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Unjust Enrichment Reversed On Appeal – Deprivation Not Sufficient

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On appeal, in *Akhtar v. Realty Canada Inc.*, 2015 ONSC 1218, the Divisional Court held that the appellant real estate agent "Remax/Sandhu" was entitled to the full commission:

Remax/Sandhu had the signed listing agreement with the vendor, and also entered into a signed representation agreement with the buyers. Remax/Sandhu had specifically asked the buyers if they had an agent before:

- a. signing up the representation agreement with the buyers; and
- b. performing services on their behalf.

The buyers told Remax/Sandhu that they had no other agent.

However, real estate agent "Realty/Kaur" had performed services for the buyers, but did not secure a signed representation agreement from them. Also, Realty/Kaur did not advise Remax/Sandhu that she had been representing the buyers until two months after closing.

At law, there was no unjust enrichment. The deprivation of commissions for work performed by Realty/Kaur was not sufficient to prove this claim against Remax/Sandhu.

Independently, Remax/Sandhu had a valid juristic claim to the full commission. Remax/Sandhu had performed work for the buyers pursuant to a signed representation agreement.

The decision seemed to hinge on the work performed by Remax/Sandhu for the buyers in good faith, as opposed to the existence of the signed agreement itself.

That said, if Realty/Kaur had secured a signed representation agreement from the buyers, the double agent situation probably could have been avoided. It seems unlikely that the buyers

would have signed two agency agreements. Further, without an agreement, presumably Remax/Sandhu would not have performed work for the buyers.

- Research contributed by Rubal Bhadu, 2014/2015 articling student.