

## Are Brokers Liable for False Information Provided by the Seller?

In 2013, the Massachusetts Supreme Judicial Court issued its most recent decision concerning the liability of real estate brokers for providing inaccurate information to a Buyer in the sale of real property. In *DeWolfe v. Hingham Centre, Ltd.*, 464 Mass. 795 (2013), the Massachusetts Supreme Judicial Court (“SJC”) held that a broker may be liable for disclosing inaccurate information provided by a Seller – even if the broker did not know it was inaccurate.

The relevant facts in *DeWolfe* are that the Seller of a property in Norwell, MA, informed his listing broker, Hingham Centre, Ltd., that the property was zoned for “Residential Business B” or “Business B.” Relying on this information, Hingham Centre, Ltd., advertised the property as being zoned for “Business B.” Daniel DeWolfe (“DeWolfe”) purchased the property with the intention of operating a hair salon on the premises. However, the zoning information ultimately proved to be false as the property was not actually zoned for business at all. Thus, after purchasing the property, DeWolfe found that he was unable to operate a hair salon on the property.

When DeWolfe sued the selling broker for misrepresentation, the trial court made a definitive ruling of the law (“summary judgment”) in favor of the broker, Hingham Centre, Ltd. The trial court held that, as a matter of law, the broker cannot be found liable because the broker relied upon information provided by the Seller. Thus, the case against Hingham Centre, Ltd., never reached a jury. DeWolfe appealed the trial court’s decision, and the SJC issued its ruling in favor of DeWolfe’s appeal. In its ruling, the SJC held that a broker may rely on Seller-provided information only where “it is reasonable in the circumstances” to do so. But where such reliance is unreasonable, a broker may be found liable for misrepresentation.

It is important to note that the SJC did *not* find the broker definitively liable in *DeWolfe*. Rather, the *DeWolfe* court simply ruled that a broker cannot escape liability simply by relying on Seller-provided information. The SJC held that the trial courts must examine each case on the basis of its own facts to determine whether the broker’s reliance was reasonable under the circumstances. The court in *DeWolfe* noted that the property was surrounded by only residential properties and that “Residential Business B” was a not an actual zoning classification in Norwell. Thus, the court felt that a jury

certainly could find that the broker acted unreasonably in relying upon the Seller’s information (which determination is a finding of fact to be decided at trial by a judge or jury). As such, the SJC sent the case back to the trial court for a factual determination on whether the broker was unreasonable in failing to verify the Seller’s information.

### SO WHAT CAN WE LEARN FROM THIS CASE?

**1. Real Estate Brokers** – The *DeWolfe* ruling does not represent a dramatic shift in the law concerning broker liability. Rather, it serves as the SJC’s written confirmation that real estate brokers have always been required to act reasonably in relying on Seller-provided information when marketing a property. However, with this recent decision in place, real estate brokers must be more diligent than ever in verifying information provided to them by Sellers. Certainly, *DeWolfe* seems like a relatively obvious case. The zoning was a critical aspect of the sale, and the zoning information was easily verifiable through public records. This was a representation that should have been verified by the broker in light of the residential nature of the surrounding area. But, there is no bright line test for “reasonable” conduct. It is a factual determination that may be different in each case. Thus, I would recommend the following:

- (a) Verify *any* information that is publicly available (e.g., zoning, permits, taxes).
- (b) If an aspect of the property is particularly important to the sale, but the information is not publicly available, ask the Seller for verification of the asserted fact.
- (c) Trust your instincts. If a representation seems inconsistent with what you see, do not accept it as true. Ask for more information.
- (d) Use indemnity language. The law does not prohibit a broker from requiring a Seller to indemnify the broker for inaccurate information provided by the Seller. Is your office having the Seller execute an agreement indemnifying you for inaccurate information? Does your listing agreement provide indemnity for false information? Review the language that your office is using, and see if it protects you.

2. **Buyers** – Notably, the SJC in *DeWolfe* did not discuss the fact that the zoning information could have been very easily verified by the Buyer at Town Hall. And whereas the zoning classification was essential to DeWolfe’s purchase, it is difficult to see why he did not verify this information. Although the ability of the Buyer to verify information through public records has been used as a defense in other cases, the SJC makes no reference to this potential defense in *DeWolfe*. Thus, going forward after *DeWolfe*, it does not appear to be an effective defense. But I would argue that it remains a factor for a trial court to consider. *Always* do your own due diligence. Do not rely on the Seller or the Seller’s broker for critical information about a property.

3. **Sellers** – Except in certain statutorily required situations (e.g., lead paint), Sellers are not obligated to disclose any defects about a real property. The *DeWolfe* ruling did not change the fact that Massachusetts is a “caveat emptor” (or “let the Buyer beware”) state in regard to real estate. But if you do represent any information as a Seller, you must speak accurately and cannot speak in half-truths. Make sure that your broker has verified important representations about your property. You may be liable for your broker’s representations, even if they did not come from you.

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