

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Sheridan v. Rickey Beals Heating, 2008 NSSC 311

Date: 20081124
Docket: SH. No. 241018
Registry: Halifax

Between:

**Michael David Sheridan and
Jennifer Lorraine Cooper**

Plaintiffs

-and-

**Rickey V. Beals, carrying on business as
Rickey Beals Heating**

Defendant

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Judge: The Honourable Justice Robert W. Wright

Heard: October 14 and 15, 2008 in Halifax, Nova Scotia

Written

Decision: November 24, 2008

Subject: Negligence - standard of care - breach of standard of care - exterior oil tank installation.

Summary: The defendant, a licensed oil burner technician, was hired to install a new exterior oil tank and attached shut off valve at the plaintiffs' residence. In so doing, the defendant complied with the express requirements of the Installation Code adopted in Nova Scotia by regulation. The location of the tank was against the side of the house immediately adjacent to the plaintiffs' driveway.

About three months later, the plaintiffs discovered that the new shut off valve attached to the tank had fractured, resulting in the escape of fuel oil into the ground. The cause of the fracture was the excessive weight of the snow load which had built up over the

top of the oil tank valve. The court found that the snow load resulted largely from the clearing of snow from the adjacent driveway. The cost of the clean up operation amounted to \$99,861.

Issues:

- (1) What was the standard of care to be met by the defendant in performing the oil tank installation?
- (2) Did the defendant breach the standard of care by failing to install a protection device over top of the valve?

Result: The appropriate standard of care was informed in large part by the Installation Code in effect at the time the work was performed. However, compliance with the Installation Code did not absolve the technician from the common law duty of care and was not conclusive evidence that there is no negligence.

Here, the technician was under a common law duty of care to provide some form of protection of the oil valve against physical damage. Indeed, that obligation was embodied in a newer version of the Installation Code which, at the time of this installation, had been published by the Canadian Standards Association but not yet enacted in law. The court held that it was reasonably foreseeable that the tank valve would be at risk of physical damage from the clearing of snow from the adjacent driveway and to meet the standard of care, the defendant ought to have installed a valve protector. His failure to do so, or alternatively the failure to warn the plaintiffs against permitting the build-up of snow over the valve, constituted negligence.

The court also found that the plaintiffs were contributorily negligent in permitting the accumulation of a 4 foot high snow load over the top of the valve from the snow clearing of the driveway. Apportionment of liability was to be based on comparative degrees of fault, not causation, and the greater blameworthiness ought to be attributed to the defendant technician with his special skills and knowledge of such installations. Liability was therefore apportioned 80-20 in favour of the plaintiffs.

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