

Responsibility for the Missing Dishwasher



By Brian Madigan LL.B.

Here is a question that arises about once every two weeks:

If the agent fails to include the dishwasher in the Agreement of Purchase and Sale, but told the buyer it was included, who is likely to pay?

The first question is: whose agent said it was included?

Seller's Agent

Let's assume the seller's agent made the representation.

If the agent had authority to make this statement, then it would be binding upon the Principal. So, the seller would be responsible.

If the agent had no authority to make this statement, then it would not be binding upon the Principal. So, the seller's agent would be responsible.

Buyer's Agent (sub-agency)

There is a limited possibility of sub-agency here. If that were the case, then, the buyer's agent would also be an extension of the seller's agent, and the same comments noted above would apply.

Buyer's Agent

Let's assume that the buyer's agent made the representation.

Neither the seller nor the seller's agent said the dishwasher was included. The laws related to agency here do not apply. There is no contractual misrepresentation.

There is however a negligent representation made about the status of the dishwasher. In contract, the buyer's representative is obligated to perform duties as outlined in the Act. One issue is material facts and another is the verification of facts. If the agent is uncertain, then the agent should not say that it is included.

In this case, the buyer's agent made a false and misleading representation about the dishwasher. The most likely measure of damages, would be the value of a suitable replacement dishwasher, at the expense of the buyer's agent.

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