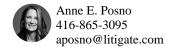
Commercial Litigation



April 1, 2015

Unjust Enrichment Reversed On Appeal – Deprivation Not Sufficient

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On appeal, in Akhtar v. Realty Canada Inc., 2015 ONSC 1218, the Divisional Court held that the appellant real estate agent "Remax/Sandhu" was entitled to the full commission:

Remax/Sandhu had the signed listing agreement with the vendor, and also entered into a signed representation agreement with the buyers. Remax/Sandhu had specifically asked the buyers if they had an agent before:

- a. signing up the representation agreement with the buyers;
 and
- b. performing services on their behalf.

The buyers told Remax/Sandhu that they had no other agent.

However, real estate agent "Realty/Kaur" had performed services for the buyers, but did not secure a signed representation agreement from them. Also, Realty/Kaur did not advise Remax/Sandhu that she had been representing the buyers until two months after closing.

At law, there was no unjust enrichment. The deprivation of commissions for work performed by Realty/Kaur was not sufficient to prove this claim against Remax/Sandhu.

Independently, Remax/Sandhu had a valid juristic claim to the full commission. Remax/Sandhu had performed work for the buyers pursuant to a signed representation agreement.

The decision seemed to hinge on the work performed by Remax/Sandhu for the buyers in good faith, as opposed to the existence of the signed agreement itself.

That said, if Realty/Kaur had secured a signed representation agreement from the buyers, the double agent situation probably could have been avoided. It seems unlikely that the buyers



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would have signed two agency agreements. Further, without an agreement, presumably Remax/Sandhu would not have performed work for the buyers.

- Research contributed by Rubal Bhadu, 2014/2015 articling student.

