



Real Estate Case Study

The Joint Venture

At 1 p.m. on Wednesday March 26, 2014, Sarah Greene hung up the phone after speaking to Peter Kovacs, the principal of her client, Renaissance Building Corporation. Pursuant to a joint venture agreement that Sarah drafted, two of her client's properties were being transferred that day to a nominee that would hold registered title for Renaissance and two other companies. Peter had just instructed Sarah not to disclose the existence of an enforcement charge she discovered had been filed against Renaissance the previous day. He assured her that he would use the purchase funds to pay the enforcement charge amount within a couple of weeks. Uncertain about how to proceed, Sarah told Peter that she would call him back within the hour with her response.

The Lawyer

Sarah Greene was called to the bar in 1985 and had been a partner in the real estate law group of Hill & Schriber, a Saskatoon, Saskatchewan firm, for over 20 years. Her practice was focused on the purchase, sale and financing of commercial real estate. Renaissance was one of her major clients and she and her husband had become friends with its principal, Peter Kovacs, and his wife.

The Companies

Renaissance was in the business of buying land or existing buildings for development or renovation. Peter advised Sarah that the company was planning to enter into a joint venture with two other companies: Northern Investments Inc., and Jarvis Development Inc. Northern and Jarvis did not own any land. They were simply investing in the joint venture with Renaissance. Northern's in-house counsel, Jane Leung, handled mostly corporate proceedings and regulatory compliance for the company. She engaged outside counsel on litigation matters, but as Northern had never owned real estate or been involved in development before, Jane had never retained outside real estate counsel. Jarvis did not have in-house or outside counsel. Its principal, David Abbott, was called to the bar, but had never practiced law.

The Joint Venture Agreement

Peter asked Sarah to prepare a joint venture agreement that would govern the relationship, rights and responsibilities of the nominee company, Renaissance, Northern and Jarvis for the various properties that would be owned and developed by the joint venture. Sarah prepared the agreement and circulated it to both Jane and David. Jane reviewed the agreement, but had no comments or suggested changes. David did not review the agreement, and simply told Sarah, "I trust you." As part of the formation of the joint venture, Renaissance agreed to transfer two pieces of property to a nominee who would hold title for all three companies, each as to an undivided one-third beneficial interest. Northern and Jarvis would each contribute one-third of

the value of the two properties to the nominee. The nominee would then pay to Renaissance the money contributed by Northern and Jarvis. Neither Jane nor David asked Sarah for a title opinion on the two properties.

The Enforcement Charge

The day before title was to be transferred by Renaissance to the nominee, Sarah did a search and discovered that an enforcement charge was filed against Renaissance earlier that day. When Sarah called Peter, he told her that Renaissance would pay out the enforcement charge in a couple of weeks with the purchase funds being paid by Northern and Jarvis. She trusted that Peter would ensure this was done, but when he insisted that she was not to alarm Jane or David by telling them about the enforcement charge, she did not know how to respond.

Conclusion

Sarah was taken aback by Peter's demand that she not disclose the enforcement charge to either Jane or David. Even though she did not represent Northern or Jarvis, she did not intend to take advantage of the trust that Jane and David had placed in her. She had to find a way to fulfill her duty to Renaissance without compromising her ethical obligations.