

Tree health meets real estate value

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Two similar cases in Quebec may have broader applicability for anyone selling real estate that includes trees. In *Verghnes v. Labelle* 2017 QCCQ 2893 and *Petrari v. Chartrand* 2021 QCCQ 5982 the plaintiffs sued on the basis that the trees on the property they had purchased needed to be felled due to the presence of emerald ash borer. In both cases the plaintiffs sought a refund on the sale costs (\$2,816.89 in *Verghnes* and \$15,000 in *Petrari*) claiming that the tree conditions were not properly declared at the time of sale, and that the loss of trees adversely affected the value

of property they had purchased. The defendants in both cases claimed that at the time of negotiations and sale there was nothing to suggest the trees in question had any health problems.

The court noted that the item 1726 of the *Civil Code of Quebec* requires the seller to "...warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

"The seller is not bound, however, to warrant against any latent defect known to the buyer or any apparent defect; an apparent defect is a defect that can be perceived by a prudent and diligent buyer without the need to resort to an expert."

The key issue in both cases is whether the presence of the emerald ash borer could have been readily determined, prior to the sale, by a prudent and diligent buyer without expert advice. Did the health of the trees constitute a hidden defect? In *Verghnes* the buyer visited the property in late winter when the trees were devoid of foliage. In *Petrari* the trees were in full foliage at the time of the site visit. In both claims the defendants noted that the buyer had the option of having the trees inspected by an expert prior to the sale. And, in both cases the court concluded that the tree health issue was a hidden defect, and the defendants were liable. *Petrari* provides a more detailed analysis of that aspect with reference to *ABB Inc. v. Domtar Inc.* 2007 SCC 50 and four key criteria. The defect, must be serious, unknown to the buyer, be hidden and be present prior to the sale.

On that basis, it seems entirely possible that the issue of tree health may take on a larger role in the future. Both cases seem to have applicability beyond Quebec and the provisions of item 1726. Emerald ash borer and other tree pests have a presence far beyond the borders of Quebec. As the vicissitudes of climate change take hold, and forest pests spread, it can be expected that not all trees will have as long a life expectancy as before.

The cases discussed above suggest that anyone selling property with trees on it, especially in Quebec, would be well advised to ensure the buyer is offered every opportunity to check the trees and their health prior to purchase. If the seller had any awareness of tree issues prior to the sale, they may want to disclose that, to avoid a subsequent claim. Similarly, buyers may want to be sure they have taken the time to check more than just the buildings and assure themselves that they have reviewed the landscape and tree conditions as well.

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