

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

04-P-290

JULIE F. FRENCH

vs.

FRANCESCA PARKINSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In connection with an alleged agreement to purchase real estate, the buyers sued the seller, Julie F. French. The seller filed a third-party complaint against the broker, Francesca Parkinson. The buyers and the seller reached a settlement, and the buyers' action was dismissed. The broker filed a motion for summary judgment on French's third-party complaint which was allowed by a judge of the Superior Court. A corrected judgment was entered. French, as third-party plaintiff, appealed. We affirm for substantially the reasons set forth in the judge's extensive memorandum, which we supplement with the following comments.

French claims that the judge erred in ruling that Parkinson had no duty to advise French to hire a lawyer. She argues that Parkinson had affirmatively encouraged the Frenches¹ to sell their home² and had specifically advised them to sign the offer

¹ Julie F. French's husband, who was a party to the purchase and sale agreement, died prior to the commencement of the action.

² French's affidavit (Vol. II/742) states that she and her husband "were interested in the possibility of selling [our home]

to purchase which Parkinson had drawn and which, French claims, unlike what she calls a "standard form offer," did not include a notice that the signers may be entering into a binding contract and that they should consult with an attorney prior to signing. Under these circumstances, French contends, Parkinson was required to advise them to consult with an attorney. We do not consider the circumstances sufficient to impose such a duty on Parkinson. See LeDonne v. Slade, 355 Mass. 490, 492 (1969). Nor do we view the New Jersey opinion, on which French relies, as requiring Parkinson to advise consultation with an attorney.³

French also claims the motion judge was in error in finding that there was no showing of damage occasioned by Parkinson's failure to notify the Frenches that the buyers refused to accept the return of their deposit. However, as the judge pointed out, since the buyers' attorney informed French's attorney that the deposit "will remain in escrow with the real estate broker in an

in order to provide us with money on which to live in our retirement. In determining whether to sell our home, we spoke to Francesca Parkinson . . . , whom we understood to be a real estate broker associated with Ermine Lovell Real Estate in Falmouth. Ms. Parkinson advised us to sell our home."

³ In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law, 139 N.J. 323 (1995), was a decision based on a master's extensive factual study of practices of brokers and others in South Jersey. That opinion does not require brokers to tell buyers and sellers that independent counsel is needed, but to "have the experience and knowledge required at least to identify a situation where independent counsel is needed." Id. at 359. Only then is there a duty to inform the parties of that circumstance. Ibid.

interest-bearing account for an indefinite period" (A. 803), French had no reasonable expectation of showing that Parkinson's failure to disclose the fact of the buyers' refusal to accept the deposit back caused French any legal injury. This was not a question of supervening cause, as French claims, but rather a showing that French, by notice of her counsel, was informed of the facts she claims Parkinson failed to disclose.

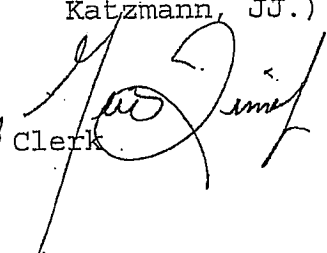
French claims that when Parkinson called the buyers in 2001, it was reasonably foreseeable that her call would result in the buyers filing a lawsuit to stop any sale. French's argument that Parkinson thereby breached a duty to French is without merit. A broker, being informed by "multiple listing" that property has been relisted for sale, is not in breach of any duty to the seller in informing persons who had a known interest in the property that the property was again on the market. That Parkinson was angry or disappointed that French had listed her home with another agency, and not with Parkinson, does not support the inference that her calling the buyers showed an intent to cause harm rather than an attempt to earn a commission. Also, Parkinson's call does not support the inference that it was reasonable to foresee that the call would trigger a lawsuit rather than negotiations between the buyers and French.⁴ Even if

⁴ The affidavit of another broker alleging that it was reasonably foreseeable that a lawsuit would be filed is a conclusory opinion that may be considered mere speculation.

the judge erred in his statement that there was evidence that the buyers were represented by counsel in 2001, he was correct in concluding that Parkinson's calling the buyers was insufficient, without more, to raise a genuine issue of material fact as to a breach of duty by Parkinson causing harm to French.

Corrected judgment affirmed.

By the Court (Cypher, Dreben &
Katzmann, JJ.),

First Assisted Clerk 

Entered: February 9, 2005