

SUPREME COURT OF NOVA SCOTIA
Citation: *MacIntyre v. Delaney*, 2022 NSSC 264

Date: 20220407
Docket: Syd. No. 506214
Registry: Sydney

Between:

Ewen MacIntyre

Appellant

v.

Nicole Delaney

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Patrick J. Murray
Heard: September 13, 2021, in Sydney, Nova Scotia
Written Decision: April 7, 2022
Subject: Small Claims Court Appeal
Facts: This is an appeal of the Small Claims Court of Nova Scotia decision decided April 26, 2021.

The Respondent claimed damages for flooding that occurred in the basement of her home within a two (2) week period of her purchasing it from the Defendant (Appellant on appeal) in December, 2018. The learned Adjudicator ruled in favour of the Claimant (Respondent on appeal) in awarding her the sum of \$17,500 in damages plus costs.

The Appellant appeals from that decision, citing eleven (11) grounds in the Notice of Appeal.

Issue: Should the appeal be granted?

Result: The Court found that the findings made by the Adjudicator were made following a thorough consideration of all the evidence.

The Court dismissed the appeal filed by the Appellant with costs to the Respondent.

Caselaw:

Brett Motors Leasing Ltd. v. Welsford, [1999] N.S.J. No. 466 (N.S.S.C.); *Young v. Clahane*, 2008 NSSM 16; *William v. Durling*, 2006 NSSM 221; *Dennis v. Langille*, 2013 NSSC 42; *Queen v. Cognos*, [1993] 1 SCR 87, 99 DLR (4th) 626; *Lawlor v. Currie*, 2007 NSSM 60; *Doherty v. Rethman*, 2015 NSSM 13; *Zafris v. Surette*, 2018 NSSM 18.

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Written Decision: April 7, 2022
Counsel: Kelly O'Brien for the Appellant, Mr. MacIntyre
Steve Jamael for the Respondent, Ms. Delaney

By the Court:

Introduction

[1] This is an appeal of the Small Claims Court of Nova Scotia decision of Adjudicator, Patricia Fricker-Bates, heard February 24, 2021 and decided April 26, 2021.

[2] At trial, the Respondent claimed damages for flooding that occurred in the basement of her home within a two (2) week period of her purchasing it from the Defendant (Appellant on appeal) in December, 2018.

[3] At trial, the learned Adjudicator ruled in favour of the Claimant (Respondent on appeal) in awarding her the sum of \$17,500 in damages plus costs.

[4] The Appellant appeals from that decision, citing eleven (11) grounds in the Notice of Appeal. These grounds are referred to in paragraph 14 herein.

Background Facts as Found by the Adjudicator

[5] On November 2, 2020, the Respondent Nicole Delaney filed a Notice of Claim with the Small Claims Court alleging the Defendant sold his home to the Claimant and did not disclose a “known” latent defect (major basement flooding). Ms. Delaney claimed general damages totaling \$25,000. plus costs.

[6] On December 3, 2020, the Appellant, Ewen MacIntyre, filed a Defence that stated (in part):

2. On or about November 19, 2018, the Claimant, Nicole Delaney, and the Defendant, Ewen MacIntyre entered into an Agreement of the Purchase and Sale, whereby the Defendant agreed to sell, and the Claimant agreed to purchase, a property located at Cottage Road, in Sydney, Nova Scotia (the “Property”).

3. The Defendant provided the Claimant with a Property Disclosure Statement, dated November 27, 2018.

4. In the Property Disclosure Statement, the Defendant disclosed that the property had flooded during the Thanksgiving weekend of 2016, when the Sydney area experienced significant flooding (the “Thanksgiving Flood”), and that the flooding had damaged the Gyproc and the carpet in the basement of the Property.

5. The Defendant further disclosed that the lower 18 inches of Gyproc and the carpet in the basement had been removed as a result of the Thanksgiving Flood. The lower 18 inches of Gyproc and the carpet were not replaced before the sale of the Property.

6. The Defendant took no steps to conceal the fact that 18 inches of Gyproc and the carpet in the basement had been removed. The state of the basement was open for the Respondent/Claimant to see while viewing the Property.

7. The Claimant took possession of the Property on December 6, 2018.

8. The Defendant did not have any knowledge of any flooding at the Property, other than the Thanksgiving Flood, which was disclosed to the Respondent/Claimant through the Property Condition Disclosure Statement dated November 27, 2018.

[7] In his Defence the Appellant further stated in paragraph 9:

9. The Defendant did not make any written or verbal warranties or representations to the Claimant with respect to the condition of the Property, other than those contained in the Property Condition Disclosure Statement, dated November 27, 2018.

[8] On December 22, 2018 the home purchased by the Respondent flooded. She contacted her real estate agent and then she contacted legal counsel.

Grounds of Appeal

[9] The Appellant, Ewen MacIntyre, appeals from an Order made by an Adjudicator of the Small Claims Court on April 26, 2021 on the basis of:

- Error of law; and
- Failure to follow the requirements of natural justice.

[10] It is important to state that Small Claims Court appeals are not a re-hearing of the merits of the case. The Grounds of Appeal are considered in the context of findings that the Adjudicator has made based on a full hearing of the evidence.

[11] The *Small Claims Court Act*, in Section 32(1) limits the grounds of appeal to three: 1) jurisdictional error; 2) error of law; and 3) failure to follow the requirements of natural justice.

[12] In this Appeal, the Appellant appeals on the basis there has been: 1) an error in law; and 2) a denial of natural justice by the learned Adjudicator.

[13] Section 32(7)(b), in addition to the grounds of appeal, require that the Notice of Appeal include: “the particulars of the error forming the ground of appeal”. (See Appendix ‘A’)

Particulars of the Grounds of Appeal

[14] The particulars of the errors or failures which form the grounds of appeal are:

1. The finding that the basement periodically flooded after 2016 is an inference that is not supported by the evidence or was reached as a result of an error in the inference drawing process.
2. There was an error in the interpretation of the building inspection report prepared by Cape Inspection Service which was tendered by the Respondent. The building inspection report specifically notes cracks in the foundation, and in a comment, the building inspector confirmed the cracks were not leaking water at the time of inspection and there were no signs of mould in the basement.
3. The building inspection report was not properly considered or applied in material respects.
4. That the Appellant had knowledge of periodic flooding after 2016 was improperly imputed and is not supported by the evidence.
5. The defect was incorrectly held to be a latent defect. The estimates tendered relate to repairs to the foundation and addition of drainage. The building inspection report specifically notes cracks in the basement concrete foundation walls, which the building inspector commented were not leaking water at the time of inspection, while the owner had stated that they did have one water leak. The building inspector's report further indicates the building inspector discussed with the Respondent that there were no signs of mold in the basement at the time of the inspection. The building inspector commented that the property was graded against the rear foundation of the dwelling. The building inspection also indicated there was no drainage away from the dwelling.
6. The law of caveat emptor was not properly applied.
7. The law with respect to fraudulent or negligent misrepresentation was not properly applied.
8. The damages awarded are not supported by the evidence or applicable legal principles.
9. The Appellant's motion for non-suit was not properly considered.
10. The burden of proof was improperly shifted to the Appellant; and
11. Such further and other grounds of appeal as may arise from the summary report of the findings of law and fact.

Appellant's Position

[15] The Appellant submits the Adjudicator made a massive inferential leap in her findings, stating the Appellant was the only party with knowledge of the history of any flooding, that being the one time at Thanksgiving in 2016.

[16] Therefore, there is no basis for the Adjudicator's finding that regular periodic flooding occurred, and that the flooding was actively concealed by the Appellant.

[17] Further, there was no finding that the Respondent reasonably relied upon the information provided by the Appellant, which was by no means a representation that he was selling the Respondent, a "dry" basement.

[18] The Appellant submits the Adjudicator made several errors as set out in the particulars of the Grounds of Appeal.

Respondent's Position

[19] The Appellant's claim at trial, turned on the Property Condition Disclosure Statement (PCDS). In particular the Appellant's statement that the only time he experienced flooding was the 2016 Thanksgiving Flood, and that he experienced no other flooding while he owned the property.

[20] The Respondent takes issue with the Appellant's submission that the building inspection contained information that would indicate that the basement could flood. The Report pointed out there were cracks in the foundation walls.

[21] The Respondent submits that no where in the Inspector's Report does it state there is a risk of flooding and no where is there an indication that the basement could flood in the future.

[22] It could not be said, submits the Respondent, that she should have known that flooding was likely at the time she purchased the home.

[23] It is the Respondent's position that the Adjudicator's finding that there was periodic flooding is not an inference at all. Instead, she argues, it is an established fact, given the evidence of the handwritten note (Note) left by the Appellant on the day of the closing.

[24] Further, the Respondent argues, the Adjudicator's finding on a balance of probabilities that the Appellant concealed or attempted to conceal a latent defect, was justified on the evidence, and did not constitute an error in law.

[25] The Respondent submits the Adjudicator's decision is fair, just and within reason, considering the evidence before her. The Respondent asks that the decision at trial be permitted to stand, with the Appeal being dismissed.

Standard of Review

[26] The standard of review in Small Claims Court appeals is summarized in the decision of *Brett Motors Leasing Ltd. v. Welsford*, [1999] N.S.J. No. 466 (N.S.S.C.), where Saunders, J. (as he was then) stated :

14. One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the Adjudicator. I do not have the authority to go outside the facts as found by the Adjudicator and determine from the evidence my own findings of fact. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or where there has been a clear error on the part of the Adjudicator in the interpretation of documents or other evidence; or where the Adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the Adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the Adjudicator has failed to apply the appropriate legal principles to the proven facts. In such instances this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.

Principles of Law

[27] There are a number of principles of law that are relevant to this Appeal. These have been referred by Counsel, as well as the Adjudicator in her Summary of Findings.

[28] The first is "Caveat Emptor", which means let the "buyer beware". In her findings the Adjudicator stated: (See *Young v. Clahane*, 2008 NSSM 16; *William v. Durling*, 2006 NSSM 221)

18. **Caveat Emptor** or buyer beware is the starting point in any purchase of a home by a buyer. It is the buyer's responsibility to ensure the condition of the property is in order and if there are problems with the property then the buyer does not have to purchase the property.

[29] A second important feature in real estate transactions is the notion of "latent defect", as noted by the Adjudicator in the Summary of Findings:

44. Relative to a real estate transaction, a latent defect "is a fault in the structure that is not readily apparent to an ordinary purchaser during a routine inspection" whereas a "patent defect is one which relates to some fault in the structure or property that is readily apparent to an ordinary purchaser during a routine inspection": *Kelly v. Wiseman*, 2018 NSSM 67 at para. 48.

[30] Generally, non-disclosure of a latent defect can result in liability to a Vendor as the defect would not be discovered upon prudent inspection. In other words, latent or hidden defects must be disclosed by the Vendor, as the Buyer is not aware of them, nor is the Buyer likely to become aware of them.

[31] In her summary, Adjudicator, Ms. Fricker-Bates, referenced the authority considered by her to be applicable to this case:

43. As Adjudicator David T.R. Parker noted in *Young v. Clahane*, 2008 NSSM 16, "the starting point in any complaint brought before the court concerning defects that are complained of by a purchaser in a real estate transaction is the notion of *Caveat Emptor* or what is known as buyer beware".

...

See also *Atwood v. Fullerton*, 2020 NSSM 22, at para. 11, where Adjudicator Andrew Nickerson quotes with approval the following passage from *Apogee Properties Inc. v. Livingston*, 2018 NSSC 143: “The doctrine [of caveat emptor] continues to apply to real estate transactions in this province, subject to certain expectations: fraud, non-innocent misrepresentation, an implied warrant of habitability for newly-constructed homes, and a duty to disclose latent defects”.

[32] A fourth relevant principle deals with the treatment of statements contained in the “Property Condition Disclosure Statement”, and their impact as a term or condition in an Agreement of Purchase and Sale.

[33] The Adjudicator’s Summary of Findings contains a number of authorities which outline what a PCDS is, and what it can mean in a real estate transaction, when the accuracy of the answers are called into question. She stated therein:

45. In *Curran v. Grant*, 2010 NSSM 29, Adjudicator Michael J. O’Hara dealt with purchasers claiming defects in a real estate transaction and the impact of the Property Condition Disclosure Statement in the Agreement of Purchase and Sale (at paras 3 - 9)

3. As a very general statement, I start with the basic proposition that on the sale of a used home, the vendor does not warrant the fitness of the structure. The basic proposition is captured in the Latin phrase caveat emptor – “let the buyer beware”.

4. This general principle of law has been modified to some extent by the now common practice of including a property condition disclosure statements as part of the standard Agreement of Purchase and Sale in Nova Scotia. Under this regime, the seller is legally obliged to truthfully and accurately respond to the various items in the property condition disclosure statement (“PCDS”).

5. If a purchaser subsequently alleges that the seller has not accurately answered one or more questions on the PCDS and proceeds with a legal claim, the purchaser must prove what it alleges on a balance of probabilities. As with any civil case, the claimant bears the burden of proof throughout.

Analysis

[34] In this dispute the PCDS was produced by the Appellant as part of the Agreement of Purchase and Sale. The PCDS stated:

1. Structural

1.1 Are you aware of any structural problems, unrepaired damage, dampness or leakage? [X] Yes [] No. Thanksgiving Flood 2016.

If yes, provide details: abnormal flooding in Sydney – minimal Gyproc damage – carpet.

1.2 Are you aware of any repairs to correct structural damage, leakage or damage” [X] Yes [] No.

If yes, provide details: lower 18” of Gyproc removed as well as carpet.

[35] Having reviewed the Summary of Findings and having considered the submissions of the Appellant and the Respondent, I am satisfied the Grounds in the Notice of Appeal can be reduced to four (4) key issues for the purpose of this Appeal. These are the findings related to 1) the inference there was periodic flooding after the Thanksgiving flood in 2016; 2) the finding of latent defect (major basement flooding); 3) the failure of the Adjudicator to properly consider and interpret the building inspection report completed by the Respondent; and 4) the misapplication of the doctrine “Caveat Emptor”.

[36] There are additional issues that deal with: 5) the shifting of the burden of proof to the Appellant; and 6) Vendor misrepresentation. I will attempt to address those later in my decision.

1. Inference there was periodic flooding after 2016

[37] Could an inference be reasonably drawn (by the Adjudicator) from the Note left by the Appellant that there had been periodic flooding or could be if more than 20mm of rain fell and the drain cover is not removed?

[38] The Appellant argued there was no basis in the evidence for this “inference” drawn by the Adjudicator.

[39] The Appellant gave evidence the basement flooded once in the 9th year of the 11 years he owned the property. The Adjudicator accepted the Appellant’s evidence that there had been no flooding previous to the Thanksgiving flood.

[40] The Adjudicator also found there was flooding following the 2016 Thanksgiving flood. Contributing to this finding was the Appellant’s evidence, in the Note written “on the underside of the plywood cover over the drain” that he left on his last day in the home before the day of closing. The Adjudicator found this was “evidence of knowledge” on the Appellant’s part, that the basement floods when a certain amount of rain falls. (See Exhibit 8 and paragraph 50 of Summary Report)

[41] It was uncontested that more than 20 mm of rain fell on December 22, 2018. This fact was relied upon by the Adjudicator, in her decision stating, “true to his projection, on December 22, 2018, when 29.1 mm of rain fell, the basement flooded.”

[42] In addition, the Adjudicator considered the evidence given by the Respondent on water problems she has had since purchasing the property. Her Summary of Findings reads:

27. The Respondent testified that since the date of purchase, the basement floods more in the summer and spring and at least a couple of times a month. She testified in cross-examination that she had items on the floor of the basement propped up of the floor so as to avoid damage from flooding.

[43] The Respondent gave evidence that she did not see the Note. In paragraph 20 of her Findings the Adjudicator stated:

20. The Respondent confirmed that she had the property inspected by Cape Inspection Service Limited (see Exhibit No. 7). It was the Respondent's recollection that one of the inspectors told her that the drain in the floor of the basement (see Exhibit No. 2) was a city drain and she was not to open it. She testified that she was with the inspector when he lifted up the board covering the drain in the basement but, contrary to Exhibit No. 2, there was no printing on the underside of the drain's plywood cover.

[44] The Respondent submitted the Adjudicator did not need to draw an inference, because it is a fact that the Appellant left a Note. He did so on the closing date. The Respondent submits, it was on this basis, having regard to the Applicant's own admission, that the Adjudicator found "on a balance of probabilities, that the Appellant did not truthfully and accurately respond in the PCDS about water (and/or flooding) in the basement." (See paragraph 50 of the Findings, re: sections 1.1, 1.2, 11.1 of Exhibit #1)

2. Finding latent defect, major basement flooding

[45] The Adjudicator, in her decision, provided a definition for the meaning of "latent defect". The PCDS mentioned there was only flooding the one time 2016. The Appellant submits there was no evidence that there was other flooding. The Adjudicator made the finding there had been more since Thanksgiving, but also, that it was not discoverable on a reasonable inspection.

[46] The Appellant submits this finding constituted an error in law. Referring to *Dennis v. Langille*, 2013 NSSC 42, the Appellant argues there is a "fairly high onus" on a purchaser to inspect and discovery patent defects. In *Dennis*, the defect was shore erosion, of which the purchase claimed to be unaware.

[47] In this case, the Appellant submits that any flooding is not a defect, but a symptom of the defects brought to the attention of the Respondent by the building inspector. The Appellant argues these included cracks in the foundation walls, the lack of drainage, and that the ground was graded against the basement. The Appellant states the building inspector recommended to the Respondent that these defects be fixed.

[48] In her decision, the Adjudicator referred to the legal authorities and made a finding that the flooding that occurred was not discoverable on a reasonable inspection. This was essentially a credibility finding, based on the contradiction between the PCDS and the statement given by the Appellant in the Note he left on his last day.

[49] The Appellant argues this Note was cautionary in nature, and did not mean there had been flooding, other than at Thanksgiving.

[50] The Appellant submits as there was no evidence of additional flooding, the Adjudicator erred in her finding that the Appellant was untruthful. In addition, that there was no evidence of concealment by the Appellant, thus the finding of the Adjudicator was in error.

Property Building Inspection

[51] The building inspection was discussed in the Adjudicator's decision.

[52] The Appellant submits it was not properly considered by the Adjudicator, stating in the inspection there were indications that the basement was susceptible to flooding ie. no drainage, graded against foundation, and the nature of the Thanksgiving flood.

[53] The Adjudicator found, on the evidence, that the building inspection was consistent with the PCDS as to the owner having "one water leak". At the time of inspection there was no leaking in the cracks and no mold present.

[54] It is apparent the Adjudicator found the inspection was not sufficient to amount to disclosure that periodic flowing would occur.

[55] It appears the Appellant, at least to some extent, is arguing at cross purposes. Respectfully, he submits on the one hand that the inspection shows the property was susceptible to flooding, and on the other, there was nothing to suggest the property had flooded periodically.

Caveat Emptor

[56] The Adjudicator indicated the starting point in respect of the purchase of a used dwelling is "caveat emptor", meaning "buyer beware". She referred to various authorities in her analysis.

[57] The Appellant submits the Adjudicator erred in applying this doctrine. The Appellant states he informed the Respondent of the flooding in 2016, and it was open for the Respondent to see that, the lower walls and carpet of the basement were removed. There is as well the cracks in the basement and lack of drainage, as previously mentioned in relation to the building inspection. In addition, the Appellant argues, there was no evidence the grading had changed.

[58] The Appellant submits the Adjudicator misapplied the doctrine by placing the burden on the Appellant seller and not on the Respondent buyer where it belonged. In doing so, he says, the Adjudicator erred in interpreting the evidence.

[59] The Applicant argues he did not warrant a dry basement. Further, the fact that the basement flooded two (2) weeks following the closing did not mean it had previously flooded.

Decision

[60] The Adjudicator made findings "based on all of the evidence" before her. She began her analysis by stating the issue before the Court was sufficient disclosure or inaccurate disclosure in the PCDS completed by the Defendant on November 20, 2018.

[61] The Adjudicator accepted some evidence of Appellant but not other evidence.

[62] These are findings of fact made by the Adjudicator and under the standard of review on an appeal in Small Claims Court those findings attract a good deal of deference under the applicable standard of review.

[63] In her summary at paragraph 51, the learned Adjudicator dealt with the pertinent issues:

51. I found that the periodic flooding of the basement post-Thanksgiving Day 2016 was a latent defect that was no discoverable upon inspection. Further, the inconsistency between the Appellant's statements in the Property Disclosure Statement and the note he printed on the underside of the plywood covering of the drain belied his assertion that the only flood of which he was aware was the 2016 Thanksgiving Flood. Further, according to the Appellant, the drain had, prior to the 2016 Thanksgiving Flood, been covered by a plywood hatch, linoleum and a heavy work bench, facts that support the Complainant's understanding of the drain's purpose, as explained by the property inspector, as preventing backflow from the city, not drainage. I found that the Appellant made misrepresentations in the Property Disclosure Statement that turned out to be untrue in circumstances where it was more probable than not that the Appellant knew or ought to have known that the statement was misleading and that the Respondent would be actively misled by the statement.

[64] The finding of periodic flooding was based on the whole of the evidence.

[65] It is possible that the Note left by the Appellant was merely precautionary, however, based on all of the evidence she heard, the Adjudicator was satisfied there had been flooding other than at Thanksgiving, 2016. She did not accept the Appellant's evidence that there had been no subsequent flooding. (See paragraph 48 of Summary Report)

[66] As stated in her Summary, the Appellant's evidence, and in particular his evidence on cross-examination, was particularly telling to the Adjudicator. This included a lack of disclosure in the PCDS, and his evidence that he picked the number of (more than) 20 mm "out of thin air".

[67] In my view, there was a basis in the evidence for this finding and it was not patently unreasonable on the whole of evidence.

[68] With respect to the Adjudicator's finding there was a latent defect, the Adjudicator reviewed the appropriate authorities and made a finding the periodic flooding was not discoverable upon a reasonable inspection. Her finding of untruthfulness (and inaccuracy) on the part of the Appellant was essentially a credibility finding based on the contradiction between the PCDS and the statement given in the Note.

[69] I find the Adjudicator did not err in law in finding there was a latent defect.

[70] With respect to the building inspection, I find that the Adjudicator did not misuse or misinterpret this evidence, as it related to periodic flooding or the application of the doctrine of caveat emptor. There was evidence to support the Adjudicator's finding that the building inspection was consistent with the PCDS, which disclosed one flood in 2016.

[71] In regard to the Adjudicator's application of the doctrine of caveat emptor, once the finding was made there had been a latent defect, by law it had to be disclosed to the Respondent. The Adjudicator found it was a latent defect that had not been disclosed. I find the Adjudicator did not misapply the doctrine of caveat emptor.

[72] I have considered the Appellant's submissions regarding negligent misrepresentation and the criteria outlined in *Queen v. Cognos*, [1993] 1 SCR 87, 99 DLR (4th) 626.

[73] In terms of the ground of appeal that the Adjudicator made no finding that the Respondent reasonably relied upon the information provided by the Appellant, it is apparent from the Adjudicator's reasons that she believed the Respondent to have been actively misled.

[74] With regard to the grounds alleged that the Adjudicator shifted the burden of proof and improperly applied the law with respect to fraudulent or negligent misrepresentation, I find these grounds of appeal are without merit.

[75] The Appellant submitted the Adjudicator erred in failing to follow the requirements of natural justice. Having reviewed the Adjudicator's findings and having considered the Appellant's submissions, I see no basis for allowing the Appellant's appeal on this ground.

[76] Similarly, the Adjudicator appropriately dealt with the motion for non-suit by the Appellant and based on her Summary Report, I am satisfied the Adjudicator properly considered the Appellant's motion for summary judgement made at the close of the Respondent's case.

[77] Similarly, with respect to damages and whether the amount awarded was supported by the evidence and applicable legal principles, I would dismiss this ground of appeal. The Adjudicator carefully considered the issue of damages.

[78] Based on the estimates from Boudreau Contracting and LGJ Construction in Exhibits 5 and 6, she concluded that if all were to be done as outlined in the estimates, the value of the property would be enhanced. Accordingly, she applied a betterment cost of 50% of the average estimate of repairs (\$35,000.) for a final award of \$17,500 plus court costs in the amount of \$199.35. (See *Lawlor v. Currie*, 2007 NSSM 60; *Doherty v. Rethman*, 2015 NSSM 13)

[79] Finally, while I have not provided an in depth analysis of the caselaw, I have considered carefully the decisions in *Zafris v. Surette*, 2018 NSSM 18 and *Dennis v. Langille*, 2013 NSSC 42, in rendering this decision.

[80] In *Zafris*, the Court accepted the vendor's explanation that the dampness and staining in the basement might raise questions. In the case before me on appeal, the Adjudicator did not, accept the evidence of the Appellant. It is not the function of an appeal court to interfere with such findings made at trial.

Conclusion

[81] The findings made by the Adjudicator were made following a thorough consideration of all the evidence.

[82] The Appellant's appeal is dismissed with costs to the Respondent.

Murray, J

Appendix "A"

Appeal

32 (1) A party to proceedings before the Court may appeal to the Supreme Court from an order or determination of an Adjudicator on the ground of

- (a) jurisdictional error;
- (b) error of law; or
- (c) failure to follow the requirements of natural justice,

by filing with the prothonotary of the Supreme Court a notice of appeal.

(2) A notice of appeal filed pursuant to subsection (1) shall be in the prescribed form and set out

- (a) the ground of appeal; and
- (b) the particulars of the error or failure forming the ground of appeal.

(3) Upon the filing of a notice of appeal in accordance with this Section, the prothonotary shall transmit a copy thereof to

- (a) the adjudicator; and
- (b) where the prothonotary is not the clerk of the Court, to the clerk.

(4) Upon receipt of a copy of the notice of appeal, the adjudicator shall, within thirty days, transmit to the prothonotary a summary report of the findings of law and fact made in the case on appeal, including the basis of any findings raised in the notice of appeal and any interpretation of documents made by the adjudicator, and a copy of any written reasons for decision.

(5) Upon receipt of a copy of the notice of appeal, the clerk of the Court, where the prothonotary is not the clerk, shall transmit the file for the case to the prothonotary.

(6) A decision of the Supreme Court pursuant to this Section is final and not subject to appeal. *1992, c. 16, s. 124; 1996, c. 23, s. 39.*