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Advertised house came up short

Purchase offer should ask that the advertised square footage be warranted

What happens if you buy a house and it turns out to be more than 18 per cent smaller than the advertised size?

That's what happened in the summer of 2003 to Bruce and Karen Meagher after they bought a house in New Westminster, B.C., from Marlene Fraser.

It was advertised online by Ralph Telep of Tri-Tel Realty as having a total finished area of 2,706 square feet. The listing accurately set out the sizes of all of the rooms in the house, but the advertised total was approximately 500 square feet larger than its actual size.

The listing agent later admitted that the statement of the house size was negligently made by his office.

When the Meaghers were arranging mortgage financing, they discovered the shortfall in the total size.

Their purchase price was \$340,000 but the house was appraised for mortgage purposes at \$320,000.

Based on the appraisal and the discrepancy in size, the Meaghers sued the seller, and the listing agent and brokerage after closing for \$20,000, representing the difference between the \$340,000 purchase price and the \$320,000 appraisal.

In court, Bruce Meagher testified that the real estate market was very hot at the time and that he and his wife were looking for a house in the range of \$320,000 to \$340,000. Their biggest priority, he said, was to find a house that they were happy in.

Meagher testified that the house met his requirements for location, privacy, number of bedrooms and bathrooms, room sizes and price range. He felt an urgency to put in an offer because homes like this were "selling like hotcakes" at the time.

Listing price for the Fraser house was \$329,800, but on the advice of Meagher's own real estate agent, he offered \$340,000 without any conditions.

Meagher acknowledged he was prepared to pay above the asking price in the listing agreement on the basis that it was a hot market and "that's what had to be done in order to secure a place."

Prior to making an offer on the house, Meagher said he did nothing else to assess its value except to view it.

The question that had to be decided by Justice John Truscott was whether the Meaghers were entitled to damages for negligent misrepresentation based on the fact that the house was advertised at 500 square feet larger than its actual size.

Unfortunately for the buyers, the judge decided against them.

"The plaintiffs here did not buy their house on the basis of so much per square foot," the judge wrote in his decision.

"They bought their house on an inspection and were prepared to pay \$340,000 on the basis of their requirements and the realities of the marketplace."

Despite Meagher's evidence that the advertised house size was critical to his purchase decision, the judge decided that the buyers did not rely on the total square footage in making their offer.

"They relied on the location and appearance to them of the house, as Mr. Meagher viewed it," the judge noted.

"They are still satisfied with the house today as it meets their needs. Mr. Meagher was prepared to pay \$10,000 over the list price of \$329,800 because to him it had that value.

"It is only subsequently that he suggests the total square footage had any meaning to him. The room sizes themselves are correct and I do not find that the total square footage of the house was of any consequence to him at all."

There is an important lesson to be learned from this case by purchasers of houses or condominiums, whether resale or purchased from plans and to be built in future:

- -Make it clear in the purchase offer that the stated size is warranted to be correct, or
- Insert a provision in the offer that the purchase price will be reduced in the event the size of the house or the land beneath it turns out, before or after closing, to be overstated.

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Meagher v. Telep, 2005 BCSC 1932 (CanLII)

Print: PDF Format

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Docket: S084023

URL: <http://www.canlii.org/en/bc/bcsc/doc/2005/2005bcsc1932/2005bcsc1932.html>

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Meagher v. Telep*,

Date: 20050718

Docket: S084023

Registry: New Westminster

Between:

BRUCE MEAGHER and KAREN RUTH MEAGHER

PLAINTIFFS

And:

RALPH TELEP, TRI-TEL REALTY LTD.

and MARLENE FRASER

DEFENDANTS

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Judgment

(IN CHAMBERS)

July 18, 2005

Counsel for the Plaintiffs:	K. Oliver
Counsel for the Defendants Telep and Tri-Tel:	K. Murray
Place of Trial/Hearing:	New Westminster, B.C.

[1] **THE COURT:** The plaintiffs bring application under Rule 18A for judgment against the defendants Ralph Telep and Tri-Tel Realty Ltd. for damages for negligent misrepresentation concerning the square footage of the house they purchased from the defendant Marlene Fraser by interim agreement dated August 27, 2003. The plaintiffs say they relied upon the representation of Mr. Telep that the house had a total finished area of 2,706 square feet. This figure was found in the listing agreement that Mr. Meagher reviewed online on approximately August 17, 2003. The listing agreement sets out the sizes of the different rooms in the house, which I understand are accurate dimensions, but the total of 2,706 square feet for the finished area is in error as being approximately 500 square feet more than its actual size. Mr. Meagher deposes in an affidavit that had he known of the discrepancy in the square footage of the property, he would not have been interested in purchasing it for \$340,000, the price that the plaintiffs in fact paid. He does not say in his affidavit what he would have paid for the house.

[2] Mrs. Meagher deposes in her affidavit that she adopts as true all the contents of her husband's affidavit.

[3] The listing agent, Mr. Telep, admits that the square footage of the finished area of 2,706 square feet was a misstatement negligently made by his office. However, he submits that the plaintiffs did not rely upon this misstatement in purchasing the property or, if they did, they did not reasonably rely upon it.

[4] The evidence of Mr. Meagher on his examination for discovery was that the real estate market was very hot at the time; that he and his wife were looking at a house in the range of \$320,000 to \$340,000; that their biggest priority in their search was to find a house that they were happy in; that he knew that he had to make an offer on any house they wanted very quickly because of the hot market; that the house that he did find he determined met the requirements for location, privacy, number of bedrooms and bathrooms, size of rooms and price range; and that he felt an urgency to put in an offer because places were selling like hotcakes at the time.

[5] The house was listed for \$329,800, but on the advice of Mr. Meagher's realtor he offered \$340,000 in an offer with no subject clauses. He thought that the vendors at that time were expecting to get a little bit more than the list price and he was prepared to pay above the value of the property as reflected in the listing agreement on the basis that it was a hot market and that's what had to be done in order to secure a place. Prior to making his offer on the house, he said he did nothing else to assess its value except to view it. The plaintiffs are still living in the house today because they are content with it.

[6] Subsequent to their purchase, when the plaintiffs were arranging mortgage financing, they obtained an appraisal that said the house had a value, by the direct comparison approach, of \$320,000 as of October 17, 2003. It was this appraisal upon which they rely to establish their claim for damages of \$20,000, being the difference between their purchase price of \$340,000 and the appraised value of \$320,000.

[7] I find on the evidence that the plaintiffs did not rely on the total square footage in making their offer. They relied upon the location and appearance to them of the house, as Mr. Meagher viewed it. They are still satisfied with the house today as it meets their needs. Mr. Meagher was prepared to pay \$10,000 over the list price of \$329,800 because to him it had that value. It is only subsequently that he suggests the total square footage had any meaning to him. The room sizes themselves are correct and I do not find that the total square footage of the house was of any consequence to him at all.

[8] I recognize that Mr. Meagher deposes in affidavit form that he relied upon the total square footage, but the evidence that he gave on examination for discovery convinces me that this statement should not be accepted. Although this is an 18A application on affidavits and I have not had the opportunity to assess Mr. Meagher's credibility in the witness box, I am able to conclude, as I consider I am entitled to do, that such a statement is completely inconsistent with the rest of his evidence and should not be accepted.

[9] I find the defendants' authorities in *Guy v. Wagner*, *Sleightholm v. East Kootenay Realty Ltd.* and *Tabakis v. Villarosa* to be helpful on disposition of this case. In *Guy v. Wagner*, Wood J. referred to evidence of the plaintiffs that they were looking for a house which was large enough to accommodate them and both testified that their inspection satisfied them that it was adequate for their purposes. They purchased the home because they liked it and they were not aware of property values, construction costs, and made no calculations based upon square footage when they made their offer. While it was concluded that the plaintiffs paid too much for the property in that case in terms of its appraised value, the court could not conclude that they would have offered any less if told the square footage was 300 square feet less. I conclude that is the same situation before me in this case.

[10] In *Sleightholm*, the claim was dismissed for the following reasons:

- 1) The statement respecting the size of the house was contained in a document the accuracy of which was specifically not warranted or guaranteed.

Here, the listing agreement states that "all measurements are approximate" and goes on to say:

The above information is provided by members of the Real Estate Board of Greater Vancouver or the Fraser Valley Real Estate Board and is from sources believed reliable, but should not be relied upon without verification.

[11] As Drost J. said in *Tabakis*, in a statement in that case which said in bold type:

"ABOVE INFORMATION IS FROM SOURCES BELIEVED TO BE RELIABLE BUT SHOULD NOT BE RELIED UPON WITHOUT VERIFICATION. NRS ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY."

That constitutes a clear disclaimer or warning to anyone reading that catalogue that the provider of the information was not assuming a duty of care (and a consequent liability for negligence) toward the reader.

[12] I consider that to be much the same situation here, although the wording is somewhat different, but still, in my conclusion, to the same effect. It is stronger wording than was considered in the case of *Olympia and York Development Ltd. v. Marshall*.

[13] The plaintiffs' counsel submits that the wording of the listing agreement that I have referred to, the disclaimer clause, at least the disclaimer portion of it, is in such small writing that it probably was not even seen by Mr. Meagher. Mr. Meagher himself does not give that evidence and I do not take that submission into account.

[14] One of the other reasons why in *Sleightholm* the case was dismissed was that the evidence there disclosed no specific reliance on any estimate of size except the plaintiffs' after-the-fact assertions, and I find that again to be the same situation before me. There, as well, the plaintiff had ample opportunity to inspect what he was in fact getting. Again, I consider that to be the same situation here. Finally, the conclusion in that case was that the plaintiff's argument on damages proceeded from an unrealistic equation of size with value. The plaintiff did not buy 1,120 square feet of house at so much per square foot. The evidence was that he bought a house he had inspected and was prepared to pay \$72,000 on the basis of his requirements and the reality of the marketplace. I find that, again, to be the same situation here. The plaintiffs here did not buy their house on the basis of so much per square foot. They bought their house on an inspection and were prepared to pay \$340,000 on the basis of their requirements and the realities of the marketplace.

[15] I dismiss the plaintiffs' claims and I award the defendants Telep and Tri-Tel Realty Ltd. costs at Scale 3.

Truscott J.