

MULLIN DEMEO

BARRISTERS & SOLICITORS

Hello and welcome to *Mullin DeMeo's Electronic Legal Update*. We hope you will find this information interesting and helpful. If you do not wish to receive this type of information from us in the future, please let us know by return email with the word "Unsubscribe" in the subject line.

MULLIN DEMEO ELECTRONIC LEGAL UPDATE **January 4, 2010**

British Columbia's *Real Estate Development Marketing Act* ("REDMA"): *Chameleon Talent v. Sandcastle Holdings Ltd.*, 2009 BCSC 1670.

This recent British Columbia Supreme Court ("BCSC") decision dealt with changes to the timelines required under provisions of the REDMA. In November, 2007 the plaintiffs entered into a purchase agreement (the "Agreement") with the developer defendants, and paid the required deposit. In choosing to purchase this property the plaintiffs relied, at least in part, on the disclosure statement (the "Statement") provided to them by the defendants. The Statement provided an estimated commencement of construction for November, 2006 and an estimated completion of construction in November, 2008. The Statement declared that "A building permit will be issued...November 30, 2006".

The defendant did not receive the building permit until April of 2007; construction began five months behind schedule. The defendant filed an amendment to the Statement in May of 2007 announcing that the "building permit was issued...on April 23, 2007"; however the defendant did not change the date for completion. Construction was significantly delayed, and the plaintiff argued the delay constituted a material misrepresentation and that the Agreement ought to be voided. The defendant argued that the repeated use of the word "estimated" in the Statement granted them virtually unlimited leeway in modifying the dates for construction and completion. The developer added that the plaintiff should have anticipated that the delayed commencement of construction would result in a delayed completion date.

At trial the judge held that the word "estimated" either creates an expectation that the actual date will be reasonably proximate to the estimated date or it creates an indefinite time in which case the Agreement would be void for uncertainty. More importantly the judge repeatedly emphasized that REDMA's purpose was to provide consumer protections; if the dates in the Statement were meaningless and the developer could change them unilaterally at any time of their own choosing, REDMA's purpose as consumer protection legislation would be effectively gutted. The completion date constituted a material fact within the Statement, and this misrepresentation of a material fact provided grounds for rescission of the contract. As a result, both developers and buyers should be alert to any potential changes to the estimated dates for completion from what was provided in the disclosure statements.

Please note that this is a preliminary discussion of the matter. In the meantime, should you have any questions or concerns with respect to this or any other aspect of real estate law, please contact Mullin DeMeo at lawyers@mdlawcorp.com, or (250) 477-3327.

Thank you for your time,