

17. Breach of Construction Contract

Background

A real estate agent represented the buyers in the purchase of a new home. The property was a proposed new construction to be built on a vacant parcel of land. The agent's representation agreement was a Contract for Exclusive Right to Represent Buyers and was accompanied by an Agency Relationships in Real Estate Transaction disclosure form identifying the agent's role and fiduciary duties to the buyers.

The purchase agreement required that funds for labor and materials be disbursed to the contractor before completion of the house. Disbursement from the buyers to the contractor were controlled under an Escrow and Disbursement Agreement negotiated after the purchase agreement. The buyers transferred funds for each construction draw request from their bank account into an escrow account. Requests to release funds to the contractor were approved individually.

Before the buyers began payments, their real estate agent and his sales manager received an email from an area real estate agent regarding past bankruptcy and "jail time" issues faced by the buyers' contractor. The building contractor's license had been revoked by the state and the licensed contractor for the property was a different contractor. This fact was not disclosed in the purchase agreement.

The project progressed slowly, and the buyers became frustrated with the pace of the project, the absence of building materials on the site, and the lack of communication with the contractor regarding a project completion schedule. Ultimately, both parties agreed to a Cancellation of Purchase Agreement citing the contractor's "lack of reasonable diligence." The Cancellation of the Purchase Agreement required the repayment to the buyers of over \$100,000. The contractor did not make the payment. It became apparent that the buyers' real estate agent and his firm knew of the contractor's involvement in several lawsuits, judgments, and criminal complaints, including a Theft by Swindle conviction.

Issues

The buyers' real estate agent failed to disclose to the buyers the change in building contractors and the contractor's poor record.

Outcome

Dr. Musil prepared the Expert Report. The case settled in favor of the buyers.

(link to list of selected professional engagements)