [56] Subsidiarily, it should also be pointed out that, if it is true that the plaintiff's spouse Pierre Bouchard has really been having trouble entering the room in which the tragedy occurred in 1992 since learning of it, or if the knowledge of this tragic event really does make the house uninhabitable for the entire family, then a motion to resiliate the contract should have been filed instead of a claim for damages.
- [57] Indeed, it is difficult to understand how the payment of \$7,000 in damages would reduce or eliminate an apprehension or fear that is aroused by the thought of what once happened in this room. In our view, if the plaintiffs are unable to live with this situation, the payment of an indemnity will not remedy it.
- [58] Furthermore, looking at the issue of prejudice from the perspective of Sylvie Knight, who submits that the damage resides primarily in the risk that the value of the building will be reduced at resale as the result of future disclosure of the tragic event, we are unable to come to a more favorable conclusion. In fact, even if we had concluded that there was a fault (which is not the case), there has been no proof that the reduction of the value or the loss would be around \$7,000.
- [59] On the contrary, the evidence shows that virtually identical properties in the neighbourhood have experienced an increase in value of more than 20% per year over the last two years. This situation largely negates the alleged hypothetical loss.
- [60] To succeed in her suit in damages, the plaintiff had to establish not only the causal fault of the defendants, but also that the amount claimed corresponds to the loss incurred. Under the terms of article 1611 of the *Civil Code of Québec*, future injury can only be taken into account if it is certain and can be assessed. The evidence that was submitted failed to establish either of these elements on a balance of probabilities.
- [61] Consequently, the Court is of the opinion that this claim should not be allowed.

FOR THESE REASONS, THE COURT:

DISMISSES the claim of Sylvie Knight;

Without costs.

GABRIEL DE POKOMNDY, J.C.Q.

[1] Jean-Louis Baudouin & Pierre-Gabriel Jobin, *Les obligations*, 5th ed. (Cowansville, Qc.: Yvon Blais) at 263.

[2] Vincent Karim *Les obligations*, Vol. 1, 2d ed. (Montreal: Wilson & Lafleur) at 190.

[3] *Vaillancourt v. Dpelteau* (21 February 2003), 500-32-067987-026, Jacques Paquet J.C.Q.