

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-08-273

JOHN T. ALLEN,

Plaintiff,

v.

LORENE MIKLOS, et al.,

Defendant.

STATE OF MAINE
Cumberland, ss. Clerk's Office
SUPERIOR COURT

JUL 22 2008

RECEIVED

ORDER

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AUG 12 2008

Defendant H & N Corporation has moved to dismiss Counts II, IV, and V of the complaint.

Plaintiff John Allen' opposition papers does not respond to H & N's arguments with respect to Counts IV and V, and those counts are therefore dismissed as against H & N.

With respect to Count II, however, H & N's motion is denied. In *Kezer v. Mark Stimson Associates*, 1999 ME 184 ¶¶ 12, 15, 742 A.2d 898, 902-03, the Law Court stated that the Legislature has defined the duty that real estate brokers owe to buyers. That duty includes a duty not to "knowingly give false information." 32 M.R.S. § 13273(2)(A). Count II of Allen's complaint alleges that H & N knowingly provided false information about the neighbors, Complaint ¶¶ 19-20, and is therefore sufficient to state a cognizable claim for knowing misrepresentation.

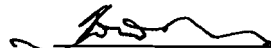
The court agrees with H & N that 32 M.R.S. § 13273(2)(A) appears to preclude a claim for negligent misrepresentation, but does not construe Count II as asserting such a claim. The court acknowledges that if Count II alleges knowing misrepresentation and Count III alleges fraud, there remains a question whether there is any difference

between Counts II and III – other than that Count II is specifically directed against H & N and Count III is against both defendants. That question is deferred for another day.

The entry shall be:

Defendant H & N Corporation's motion to dismiss is granted as to Counts IV and V of the complaint and denied as to Count II. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

DATED: July 22, 2008



Thomas D. Warren
Justice, Superior Court

erland County
J. Box 287
Maine 04112-0287

DAVID BRANDT ESQ
PO BOX 837
WINDHAM ME 04062

David Brandt Esq,
(Lorene Hikos)

O. Box 287
Maine 04112-0287

BERNARD KUBETZ ESQ
PO BOX 1210
BANGOR ME 04402

Bernard Kubetz Esq
(H & N Corp)

J. BOX 287
Maine 04112-0287

NEAL WEINSTEIN ESQ
PO BOX 660
OLD ORCHARD BEACH ME 04064

Neal Weinstein Esq
Plaintiff