

Interesting BC Condominium Case Law: Mazarei v. Icon Omega Developments Ltd., 2012 BCSC 673

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A recent case out of the British Columbia Supreme Court highlights the hazards that may befall developers entering the marketplace of other jurisdictions.

A condominium project located in Edmonton, Alberta was developed by the Defendant Developer, a company incorporated under the laws of Alberta. The Plaintiffs were savvy real estate investors residing in British Columbia who purchased residential units in the development.

The Purchasers learned of the development from a real estate agent residing in British Columbia who also happened to be agent for a director of the Developer. The conduct at issue in this case was that of the Director and his Agent. The Director, initially approached by the Agent on an informal basis, arranged for pricing lists, brochures and pre-signed contracts to be sent to the Agent and agreed that the Agent would be entitled to commissions fees from the Developer as an incentive for sales in British Columbia.

Stromberg-Stein J. concluded on the facts that the Developer contracted the Agent to “market” the development in British Columbia; “marketing” being broadly defined under the *Real Estate Development Marketing Act* (REDMA) to include engaging “in any transaction or other activity that will or is likely to lead to a sale or lease” (s. 1).

REDMA provides for very strict disclosure obligations for marketing developments in BC including that the developer must file a disclosure statement of material facts for the development with the Superintendent of Real Estate in BC before going to market. A developer must also provide this disclosure statement to a purchaser before he or she enters into a purchase agreement. There is a further obligation to update disclosure in the event of material change. Where these obligations are not met, the purchaser may rescind the agreement. These disclosure obligations were determined by the Court not to have been met by the Developer.

The bulk of the legal argument by the Developer concerned whether it had engaged in *marketing* as defined under the Act and the constitutional validity of a BC Act regulating the validity of the Alberta contract. These arguments were dismissed by the court because REDMA regulates marketing and consumer protection, matters within the jurisdiction of that province.

Generally, the form and validity of a contract is determined by the governing law of that contract. One would expect that the contract could not be rescinded by the laws of another jurisdiction, yet that is exactly what happened in this case. The Court ruled that the developer marketed real estate in British Columbia, failed to meet the disclosure obligations under REDMA, and that the purchasers were therefore entitled to rescind their purchase agreements.

This case acts as a reminder to developers to tread cautiously when marketing out of Ontario. Even if a developer meets the disclosure requirements within the jurisdiction of the contract for the subject property, this case would seem to indicate that the failure to comply with the more stringent legal requirements in the jurisdiction where the deal was actually made may entitle the purchaser to a right of termination.