

Publisher's Note

2019 — Release 3

Previous release was 2019-2

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Victor DiCastrì

Law of Vendor and Purchaser

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 updates to the case law and commentary in chapters: 3 (Parties), 4 (Statute of Frauds), 5 (Offer and Acceptance), 6 (Options), 8 (Mistake and Illegality), 11 (The Doctrine of Frustration), 12 (The Contract), 13 (Position of Parties Pending Completion), 14 (Completion), 16 (Remedies for Default), and 17 (Remedies for Vendor).

Highlights

The Contract — Construction of the Contract — §395 In General

Parties entered into agreement for purchase of land, conditional on purchaser satisfying itself of certain matters within 30 days; thirty day period elapsed, and afterward parties amended agreement that conditions could be satisfied within 60 days; vendor brought application upon which it was found that original agreement had become null and void, but amendment reflected intention to create new agreement incorporating all terms of original agreement, while modifying original due diligence period from 30 days to 60 days; purchaser appealed; trial judge erred in treating matter as resurrection of original agreement; record did sufficiently address parties' intentions had they turned their mind to fact that their original agreement had become null and void; matter to proceed by way of action: *Grabarczyk v. 2198802 Ontario Limited*, 2018 ONCA 47, 2018 CarswellOnt 561 (Ont. C.A.).

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Remedies of Vendor — Recover by Vendor of Damages — §888 In General

Parties entered into agreement of purchase and sale, completion date was extended by two weeks on condition of payment of increased deposit, which was not paid, and sale did not complete; vendor accepted purchaser's repudiation and filed notice of civil claim; purchaser pleaded that vendor failed to mitigate her damages by rejecting purchaser's son's offer following repudiation; purchaser obtained adjournment of summary trial; trial judge dismissed purchaser's application for further adjournment for further document disclosure and discovery of vendor, and found purchaser breached contract by failing to complete and awarded vendor damages; purchaser appealed; purchaser on appeal attempted to broaden ambit of her defence of mitigation beyond that pleaded and argued before trial judge; trial judge had before her all evidence brought to court's attention, and she gave thorough reasons; purchaser failed to demonstrate that trial judge erred in refusing application to adjourn or to require vendor to produce documents and attend discovery; trial judge's refusal was grounded in her conclusion that purchaser's request was based on speculation and, if granted, would amount to fishing expedition: *Chang v. Hua*, 2018 BCCA 13, 2018 CarswellBC 91 (B.C. C.A.).