

CASE LAW UPDATE

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Gentra Canada Investments Inc v Lipson

2011 ONCA 331 (Released April 29, 2011)

Solicitor's Negligence – Costs – Contractual Interpretation

In this decision, the Court of Appeal affirmed that a cause of action for solicitor's negligence is assignable. As part of a plan of arrangement of Royal Trust, Gentra Canada Investments Inc. ("**Gentra**") was assigned a mortgage. Gentra brought an action against Lipson and his firm alleging breach of contract and negligence due to alleged deficiencies in mortgage documents prepared by Lipson while he was counsel for Royal Trust.

Gentra brought a motion for partial summary judgment to confirm its right to pursue the action. Lipson asserted by way of a cross-motion that an action for solicitor's negligence is non-assignable as a matter of public policy. The court held that a cause of action for solicitor's negligence is assignable if an assignee can show a legitimate commercial interest in the cause of action against the lawyer. It rejected the contention that such an assignment "savours of maintenance".

Lipson also argued that the cause of action was not properly assigned. The court held that there is no need for an assignment of a cause of action to be explicit and that it is sufficient if the language of the assignment is capable of identifying the cause of action as one of the things assigned. In this case, the language of the assignment was sufficient to encompass the claim against Lipson. Moreover, the court noted that the purpose of the assignment was to place Gentra in the position of Royal Trust in respect of its underperforming loans, and a consideration of this context affirmed that Gentra had a legitimate commercial interest in the cause of action.

The court also rejected Lipson's contention that Gentra could not bring the action because of non-compliance with the *Conveyancing and Law of Property Act*. In the circumstances, the court found that Royal Trust was not a necessary party to the action and that Gentra was the appropriate plaintiff.