

Sample Research Memorandum

Prepared For: Legal Education Society of Alberta

Advanced Legal Research

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For Presentation In:

Edmonton – November 26, 2009

Calgary – December 3, 2009

RESEARCH MEMORANDUM

To: ???????????

From: Bottom Line Research

Date: November 11, 2008

File No: ???????????

Re: *ZZZZZZZZZZ* Construction et al.
v. *XXXXXXXXXX* Estates et al.

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QUESTIONS PRESENTED:

You act on behalf of XXXXXXXXXX Estates (“XXXXXXX”), the owner of certain lands near Calgary which they are developing for a subdivision called ----- . You also act for YYYYYYYY Realty (“YYYYYYY”) and WWWWWW (“WWW”) , the real estate broker and agent who were retained by XXXXXXXXXX to act exclusively on behalf of XXXXXXXXXX to market and promote -----; they were later added as defendants to the action.

While the facts are laid out in detail in your Memo to us dated October 21, 2008 [and further details of the circumstances will be examined and discussed within the analysis below], essentially XXXXXXXXXX was searching for custom home builders for ----- and considered several builders, including the plaintiff, ZZZZZZZZZ Construction Ltd. (“ZZZZZZZZZZ Homes”). XXXXXXXXXX sent out several proposals to these builders to invite them to contract with XXXXXXXXXX to buy and build lots in -----; however, ZZZZZZZZZ Homes was generally non-committal and eventually made a counter-proposal that was not acceptable to XXXXXXXXXX in a number of respects and which XXXXXXXXXX did not accept. Overall, the ZZZZZZZZZ brothers (the principals of ZZZZZZZZZ Homes, and collectively with ZZZZZZZZZ Homes shall be referred to as “ZZZZZZZZZZ”) turned out to be too difficult to deal with and XXXXXXXXXX did not want to do business with them, but when they advised ZZZZZZZZZ they had decided to go with other builders for “business reasons”, the ZZZZZZZZZ brothers reacted extremely, going on a “verbal rampage” and suggesting there had been some kind of “conspiracy” to keep them out of the ----- project.

Eventually, ZZZZZZZZZ sued all involved, claiming they had a binding contract with XXXXXXXXXX and, consequently, an interest in -----, and that XXXXXXXXXX breached or repudiated that contract by refusing to recognize their rights. They further claimed that there was a “civil conspiracy” by all the defendants to harm ZZZZZZZZZ Homes; that the defendants unlawfully induced XXXXXXXXXX to breach their contract with ZZZZZZZZZ Homes; that YYYYYYYY and WWWWWW negligently induced ZZZZZZZZZ Homes to breach their contract with XXXXXXXXXX; that YYYYYYYY and WWWWWW improperly acted as a dual agent to both XXXXXXXXXX and ZZZZZZZZZ Homes and breached their fiduciary duties and duties of confidentiality owed to ZZZZZZZZZ Homes; that the defendants made false and misleading representations about ZZZZZZZZZ Homes and made false or negligent misrepresentations to ZZZZZZZZZ Homes about the ----- project; and that the defendants all owed fiduciary duties to ZZZZZZZZZ Homes, which they breached.

We understand that the pleadings are all filed and the matter is proceeding to trial on November 17, 2008. Thus, you need an overview and analysis of the case law with respect to the causes of action that have been pled against your clients, specifically, you requested we examine: (1) breach of fiduciary duty; (2) breach of confidentiality; (3) civil conspiracy; (4) inducement of breach of contract; (5) misrepresentation, including false or negligent misrepresentation. You also need to know how the Statute of Frauds defence applies to your facts.

RED FLAG: Aside from the causes of action you specifically requested we examine, we also noticed at least one other potential cause of action within the Amended Amended Statement of Claim, which was not examined in any depth, but which we wanted to bring to your attention for future consideration -- the tort of “interference with economic interests”. This tort has been identified as being separate and distinct from the tort of conspiracy and much broader than the tort of inducing breach of contract or interference with contractual relations: see comments beginning at para. 66 in *Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co.* [1996] A.J. No. 722; 187 A.R. 81 (ABCA) (“Ed Miller”) [TAB 34], and also *Rigco North America LLC v. ExxonMobil Canada Ltd.*, [2007] A.J. No. 516; 2007 ABQB 311; 416 A.R. 396 [TAB 36], per Macleod J.

CONCLUSIONS:

Based on the information and facts presented to us, and our review of the relevant case law, it seems that none of the claims made by ZZZZZZZZZZ stand much chance of success.

1. Breach of Fiduciary Duty [by XXXXXXXXXX, YYYYYYYY and WWWWWW]

In our view, it is not likely a court would find these are appropriate circumstances in which to impose a fiduciary duty on XXXXXXXXXX. That is mainly due to the commercial nature of the transaction between two arms’ length parties, the experience and sophistication of both of the parties, and the lack of requisite vulnerability on the part of ZZZZZZZZZZ Homes, as was the case in the central decision of *Lac Minerals Ltd. v. Int. Corona Resources Ltd.*, [1989] S.C.J. No. 83; 2 S.C.R. 574 (“Lac Minerals”) [TAB 4].

In addition, the same is true for YYYYYYYY and WWWWWW. Aside from any possible finding that they were acting as “dual agents”, it is clear a fiduciary relationship could arise between them even outside of an actual agency relationship. In any case, there is arguably no evidence they had any power or discretion over ZZZZZZZZZZ, or that ZZZZZZZZZZ was in any way vulnerable to or dependent on them, and generally, there could be no expectation that they were acting in ZZZZZZZZZZ Homes’ interest. They seem to have clearly been XXXXXXXXXX’s agent and acting on their behalf.

2. Breach of Confidentiality [by YYYYYYYY and WWWWWW]

To establish this claim, ZZZZZZZZZZ would have to show: (i) that the information conveyed was confidential; (ii) it was communicated in confidence; and (iii) it was misused by XXXXXXXXXX, YYYYYYYY and WWWWWW to the detriment of ZZZZZZZZZZ: *Lac Minerals*.

Without further details, it is difficult to say if the information referenced by ZZZZZZZZZZ was confidential or whether it was communicated in confidence. However, even it was, the issue would likely come down to whether ZZZZZZZZZZ could establish any misuse of the information by YYYYYYYY and WWWWWW – whether they did in fact share any pertinent confidential information with the other potential builders which put them at an advantage relative to ZZZZZZZZZZ in negotiations with