IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Li v. Ouyang,*
2012 BCSC 48

Date: 20120116
Docket: S084342
Registry: Vancouver

Between:

Chia Chieh Li and Yu Chuan Li

Plaintiffs

And

Jie Won Ouyang, Hing Wai Ouyang, Yan Yun Ru, Choa Jun Ru, Jian Fei Zhou also known as Faith Zhou and Royal Pacific Realty (Kingsway) Ltd.

Defendants

Before: The Honourable Mr. Justice Powers

Reasons for Judgment

Counsel for the Plaintiffs:	P.G. Mendes N. Rozenberg
Counsel for the Defendants:	K.A. Murray D. Marks
Place and Date of Trial:	Vancouver, B.C. November 28-December 2 and December 5 & 6, 2011
Place and Date of Judgment:	Vancouver, B.C. January 16, 2012

INTRODUCTION

[1] In June 2006, the plaintiffs purchased a condominium in East Vancouver. The defendant, Ms. Zhou, was the listing realtor, and Royal Pacific Realty (Kingsway) Ltd. ("Royal Pacific") was the real estate brokerage.

[2] The plaintiffs knew that the condominium had water ingress problems, or could be described as a "leaky condo," but they purchased it on speculation. They paid $154,000.00 for the condominium, and subsequently paid an assessment of $92,000.00 to repair the condominium. Ultimately they sold it for $415,000.00. They did make a profit after all of their costs.

[3] They allege that Ms. Zhou negligently misrepresented the assessed value at $216,000.00, when it had been re-assessed at $83,700.00. They also allege that Ms. Zhou failed to disclose the existence of a 1999 engineering report dealing with the water ingress problems. They argue that the condominium was only worth $50,000.00 when they purchased it. Therefore, they say that they paid $104,000.00 more than it was worth and, as a result, made a smaller profit. They claim damages of $104,000.00, being the difference between what they say was the market value of the condominium at the time of purchase and what they paid.

[4] The defendants argue that the condominium was worth $154,000.00 or alternatively, that in any event the vendor would not have sold the condominium for less than $154,000.00. Therefore, the defendants argue that the plaintiffs have suffered no damages and, in any event, that the defendants made no misrepresentations, or alternatively, were not negligent if they did make any misrepresentations.

[5] The defendants, Ouyang and Ouyang, were the owners of the condominium. The claims against Ouyang and Ouyang were discontinued without costs by consent. The defendant, Yan Yun Ru, is a relative of the Ouyangs, and any claims against her were dismissed without costs and by consent.

[6] The defendant, Chao Jun Ru, is a relative of the Ouyangs and had their power of attorney to deal with the condominium. He actually dealt with the realtor, Ms. Zhou, on behalf of the Ouyangs. The claims against him were discontinued without costs and by consent.

[7] The claims against Royal Pacific are outlined in the second amended statement of claim filed July 14, 2010. The statement of claim specifies that Royal Pacific is a real estate brokerage and that the defendant, Ms. Zhou, provided real estate services under the supervision of Royal Pacific. The statement of claim alleges that Royal Pacific was responsible for supervising Ms. Zhou and providing training to her concerning professional duties and responsibilities as a licensee under the *Real Estate Services Act*, S.B.C. 2004, c. 42.

[8] The statement of claim alleges that Royal Pacific owed a duty to the purchasers to properly supervise the licensee and ensure that her work complied with industry standards, as well as to properly train the licensee with regard to particular matters dealing with the sale and listing of real estate. The statement of claim alleges that Royal Pacific breached that duty of care. However, no evidence was called with regard to the standard of care or breach of any such duty. Therefore, the plaintiffs' claim against Royal Pacific is dismissed.

THE CLAIMS AGAINST ZHOU

[9] The plaintiffs allege that Ms. Zhou owed them a duty to provide accurate information about the condominium. The plaintiffs say that Ms. Zhou owed this duty either because she entered into a dual agency relationship with the plaintiffs; that is representing the vendors and the plaintiffs as purchasers, or alternatively, that such agency should be implied from the circumstances. In the further alternative, the plaintiffs were a "customer" and were owed the same duty to provide accurate information. The failure to provide accurate information related to the failure to disclose the existence of a 1999 engineering report dealing with the water ingress problems, and the significant cost of repairs. The plaintiffs also argue that Ms. Zhou negligently misrepresented the assessed value of the condominium which was a

significant factor in the plaintiffs' mind when they agreed to the purchase price. Ms. Zhou relied on information contained on a database maintained by the multiple listing services in Vancouver called "ML Xchange" to determine the assessed value. The information on the ML Xchange was inaccurate and did not reflect the fact that an appeal of the assessment had been made and allowed, reducing the assessment to $83,700.00. Ms. Zhou did not seek information about the assessed value from Mr. Ru, whom she was dealing with on behalf of the vendors, nor from the B.C. Assessment Authority.

[10] The defendants deny that a dual agency relationship existed or that there was any agency relationship between the plaintiffs and the defendant, Ms. Zhou. The defendants agree that in any event the standard of care and the duty to provide accurate information is the same whether the plaintiffs were in an agency relationship with Ms. Zhou, or were simply "customers" of Ms. Zhou. However, the defendants argue that Ms. Zhou was not negligent in providing the information she did and, alternatively, this is not information which the plaintiffs would have relied on in determining the purchase price in any event. Lastly, that they have suffered no damages.

FACTS

[11] In June 2006, Mr. Ru was managing a condominium owned by his relatives, the Ouyangs. He had managed it as a rental unit, although the condominium bylaws included rental restrictions. The tenants had moved out and he was updating the condominium. A flyer had been placed under the door that indicated that Ms. Zhou was a realtor and had experience in dealing with leaky condominiums and those which had been used for marijuana grow operations. Mr. Ru knew that the condominium was a leaky condominium and that an engineer's report outlined the problems with the condominium. The Ouyangs were living in Ontario and were prepared to sell the condominium. Mr. Ru contacted Ms. Zhou and, acting on his power of attorney, listed the condominium with her. Ms. Zhou advertised the condominium for sale in a Chinese language real estate paper. She also placed the condominium on the multiple listing services.

[12] Mr. and Ms. Li had immigrated to Canada from Taiwan in 1996. Ms. Li spoke Mandarin, Taiwanese and some English. She can also read some English. Ms. Li and Mr. Li were interested in investing in property, but did not have a lot of money. They became aware, through friends or relatives, that occasionally a person could buy a leaky condominium for a low price, pay to have it repaired, and then sell it for a profit. They did have enough money to invest in a leaky condominium. They had in fact done so four or five times between 2002 and 2006. They had been successful in making a profit on each purchase.

[13] They saw the advertisement for this condominium in June of 2006. They knew the area and thought that the list price of $188,000.00 was low for that area. Ms. Li thought that similar properties would be selling for $220,000.00 to $260,000.00 in that area. They suspected that it was a leaky condominium.

[14] Mr. Li contacted Ms. Zhou and was told that the condominium was being sold for less than the assessed value, that the owners were in Toronto and were anxious to sell, and that this was a good location near the sky train. Ms. Zhou told Mr. Li that it had a “leaky problem”.

[15] Ms. Zhou met with the Lis on June 18, 2006 to view the condominium. It was obvious to them that the condominium building did have some water problems, although the unit itself was clean and appeared to have been updated.

[16] The Lis knew that the condominium was a leaky condominium and Ms. Zhou knew they were purchasing it for investment purposes. The Lis say that Ms. Zhou told them the condominium had been assessed at $216,000.00. Ms. Zhou did not remember doing that, but does agree she provided them with the ML Xchange report which indicated an assessed value of $216,000.00. The Lis say that Ms. Zhou told them she thought the cost of repairs would be $20,000.00 to $30,000.00 for their unit. Ms. Zhou denies that and says that she told the Lis the costs were unknown and that was a risk. Ms. Zhou says that she told them there was no recent engineering report. The Lis say that she told them there was no engineering report at all.

[17] Ms. Zhou asked them if they had a real estate agent of their own. They told her no. The Lis say that Ms. Zhou told them that she could do everything for them. I am satisfied that she told them that she would obtain the documents which they were seeking. However, the plaintiffs have not proven that she entered into any form of agency relationship with them. The Lis were used to buying without an agent representing them. They had some experience in dealing with agents before. Their practise, which they followed on this occasion, was to buy without an agent and to attempt to negotiate a reduction in price by reduction of the agent's fee, because the vendor's agent would not be required to split the commission with anyone.

[18] The relationship between the Lis and Ms. Zhou was then one of Ms. Zhou acting as the vendor's agent and the Lis being "customers". The plaintiffs and the defendant, Ms. Zhou, agree that Ms. Zhou owed a duty to the plaintiffs to act honestly and to exercise reasonable care and skill when providing information. These duties are outlined in the *Licensee Practice Manual*, 6th Ed. 2006. In addition, the manual (p. 17 and 18) describes the duties to a customer as:

> ...
>
> 4. Honesty
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> ...
>
> 6. Exercise care and skill
>
> 7. Disclose information concerning:
>
> ...
>
> 7.3 Material defects in seller's property
>
> ...
>
> 11. Present, in a timely manner, all offers, counter-offers, etc.
>
> 12. Convey in a timely manner all information that party wishes to have communicated
>
> 13. Keep fully informed regarding the progress of the transaction
>
> ...
>
> 18. To account
>
> 19. Other miscellaneous statutory duties
>
> ...
>
> 21. Provide real estate statistics, comparable property information, etc.

22. Provide standard form agreements and other relevant documents
23. Act as a scribe in the preparation of standard form agreements, etc.
24. Provide the names of “experts” (appraisers, surveyors, inspectors, etc.).

[19] I note page 66 of the manual also includes a requirement to obtain the most recent property assessment. I note also that the practice manual has a section dealing with specialized sales including strata sales and advises the licensee to be particularly careful or take special precautions in the sale of strata properties.

[20] Ms. Zhou agreed to obtain the strata documents which would normally be provided, including minutes of the strata meetings for the prior two years, the engineering reports, and the tax assessment.

[21] Ms. Zhou obtained the tax information from the ML Xchange which is a service maintained by the Vancouver Real Estate Board. They receive information from the B.C. Assessment Authority and include it in the database. However, the evidence is unclear as to how current that information was in 2006. The evidence is that now it is updated once a month. The initial assessment of a property comes out in January of each year. The homeowner then has an opportunity to appeal that assessment. Therefore, the initial assessment is not considered an authenticated assessment. By June of 2006, the Ouyangs, directly or through their power of attorney, had appealed the assessment. The assessment was changed from $216,000.00 to $83,700.00. This had occurred before the condominium was listed. The information in the ML Xchange, however, had not been updated. Mr. Ru was aware of the re-assessment. Ms. Zhou did not ask Mr. Ru for any information regarding the assessment. It is clear from her evidence that she did not understand the process of assessment, appeals and re-assessment very well. In 2006, she was not aware that the ML Xchange information may not be accurate. In particular, she was not aware that she should be confirming that information through the B.C. Assessment Authority or the owner to establish whether or not an appeal had been taken and the result of that appeal.

[22] I am satisfied that a reasonable and prudent realtor would have done so, especially when the purchasers were asking for confirmation of the assessment value.

[23] Ms. Zhou did call an expert witness with regard to the standard of care of a realtor in 2006. This individual, Mr. Scott Russell, is certainly an experienced realtor practicing in the Vancouver area. He has served on the Business Practices Committee of the Real Estate Board of Greater Vancouver and the Professional Conduct Committee. His evidence was that in 2006 the majority of the realtors would not have checked the assessed value beyond going to the ML Xchange. This is one of those cases that if that in fact is the practice, it falls below the standard of a reasonable and prudent realtor. The practice itself is not reasonable. The evidence is that the ML Xchange is updated once a month at this time. There is no evidence as to how often it was updated in 2006. However, even today, where the purchaser wishes to have the assessed value confirmed, a reasonable and prudent realtor would obtain that information from the vendor directly or the B.C. Assessment Authority, especially while the appeal period is still open or to determine whether an appeal had been launched and the results of such appeals. This would be a particular concern where it was obvious that the building had structural issues, such as water ingress problems, and the assessed value did not reflect those issues. Mr. Russell's evidence was that the assessed value is not important because it could be all over the board. I agree that the assessed value does not necessarily reflect the market value. However, a significant change in an assessed value, such as occurred here, would be a red flag for any purchaser. This was pointed out by the plaintiffs' expert, Mr. Michael Ziegler. Mr. Ziegler is a licensed real estate practitioner in the Victoria area and not the Vancouver area. However, he has extensive experience both in real estate and in chairing the Real Estate Council Licensee Practice Manuals Editorial Committee. The plaintiffs correctly point out in paragraphs 151 and 152 of their argument the following:

> 151. Even if the Court accepts Mr. Russell's opinion that it is not the industry practice to verity information obtained from the Real Estate Board website, this court can still find that conformity to common practice is not

> prima facie evidence that the property standard of care was being taken, if the standard set by industry practice is too low.
>
> 152. As the Ont. Superior Court held in *Carleton Condominium Corp. No. 21 v. Mintos Construction Ltd.*, 2001 CarswellOnt. 4558, aff'd 2004 CarswellOnt. 583 (C.A.):
>
> 280 [N]eglect of duty does not cease by repetition to be neglect of duty', for in the last analysis the standard of reasonable care is measured by what ought ordinarily to be done rather than what is ordinarily done. Were it otherwise, an entire industry would be free, by maintaining careless methods, to set its own uncontrolled standard with no incentive to devise new and more efficient safety precautions. (Fleming, The Law of Torts, 4th ed., pp 117-118).

[24] It would have been a simple matter for Ms. Zhou to confirm the assessment information contained in the ML Xchange. However, she did not do so. I am satisfied that she simply did not understand the process. If she simply followed the practice of the Vancouver realtors at that time by relying on the ML Xchange, she was following a standard which was not acceptable.

[25] Ms. Li was cross-examined at length about whether or not she actually relied on assessed values in determining purchase prices. Her evidence was that she did not become aware of the reduced assessment value, even though she had received a new assessment in 2007 showing that the condominium's assessed value had been reduced significantly, until an owner of another unit in the building advised her that she had paid too much money for the condominium. It was then that she began making her inquires. It is clear that the assessed value was not the only factor that Ms. Li would rely on in determining what to pay for a property, but in this case it was something that she was interested in and which was communicated to her incorrectly.

[26] The tax report which was provided to the Lis did contain information about prior sales of the condominium:

1991: $144,859.00

1994: $162,500.00

1996: $148,000.00

[27] The real estate market in 2006 was described as “hot,” meaning that properties were selling quickly and sometimes for more than their assessed value. The evidence is not clear that this also applied to leaky condominiums.

[28] There were other sales in the building, but Ms. Zhou did not obtain the information regarding those sales. She simply advised the Lis that there were no recent sales. She may have been referring to this particular condominium. However, I am not satisfied that she agreed that she would provide the Lis with a full record of any sales in the building. She was not their agent and had not agreed to do so.

[29] Ms. Zhou did agree to obtain an engineer’s report, if any, with regard to the condominium. The Lis called Ms. Francesca Barone as a witness. She is an owner in the building and was on the strata council in 2006. She recalled dealing with Ms. Zhou and receiving a number of calls from Ms. Zhou. She told Ms. Zhou that she had to reveal that this was a leaky condominium, but felt that Ms. Zhou was not getting the message. That is not really important in this case because everybody knew it was a leaky condominium. Ms. Barone said that the engineer’s report which had been prepared in 1999 was available through the engineering company. The strata council had a copy of it, but when people asked about the engineering report they were told to obtain it from the engineering firm. Ms. Barone could not recall the exact words she used when talking to Ms. Zhou, but was clear that if Ms. Zhou asked about the engineering report she would have told her that she could obtain it from the engineering firm. She was not aware of anyone who has been unable to obtain a copy of the report from the engineers.

[30] Ms. Zhou’s evidence was that she was told the engineering report was not available. I do not accept this. The engineering report would be a critical factor and a consideration for anyone purchasing a leaky condominium. I am satisfied that what did happen was Ms. Zhou wanted the engineering report from the strata council and was told she could not get it from the strata council. I am satisfied she was told she could get it from the engineering firm. Ms. Zhou was aware that the engineering report was dated and that the strata council had taken no steps with regard to the

recommendations of the report. She concluded on her own that it was, therefore, not important and did not pursue the matter. In fact, the engineer's report was available and would have indicated that the total cost of repairs in 1999 was estimated to be close to $1 million.

[31] On June 23, 2006, the Lis met with Ms. Zhou at her office. They were provided with the tax report from the ML Xchange and were told that there was no engineering report and no past sales. The Lis were aware and were told clearly that this was a leaky condominium or it had a leaky problem. The specific language is not important. The Lis signed an offer to purchase on that date, offering $154,000.00 for the condominium. The subject removal date was set for June 28, 2006, a relatively short time period. The subject-tos were simply the normal subject-tos in any condominium purchase. They did include the buyers' approving them on or before June 28, 2006 including an engineering report, if any. The seller was obliged to obtain the documents listed above, including the engineering report, and immediately upon receipt or, in any event, no later than 72 hours before the subject removal, deliver the documents to the buyer or the buyer's agent. This indicates the very tight time frame the parties were working under. Mr. Li signed the document on that date confirming that he had been advised that the building had leaky problems and potential risks of the problems. He also signed a brochure outlining the various relationships a party might have with a realtor.

[32] The Lis' evidence is that when they attended on June 23, 2006, they did not know what they should offer for the condominium. I am satisfied they had not finalized that figure, but I am not satisfied that they had no idea what they should offer. Their understanding of English may be limited, but Ms. Li particularly, is an astute individual who was well aware of the process of buying real estate. Mr. Li, as well, was interested in buying the condominium, but only at a good price.

[33] The Lis say that they asked Ms. Zhou how much they should offer and that Ms. Zhou told them the vendors were anxious to sell, and their bottom-line was $158,000.00. Ms. Zhou denies telling them that. Ms. Li's evidence is that he then

told Ms. Zhou that she should reduce that price because she was getting the full commission and did not have to split that commission. He used the words that she was getting “two commissions”. His evidence is that she suggested they offer $154,000.00 for the condominium and she would reduce her commission by $4,000.00.

[34] Ms. Zhou presented the offer to Mr. Ru. Her evidence is that Mr. Ru was reluctant to accept that offer. She told him that the condominium was a leaky condominium and that this was a good offer, and if he did not wish to accept it she was not sure she wanted to continue to hold the listing. She told him that she would reduce her commission to $1,000.00 if he accepted the offer. He did so. Mr. Ru’s own evidence is that he was not happy with the price, but did agree to it. He was called as a witness by the plaintiffs and, in cross-examination, he confirmed that he would not have sold the condominium for less than $154,000.00. I accept his evidence. I accept he was speaking on behalf of the Ouyangs. There is no evidence that they would have sold for less than they did.

[35] On June 28, 2006, the Lis removed the subject-tos on the condominium and the sale did complete.

[36] The Lis argue that had they received the engineering report they would not have offered $154,000.00 for the condominium. They believed they were getting a good deal because the condominium was being sold for significantly less than the assessed value, and they were aware that it was being sold for less than other properties in the area. In cross-examination, Ms. Li acknowledged that in the past she had not read engineer’s reports, but had relied on friends or other people who were familiar with them or could give her advice about them. I am satisfied that had they had access to the engineering report they may have reconsidered the purchase of this property. This would be the only information they had which would give them some idea of the potential costs of repairs.

[37] I am satisfied that Ms. Zhou did not meet the standard of a reasonably prudent agent when she failed to obtain and provide a copy of this engineering

report. I am satisfied it is a matter which could have been done easily, but a duty that she failed to fulfil. The time between the offer and the subject-to removals was very tight; only five days. It is even tighter when you consider that the report was to be delivered 72 hours or three days before the date for subject removals. This probably contributed to her failure to fulfil her duty.

DAMAGES

[38] The plaintiffs began this case by saying that their damages were the difference between the profit they did make on re-sale of the condominium and the profit they should have been able to make if they had only paid fair market value for the condominium. They paid $154,000.00 for the condominium and argue that its fair market value was $50,000.00. They paid $91,947.58 by way of a special levy to repair the water damage, and sold the condominium in June of 2010 for $415,500.00.

[39] The plaintiffs rely on an appraisal of the condominium to establish its fair market value. They filed two reports from Mr. Dean Doolan, a qualified appraiser. In the first report, he critiqued an appraisal done on behalf of the defendants by Mr. Coley-Donohue. The defendants also filed a further report by Mr. Coley-Donohue critiquing Mr. Doolan's report.

[40] Mr. Doolan provided a narrative report and attempted to place a value on the condominium using the direct comparative method. This was the same method used by Mr. Coley-Donohue. Mr. Doolan concluded that the value was $50,000.00, Mr. Coley-Donohue concluded that the value was between $150,000.00 and $160,000.00.

[41] They both agree that fair market value is defined as follows:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently and knowledgeable, and assuming the price is not affected by undue stimulus.
>
> The CUSPAP definition of "Market Value" is then expanded:

> Implicit in this definition is the consummation of a sale as of the specified date and the passing of title from seller to buyer under conditions whereby:
>
> - Buyer and Seller are typically motivated;
> - Both parties are well informed or well advised and acting in what they consider their best interests;
> - A reasonable time is allowed for exposure in the open market;
> - Payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto;
> - The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.
>
> Appraisers understand the Market Value implies the fully expanded explanation. In my opinion, stigmatized properties especially must be considered in the full context of the definition.
>
> [Report of K. Coley-Donohue dated June 22, 2011]

[42] The appraisers disagree about the comparables each of them used. Mr. Coley-Donohue's original report is limited because he simply used a form called a "Drive-by Appraisal" form that would be used to provide a summary or abbreviated form of appraisal for financial institutions. He himself agreed that there were limitations to using this form, and the advantage of a narrative report is that it can more fully explain the assessment. This is particularly important in a case like this where the property would be difficult to assess.

[43] Mr. Doolan correctly stated that the B.C. Assessment value in this case would have been a factor because of the dramatic change in value. This would certainly cause a vendor to look more carefully at the property. He also correctly stated that the cost for repairs would affect the value. He did acknowledge, in cross-examination, that in September of 2006, unit #101 in this building sold for $86,000.00 which was above its list value of $80,000.00.

[44] Mr. Doolan is critical of Mr. Coley-Donohue's use of some comparables which were correctly described as "leaky condos," but for which the cost or remediation were known.

[45] Mr. Coley-Donohue said that East Vancouver prices increased significantly in 2001 to 2006 in the amount of approximately 102.8%. He said it was a “hot market” in 2006. He said he did not believe the sales in the subject building itself were useful because the most recent sale was of the penthouse in 2004, and it appeared to be between related parties. He prepared his report with the assistance of another appraiser, but it would appear from the cross-examination that he relied heavily on the other appraiser’s selection of comparables. He was referred to one possible comparable in the material in his file: 2238 East Eaton Street, #109, which sold for $104,500.00. This would appear to have been a reasonable comparable. A future assessment for repairs was estimated at $68,000.00.

[46] He also agreed in cross-examination that one of the comparable he used, 305 Fraser, had been rejected by the B.C. Assessment Authority and, therefore, was not a good comparable. The same applied to the penthouse, #9, on Eaton Street.

[47] The establishment of a fair market value by an appraiser depends to a certain extent on the exercise of judgment. Reasonable people may disagree. However, for the purposes of this case, I find that the appraisal conducted by Mr. Doolan is more helpful. It is not perfect, but I find it more useful than Mr. Coley-Donohue’s. I do not accept that the fair market value, however, was $50,000.00. I find that the appropriate fair market value was in the range of $80,000.00 to $90,000.00. If 2238 East Eaton Street is a good comparable, it sold for $104,500.00 and the repair costs were $68,000.00 (the purchaser was to pay this); this indicates a price of approximately $172,500.00, after repairs were affected.

[48] The cost of the repairs of the subject property were not as finely detailed, but the engineering report did indicate they would certainly be approximately $90,000.00, or a little more. I recognize that the report is dated and the cost estimates are as well. The properties are not exactly comparable, but I am satisfied that a range of value of $80,000.00 to $90,000.00 would have taken into account any variables.

[49] However, I find that this is not the correct measure of damages in this case. The plaintiffs are suing a realtor for negligence. In order to establish their claim they must show a breach of that duty and damage. To establish damage they must show that they could have purchased the condominium for less than they did and, therefore, made a larger profit. However, the evidence which I accept is that the vendors would not have sold for less than $154,000.00. Therefore, they have failed to show that they would have been able to purchase the condominium for less than $154,000.00 had they been aware of the true assessed value or the engineer's report.

[50] This is similar to the circumstances in *Lee Estate v. Royal Pacific Realty Corp*., 2003 BCSC 911. Madam Justice Satanove J. said at para. 92:

> Proving a loss of opportunity claim is a two fold process. First, the plaintiff must prove on a balance of probabilities that Mr. Lee had a real or a substantial chance to make a better bargain with the vendor, but for the conduct of Mr. Chan. Only then does the court embark on an assessment of the value of that chance. (Fraser Park South Estates Ltd. v. Lang Michener Lawrence & Shaw (2001), 84 B.C.L.R. (3d) 65 (C.A.) 2001 BCCA 9, leave to appeal dismissed, [2001] S.C.C.A. No. 72).

[51] The plaintiffs have failed to prove that they have lost an opportunity to make a larger profit. The vendors were not anxious to sell and were content to simply continue to rent the condominium if they did not get the price they wanted. Mr. Ru, on behalf of the vendors, only accepted the price of $154,000.00 after being convinced to do so by the realtor. Whether the fair market value of the condominium was less than $154,000.00 is irrelevant if the vendors would not be prepared to sell for less.

[52] Although I have found that the realtor was negligent in her conduct, because the plaintiffs have to prove damage, their claim must be dismissed.

[53] The parties have not addressed the issue of costs. There may be other factors to be considered. If the parties are unable to simply agree to costs following the event, then they have liberty to address that issue.

"R.E. Powers J."

POWERS J.