

Chalkline - Legal Corner by Jay A. Goldstein, OMB General Counsel

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Realtors Beware

John L. Scott Wins One, Loses One

Our state Supreme Court has decided two cases involving a realtor's duty in the purchase and sale of real property, both concerning the Consumer Protection Act. John L. Scott, Inc. was the Defendant in each case. The real estate company won one and lost one.

Sing v. John L. Scott, Inc., 134 Wn.2d 24, 948 P.2d 816 (1997).

Sing sought to purchase property listed through a John L. Scott office. After submitting an offer through Scott, two other agents in the Scott office made a competing offer, which the owner accepted. Sing sued for tortious interference with contractual expectancies and violation of the Consumer Protection Act. The trial court awarded damages for a CPA violation based on the failure of the broker to take precautions to safeguard the confidentiality of Sing's offer. The Court of Appeals affirmed.

But the Supreme Court reversed. Scott had no duty to maintain the confidentiality of Sing's offer. As the listing agent, Scott's primary duty to the seller, and that duty included the obligation to get the best possible deal for the seller. The court found no statutory prohibition on agents buying property listed through their office, even if an offer has been made through that agency. Sing's argument that Scott violated the CPA by not starting a "bidding war" was rejected.

Edmonds v. John L. Scott Real Estate, 87 Wn.App. 834, 942 P.2d 1072 (Div. 1 1997).

A prospective buyer of a house sought to recover an earnest money deposit. Purchaser refused to close the purchase of the house because the basement leaked. The purchaser had specifically instructed the sales agent to make certain that the leak was repaired prior to closing. The in-house counsel for the realtor determined that the purchaser had breached her obligation under the purchase and sale agreement and that she forfeited the deposit half to the seller and half to the realtor. The trial court entered a judgment in favor of the purchaser and found the realtor in violation of the Consumer Protection Act.

The Court of Appeals affirmed, but remanded for a new calculation on attorney fees. The court held that the agent breached its obligation to the buyer by failing the adequately draft the purchase and sale agreement in accordance with the buyers instructions. The practice of the realtor if unilaterally determining the party at fault of a transaction fails to close, and then distributing escrow funds violated the Consumer Protection Act and the realtor's duty as an escrow agent. The Washington Supreme Court denied review of this case.