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LAW OF VENDOR AND PURCHASER

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The *Law of Vendor and Purchaser* is the classic work on the law relating to the sale of real estate in Canada. The 3rd edition, in 20 chapters, surveys the statutes and case law in the common law provinces and territories. The first eight chapters explore the formation of the contract for sale or the agreements of purchase and sale. Chapters 9 to 14 canvass the legal issues that arise from the investigation of title to repudiation or abandonment, and from construction of the contract to the position of the parties pending completion. Chapters 15 to 18 examine the selection and pursuit of remedies for vendors and purchasers upon default. Chapters 19 and 20 address the standard of care to be met by solicitors acting for parties to a real estate transaction, and the rights and duties of real estate agents and brokers.

This release features updated case law in Chapters 3 (Parties), 5 (Offer and Acceptance), 12 (The Contract), 13 (Position of Parties Pending Completion), 14 (Completion), 16 (Remedies for Default), 17 (Remedies of Vendor) and 18 (Remedies of Purchaser).

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Highlights

Remedies for Default—Non-Performance, etc. as a Bar to Remedy: Purchaser’s Non-Performance—Where Recovery of Deposit by Purchaser Denied—In *Nguyen v. Zaza*, 2023 CarswellOnt 369 the parties entered into an agreement of purchase of sale. As of the date of that agreement, title to the property was held in the name of the defendant’s father. However, the defendant’s father transferred it to the defendants before the closing date. The plaintiff entered into an amended agreement addressing who held title and whose names were on the agreement. On the closing date, the defendants tendered closing documents, but the plaintiff failed to tender the purchase price. The defendants’ motion for summary judgment dismissing the plaintiff’s claim was granted, as was the defendants’ counterclaim. The motions judge ordered forfeiture of the plaintiff’s deposit to the defendants. The Ontario Court of Appeal dismissed the plaintiff’s appeal. There was no basis on which to interfere with the finding that the defendant and not the defendant’s father had entered into the agreement. The premise that, for the defendant to enter into the agreement, the title needed to be in his name at that time was incorrect. There was no error in the judge’s conclusion that the plaintiff was responsible for the non-closure of the agreement when she did not tender the purchase price on the closing date.

OFFER AND ACCEPTANCE—PARTIES NOT *AD IDEM*—VAGUENESS OR UNCERTAINTY—In *Angus v. CDRW Holdings Ltd.*, 2023 CarswellBC 2395, the plaintiff alleged that: the parties had entered into a binding agreement for the sale of property for \$6,400,000 and art and furniture for \$400,000; and that the agreement required the payment of a deposit that was not paid. The sale did not complete. The one-page alleged agreement contained bullet points, no title, did not refer to the property, stated that the parties agreed to all items, did not indicate whether any deposit was refundable, and stated that the plaintiff’s real estate agent was to prepare necessary paperwork. The plaintiff brought an action for the deposit under the alleged agreement, which action was dismissed on the basis that the parties’ conduct prior to and after execution of alleged agreement and wording of alleged agreement did not establish that parties’ intended alleged agreement would bind them. A reasonable objective bystander would conclude that the alleged agreement was too uncertain to be valid and the absence of any reference to the property suggested a casualness inconsistent with an intention to be formally bound. The plaintiff’s appeal was dismissed. The trial judge properly interpreted the documents at issue and the parties’ subsequent conduct, while carefully assessing the evidence from the perspective of an objective reasonable bystander without being drawn into the parties’ subjective views.

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