

YOU AND THE LAW

USE CAUTION IF RENEGOTIATING REAL ESTATE DEAL

In BC's hot real estate market, deals are often made quickly. Upon reflection, one of the parties may afterward want to clarify or renegotiate a term of the contract. But buyers, sellers and their agents must take care when dealing with a fully signed purchase and sale agreement.

If a party's actions are considered a "repudiation" of the agreement, the other party may be entitled to walk away from the deal and sue for breach of contract. Repudiation occurs when one party to the contract indicates through words or actions that they don't intend to follow through on the deal.

This is what happened in the case of *Jenkins Road Developments Ltd. v. Frank and Vera Wille*.

Jenkins Road Developments was a family company owned by two sisters. The company signed an agreement with the Willes to buy a piece of land near Duncan on Vancouver Island for \$650,000. The property was to be developed as a high-quality, family-oriented, residential subdivision consisting of 84 duplex homes. The buyers paid a deposit and the deal was to be completed 11 months later.

During the time leading up to the closing, Jenkins performed all of the preparatory work needed to get the lots ready them for construction. The company obtained municipal approval for the subdivision, hired engineers to plan the development, arranged with a contractor to construct the duplexes, obtained a financing loan, etc.

Then, just as the deal was scheduled to close, Mr. Wille became concerned about the possibility of the property being contaminated from the operation of an auto wrecking business, which had occupied the property some years before. (He'd found out about a lawsuit over another piece of property in Victoria where environmental contamination was alleged.) So he asked Jenkins and the two sisters to sign an agreement to indemnify and release the Willes from any claims in case the site turned out to be contaminated (so Jenkins would be liable for any contamination, not the Willes).

Jenkins was ready and willing to close the deal. The company agreed to assume liability for any pollution on the property it may have caused since taking possession, but not for any previous contamination. However, the Willes refused to sell unless Jenkins and the sisters signed the new full indemnity agreement. Jenkins thus sued the Willes for breach of contract.

The Supreme Court of BC concluded that the purchase and sale agreement didn't require

Jenkins to sign the indemnity agreement. "By demanding and forwarding such an agreement, the defendants [the Willes] were attempting to impose on the plaintiff [Jenkins] an entirely new contractual term... That amounted to repudiation of the contract and a breach of it." The court awarded Jenkins almost \$200,000 in compensation – which covered the \$20,000 it had spent on preparing the property for construction, plus the increase in the property's market value.

In this case, it was the seller who repudiated the contract. But if a buyer tries to clarify or change a term of a completed real estate deal, the buyer may inadvertently make it possible for the seller to walk away. This doesn't mean that buyers or sellers shouldn't propose amendments to a completed agreement, but care must be taken. Your lawyer is your best resource when entering into a real estate transaction and can assist you appropriately.



Steve Michoulas
604-661-9269
smichoulas@rbs.ca



richards buell sutton LLP
Barristers and Solicitors

A Tradition of Innovation
A History of Excellence

Tel: 604-682-3664
Fax: 604-688-3830

Vancouver, BC
www.rbs.ca