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Lamont

Real Estate Conveyancing

This 2nd edition of Donald Lamont's classic work on real estate practice covers various legal issues that arise in buying and selling real estate. It examines leading case law and relevant statutes for each stage of the real estate transaction including signing the listing agreement, negotiating the Agreement of Purchase and Sale, submitting Requisitions, closing the transaction, the document registration procedure under electronic registration, and remedies where the vendor or purchase is in default.

This release features updates to the case law and commentary in the following chapters: Chapter 1 (Description of the Two Land Law Systems), Chapter 3 (Offer to Purchase), Chapter 5 (Practical Description of Common Terms), Chapter 6 (Outline of Some Real Estate Statutes), Chapter 12 (Land Titles Procedures), Chapter 15 (Closing the Transaction), Chapter 19 (Remedies When Vendor or Purchaser in Default), Chapter 22 (Mortgages), Chapter 26 (Condominiums), and Chapter 27 (Building Restrictions).

Highlights

- **Offer to Purchase — Latent Defect vs. Patent Defect — Where Some of Defect Observable — Whether Patent Defect** – Where some of the defect, or an indication

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of the defect, was observable through a reasonable inspection by the purchaser, the defect as whole was patent even if the full extent of the problem was not immediately apparent. In this case, the purchaser S purchased a 100-year-old house from the vendor H in 2013. After S took possession of the property, she removed drywall in the basement and found that the ceiling joists were burnt and charred. S learned there had been a fire at the property in 2005. S brought an action against H as well as the home inspection company and the individual who conducted the home inspection. All three defendants applied for summary judgment against S. The chambers judge granted summary judgment in favour of the home inspection company and the home inspector. The chambers judge found that she was able to resolve most of S's claim against H on summary judgment. However, with respect to "the fraudulent misrepresentation by concealment of the damage caused by the fire," the chambers judge found herself unable to confidently resolve that dispute on the evidence before her. She concluded that *viva voce* testimony was required to assess the facts and the credibility of the witnesses. This part of H's application for summary judgment was dismissed and sent on for trial. H brought an application for leave to appeal. His application was granted.

The chambers judge found the majority of the fire damage was concealed by the ceiling, and that it was highly unlikely that an ordinary purchaser could, during the course of a reasonable inspection of a property, have uncovered the extent of the fire damage. She concluded that the damage was a latent defect. The chambers judge's finding was crucial because the law drew a sharp distinction between patent and latent defects with respect to the sale of real property. Latent defects were those not readily discoverable by the purchaser through a prudent inspection, and the vendor was under an obligation to disclose them. A patent defect was one that was readily discoverable on an ordinary inspection by a purchaser, and the onus was on the purchaser to discover it. If the chambers judge had found the defect to be patent, S would have had to prove fraud and/or an act of concealment on H's part. There was Saskatchewan authority for the proposition that where some of the defect, or an indication of the defect, was observable through a reasonable inspection, the defect as whole was patent even if the full extent of the problem was not immediately apparent. This ground of appeal of H was not *prima facie* frivolous or vexatious or *prima facie* destined to fail. Apart from the obvious importance to the litigants personally, an appellate-level decision could have broad implications for real estate practice generally. Some clarity with the law concerning patent and latent defects was called for. If the chambers judge's decision stood, it could be interpreted to mean that the purchaser's obligation to inspect and inquire was diminished where the bulk of the defect was hidden, in spite of some indication that further investigation was required: *Hawryliw v. Smith*, 2020 CarswellSask 383, 2020 SKCA 92, 18 R.P.R. (6th) 179 (Sask. C.A.), allowing leave to appeal *Smith v. Hawryliw* (2020), 2020 SKQB 169, 2020 CarswellSask 320 (Sask. Q.B.).

- **Rectification of Parcel Register — Misrepresentation to Lender That Second Mortgage — Three Prior Mortgages — One of Mortgages to Mortgagor's Company — Fraudulent Mortgage — Mortgage Deleted From Register** — Where the mortgagors and their lawyer represented to the lender that its mortgages would be second and third mortgages when in fact there were three prior mortgages, one of