

SUPREME COURT OF NOVA SCOTIA

Citation: Deep Cove Marine v. Romkey, 2009 NSSC 250

Date: 20090821

Docket: Hfx No. 281864

Registry: Halifax

Between:

J. Hartling Holdings Incorporated,
a body corporate, carrying on business as
Deep Cove Marine

Plaintiff

- and -

Margaret Cecilia Romkey, Marc Adam Romkey
and Jim Snair, the latter carrying on business as
Sunnybrook Yachts

Defendants

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Judge: The Honourable Justice Gerald R.P. Moir

Heard: June 4, 2009, in Halifax, Nova Scotia

Subject: Summary judgment; negligent misrepresentation; misrepresentation going to rescission; *Sale of Goods Act* implied conditions

Summary: The Romkeys sold a yacht that had been in an accident to Hartling, and Snair acted as agent for both sides. Although all defendants agree that an accident history is material on the sale of a used yacht, the information was not given to Mr. Hartling. He was told that the yacht was “like new”. Nothing about representations was put into the purchase agreement, but a clause negating misrepresentations and a clause for an “as is, where is” sale were included in the bill of sale, which Mr. Hartling signed.

Issues: Whether summary judgment should be granted against a claim in negligent misrepresentation, a claim for rescission founded on misrepresentation, or claims based on terms implied under the *Sale of Goods Act*.

Result:

There are genuine issues of fact requiring a trial on the claims in negligence and for rescission. No such issue exists on the *Sale of Goods Act* claims, and none of them are shown to otherwise amount to a claim with a real chance of success. The *Sale of Goods Act* claims are dismissed, the others continue.

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