

Beware of Double Agents!

By Brian Madigan



This word of caution does not simply apply in the world of espionage. There was a case of a young, single mother who finally saved up enough money to put down on a modest home just outside of the city. She worked as a nurse's aide in a local retirement home. She wished to move to the country with her six year old daughter. Consequently, she contacted a local real estate agent to find her a property. She heard nothing, but after a few weeks went by, she saw an interesting property advertised in the local newspaper.

She drove by and it looked fine. She contacted her agent who arranged an inspection of the country residence. She and her agent spent about 15 to 20 minutes inspecting the house.

The young, single mother decided that this was the place for her, and her agent drew up an offer. The agent took the offer to the listing agent and presented it to the vendors. In fact, the agent pointed out to the vendors that there was no "building inspection" condition. The offer was accepted and the young mother and her daughter moved into their country home. At first everything went well.

A few months later she decided to fix up the basement. In cleaning up, she noticed that there was water damage in the basement. As it turned out, there were cracks in the concrete floors and the foundation walls. Within a short period of time the municipality condemned the building which was in need of substantial repair. The young mother was required to vacate and soon thereafter lost the house through power of sale proceedings by the bank.

So, what do you think so far? This is not a good situation! A colleague recommended that she sue her real estate agent. And, she did. But, imagine her surprise when she found out that the real estate agent said that she was not really her agent. The real estate agent said that she was the agent for the vendor, and not the purchaser at all.

The real estate agent said she only owed ordinary duties at common law not to trick, deceive or misrepresent the property, and furthermore, if any duties

were owed, then they were owed to the vendor. It was the vendor who was paying the commission. She was the co-operating agent for the listing broker. In fact, she said that they were both acting for the vendor.

Now, this makes real sense! The vendor has two agents and the purchaser has no one. However, this situation arises all the time. This isn't a case of conflict of interest. The problem here is that the purchaser had no agent at all.

The only written document, the agreement of purchase and sale, specified that both agents were agents for the "vendor".

You might be pleased to hear that the trial Judge did not accept this argument. In a precedent setting decision, he concluded that the young mother had been induced to believe that her agent was truly acting for her and in her best interests. He said that the doctrine of agency was not explained nor were any agency documents executed. As a result he awarded damages and concluded that the agent was an "agent" at common law and consequently owed certain duties to the purchaser.

But, what if the doctrine of agency had been explained and what if agency documents had been executed? You would have a situation where the agent you thought was yours, was actually acting for the other side, truly a "double agent".

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