

Connecticut Trial Court: Missing Dual Agency Consent Form Doesn't Void Contract

A trial-level Connecticut Superior Court recently ruled that the failure to attach a dual agency consent form as required by the terms of a contract did not invalidate the agreement under general contract law, case precedents regarding contracts that violate public policy, or the state's real estate licensing laws.



Image courtesy of Ambro at freedigitalphotos.net

attachment of a dual agency form, the agreement does not specify any ramifications of its omission. The court also found that the substance of the contract is a real estate transaction and contains the minimal essential terms needed; the identification of the parties, property, purchase price and closing date. The court thus ruled that the omission of the consent form does not affect the contract.

The case of Bastarache v. Edgerton involves owners of real estate in Connecticut who entered into a written agreement for the purchase and sale of their property. A section of the contract names the listing broker and cooperating broker, both of whom are associated with the same company. The section also contains a check-box indicating that there is dual agency representation in the transaction, but the box was left unchecked. Next to the unchecked box the contract states, "If the Listing Agent is acting as a Dual Agent, a CONSENT FOR DUAL AGENCY FORM SHALL BE ATTACHED to this Agreement" [emphasis in original]. However, the form was not attached to the executed contract. The sellers repudiated the contract shortly after signing it. The buyer sued for specific performance. The sellers moved to strike the complaint, arguing that the contract (1) is materially incomplete and unenforceable because a dual agency consent form was not attached, as required; and (2) violates public policy and is therefore unenforceable because "there was no dual agency consent form", as required by Connecticut's real estate licensing statutes and regulations. The court denied the sellers' motion, and the case will proceed to further litigation.

With respect to the validity of the contract, the court noted that to form a binding contract in Connecticut there must be a mutual understanding of terms that are definite and certain between the parties, and if any essential matters are left open for further consideration the contract is not complete. The court found that, while the subject contract called for the

With respect to the sellers' public policy argument, the court noted that, "It is well established that contracts that violate public policy are unenforceable...[and that]...[t]he ultimate determination of what constitutes the public interest must be made considering the totality of the circumstances of any given case against the backdrop of current societal expectations" [citations omitted]. The court examined the relevant real estate licensing statutes and regulations [Conn. Gen. Stat. section 20-325g, section 20-325d-2(b)(i) of the Regulations of Connecticut State Agencies], which require real estate brokers or salespersons, when acting as dual agents, to use a specified written disclosure and consent agreement. The court found that the statute and regulations require a specific disclosure when there is a dual agency relationship, but neither mandates that the required form be attached to a purchase and sale agreement. The court thus concluded that "The legislature regularly considers whether attachment of a document should be necessary and its choice to not include this requirement [in the real estate licensing statute] supports the notion that the failure to attach a dual agency consent form to a purchase and sale agreement does not violate public policy."

[Bastarache v. Edgerton, 2015 Conn. Super. Note: This is a trial-level decision resolving a pre-trial motion. The respective allegations of the parties have not been litigated or proven. The decision is unreported and may be subject to further appellate review.]