



Courtside *Newsletter*

California Court of Appeal Further Decide on Extent of Brokers' Fiduciary Duties

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Recently, in *Saffie v. Schmeling*, the California Court of Appeal considered what the selling broker's fiduciary duty to his buyer is regarding further investigating an earthquake report provided by the listing broker, and the extent of the duty of the listing broker and seller to the buyer. The Court clarified that the selling broker has a duty to further investigate an old report and that the duties of the listing broker and the seller do not include performing research for the buyer.

In 2006, Broker Robert Schmeling ("Listing Broker") put a listing in the MLS on behalf of his client, Yousef Sasa ("Seller") for a 0.62-acre commercial property in Hemet, California. The listing included the following accurate statement: "This parcel is in an earthquake study zone but has had a Fault Hazard Investigation report completed and has been declared buildable by the investigating licensed geologist. Report available for serious buyers."

The Fault Hazard Investigation report was prepared by a Registered Geologist, and had "May 20, 1982" displayed prominently across its cover. The Geologist asserts in the report that there is "no evidence of an active fault" on the property and that "the secondary effects of ground fissuring and cracking and the primary effects of ground rupture and

displacement on a fault are unlikely to occur on the subject property." On July 23, 1982, a letter granting final approval of the report was issued by an engineering geologist for the Riverside County Planning Department.

In June 2006, Anthony Burton ("Selling Broker") made an offer to purchase Seller's property on behalf of his client, George Saffie, Jr. ("Buyer"). Buyer intended to build a commercial building on the property. During escrow, prior to the close of the transaction, Listing Broker provided the Fault Hazard Investigation report to Selling Broker. Selling Broker did not read the report, but provided the report to Buyer, implying that it indicated that the property was "ready to build." No further investigation regarding any geological issues with the property was conducted, and the transaction closed.

When Buyer attempted to develop the property, he was told by Riverside County that the property was not "ready to build" and the County's standards regarding investigation of fault hazards had changed after the 1994 Northridge earthquake. The report provided by the Listing Broker was no longer accepted by the County since it was performed under prior standards. Additional geological investigation by the County rendered Buyer's intentions for the property impractical, and he could not feasibly develop the property with a commercial building.

Buyer brought suit against Selling Broker, the Listing Broker and Seller for breach of fiduciary duty and negligence. The trial court found Selling Broker liable in the amount of \$232,147.50 for failure to conduct due diligence by (1) reading the Fault Hazard Investigation Report (which he admittedly did not do before handing it over to Buyer), and (2) conducting further investigation after noting the date on the report. The trial court did not find Seller or Listing Broker liable. Buyer appealed alleging that Listing Broker's statement in the MLS was "false or inaccurate," in violation of California Civil Code Section 1088.

The Court of Appeal focused its analysis specifically on whether the MLS listing could be considered false, inaccurate, or at all misleading. Civil Code § 1088 states that the broker "shall be responsible for the truth of all representations and statements made by the agent [in an MLS] ... of which that agent ... had knowledge or reasonably should have had knowledge." It also provides a statutory negligence claim for "anyone injured" by the "falseness or inaccuracy" of such representations and statements. The Court took into account the fact that "real estate brokers owe their clients fiduciary duties, [as well as] ... third parties who are not their clients, including the adverse party in a real estate transaction ... These duties include

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Calendar

Managing Risk in Today's Litigation Environment

Date: April 8, 2014
Time: 9:00 a.m. – 1:00 p.m.
Location: Pacific West Association of REALTORS®

Contact PWR to sign up!

Fair Housing

Date: April 15, 2014
Time: 9:00 a.m. – 1:00 p.m.
Location: Tri-Counties Association of REALTORS®

Contact Tri-Counties to sign up!

Fair Housing

Date: April 17, 2014
Time: 9:00 a.m. – 1:00 p.m.
Location: Pacific West Association of REALTORS®

Contact Tri-Counties to sign up!

C.A.R. Expo

Date: April 30-May 3, 2014
Location: Sacramento Convention Center

Go to www.car.org for more information and registration!

Broker Supervision

Date: May 8, 2014
Time: 9:00 a.m. – 12:00 p.m.
Location: Pacific West Association of REALTORS®

Contact PWR to sign up!

RPA

Date: June 24, 2014
Time: 9:00 a.m. – 1:00 p.m.
Location: Pacific West Association of REALTORS®

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Brown Bag

Date: June 27, 2014
Time: 11:30 a.m. – 1:00 p.m.
Location: Southwest Riverside County Association of REALTORS®

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RPA

Date: July 9, 2014
Time: 9:00 a.m. – 1:00 p.m.
Location: Southwest Riverside County Association of REALTORS®

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a general obligation of “honesty, fairness and full disclosure toward all parties.”

Buyer alleged that the passage of time between 1982 and 2006 rendered the Fault Hazard Investigation Report “unreliable and invalid.” Listing Broker’s MLS listing failed to mention the date of the Report. Buyer argued that the listing was false and inaccurate by giving the false impression that the report was current as of the date of the MLS listing and remained “valid” as a basis for commercially developing the property in 2006. The Court disagreed and explained that, since the MLS listing did not state that the land was “ready to build” or even that the report was still valid, only that is was declared buildable by a licensed geologist. Further, any mischaracterization that could have been implied by the MLS listing was considered dispelled once the report was provided to Buyer’s Broker and Buyer during the transaction. According to the Court, “by disclosing a copy of the Fault Hazard Investigation report and associated approval letter during escrow, Seller’s Broker fully satisfied his duty to buyer of ‘honesty, fairness and full disclosure towards all parties.’” Also, “there is nothing in section 1088, or any other source of law, imposing responsibility on a seller’s broker to ensure that true statements in an MLS are not misconstrued, or to make certain that the buyer and buyer’s broker perform the appropriate due diligence to evaluate the significance of such true statements for the buyer’s particular purposes.”

The Court found that “Buyer’s alleged injury arises from a failure to investigate and understand the implications of the information that the Fault Hazard Investigation report dates to 1982—a failure that the trial court found was buyer’s broker’s responsibility—not any failure to provide that information in a timely manner on the part of seller’s broker.” Listing Broker’s MLS listing

was not false or inaccurate, or in any way misleading, and therefore not in violation of Civil Code § 1088. “It was buyer’s and buyer’s broker’s duty to further investigate the report to determine if it was something to rely on. Seller’s broker had no obligation to perform such research for the buyer or buyer’s broker.”

As in *Schwartz v. Coldwell Banker Residential Brokerage*, the Court once again affirmed that real estate brokers and agents cannot do it all, nor should they be expected to do someone else’s job. The instant action reaffirms that a broker’s fiduciary duty, including to an adverse party, does not extend to cover the fiduciary duties of that party’s brokers. Selling brokers should take note that their fiduciary duty to their buyer client includes further investigation when appropriate. Taking care to meet that obligation will help avoid unpleasant legal consequences.

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Sylvia J. Simmons has been an associate attorney at The Giardinelli Law Group, APC and its predecessor firms since 1997. Her practice is primarily focused on real estate transactions, employment law, and business law. She advises real estate brokers and office managers, buyers, sellers, landlords, tenants, and business owners and managers. Her work involves not only negotiating, structuring, and documenting the purchase, sale, lease, and development of real property, but also helping clients resolve contract disputes in order to avoid costly litigation.

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