

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
Cite as: Stuckless v. McFarland, 2004 NSSM 43

BETWEEN:

Name Sherry Marcella Stuckless Claimant

Name Robert James McFarland Defendant

**DECISION**

**Revised Decision:** The text of the original decision has been revised to remove addresses and phone numbers of the parties on August 22, 2007. This decision replaces the previously distributed decision.

Appearances:

Cheryl C. Arnold on behalf of the Claimant;  
Daniel Weir on behalf of the Defendant.

- [1] This matter came on before me on April 6, 2004.
- [2] On behalf of the Claimant, I heard the evidence of the Claimant Sherry Stuckless; Jason Cole, an employee of PermaCrete; Charles Brown, a handyman; Gemma Donaldson, a friend of the Claimant; and Paula Murray, the Claimant's sister.
- [3] On behalf of the Defendant, I heard the evidence of his common law spouse, Andrea MacDonald; Stephen Gaudet, his former brother-in-law; and the Defendant Robert McFarland.
- [4] All of the evidence was sworn.
- [5] This claim arises out of an agreement of purchase and sale entered into between the Claimant as purchaser and the Defendant as vendor on April 8, 2002. The Claimant says that the Defendant failed to warn her about water problems in the

basement of the house; or that the Defendant misrepresented the state of those problems. The Claimant claims for damage caused to her personal property as a result of flooding after heavy rains, which flooding she says she was never told about by the Defendant.

- [6] The Claimant was represented on the purchase by Don and Kathy Plume, two real estate agents.
- [7] The Defendant's house was not listed, nor was it up for private sale.
- [8] However, the Claimant was interested in his neighbourhood. Mr. or Mrs. Plume "cold called" the Defendant and asked him whether he would be interested in selling the house.
- [9] Don and Kathy Plume first met with the Defendant and his common law spouse, Andrea MacDonald.
- [10] They toured the house.
- [11] When the Plumes went into the basement with Mr. McFarland and Ms. MacDonald, they had a discussion about some vertical cracks in the basement wall that were about seven feet long. Ms. MacDonald recalls telling Don Plume that they did have some water in the basement after every heavy rain storm, but that it was not a big problem. She told them that any such water could be vacuumed up with a shop vac. She recalls Mr. Plume saying that that was not a big deal, since it was common for most Nova Scotia basements to be damp at some point.
- [12] Don and Kathy Plume then met with the Claimant and told her about the house. The Claimant's evidence is that they did not mention anything about water issues in the basement.
- [13] The Claimant visited the house with her sister and her girlfriend and with Don Plume. Mr. McFarland was present, but not Ms. MacDonald.
- [14] The Claimant says that when she was in the basement with Mr. McFarland and Don Plume she asked Mr. McFarland, point blank, whether there were any water problems with the basement. She asked the question because of the cracks, which were quite obvious. She says that she was told that there had been problems in the past that had been fixed; and that there had been no problems since that point.
- [15] This evidence was supported by her sister and her girlfriend, both of whom said that they overheard the conversation.

- [16] Mr. McFarland, on the other hand, says that when he was asked he answered that they did get a little water in the basement, which pooled around the furnace during heavy rains. He said that it was not a big deal, and that they dealt with it by vacuuming it up with a shop vac. He recalls saying this to her in the presence of the agent, Don Plume.
- [17] On this point I accept Mr. McFarland's evidence, for two principal reasons.
- [18] First, the Claimant did say a number of times during her evidence that she was having trouble remembering everything, since it was such a "long time ago."
- [19] Second, and more importantly, after the Plaintiff began to experience the water problems in the basement (following her purchase of the home) she met with her lawyer. The lawyer then sent a letter to the Defendant's lawyer, on December 12, 2002, stating as follows:
- "She [the Claimant] has had four floods in the property since the closing and was informed by your client when she inquired with respect to any possible leakage in the basement that there was only 'a little water.'"
- [20] I am accordingly satisfied and I find that there was, in fact, a discussion about water problems associated with the cracks in the foundation. I am also satisfied, and so find, that the Defendant did state that while there were leaks during rains, it was not a problem for him because he could deal with it.
- [21] In my opinion, this information put the Claimant on notice. She ought to have inquired more closely of the Defendant to determine what the problem with leakage was; to determine whether it required more attention than the Defendant was or had devoted to it; and whether the problem would interfere with her own use of the basement.
- [22] The Claimant did have the right under the terms of the agreement of purchase and sale (which was executed after this discussion and after she had seen the property at least three times) to have the house inspected by a qualified home inspector. She did not do this, but rather had her former boyfriend and his boss (both of whom had some experience in building trades) look at the house. Both of them appear to have thought that the house was acceptable.
- [23] The Claimant may also have been let down by her agents, Don and Kathy Plume, who failed to require a disclosure statement from the Defendant; and who failed to

convey Ms. MacDonald's evidence concerning the water leakage to her. In this regard, I find it of some significance that by the Claimant's own evidence the Plumes told her that they may have "forgotten" to get a disclosure statement; and that, in any event, they did not want to take sides between the Defendant and her. Based on this evidence, the Claimant's failure to subpoena the agents suggests that either:

- a. they would not have supported her evidence concerning the discussion around the basement leaks; or
- b. they recognized that they had failed to pass on to her the information that had been given to them by Ms. MacDonald.

[24] In my opinion, a vendor is not required to do anything more than respond truthfully to direct questions posed to him or her. The Defendant's statement, that there was leakage in the basement but that it was not a big problem, cannot be taken as false or as a misrepresentation in and of itself, since the statement can only be measured by the standards of the person making the statement.

[25] For the Defendant, who kept the basement floor around the cracks free of objects; who did not put carpet down; and who was prepared to use a shop vac rather than employ more expensive remedies, such leaks were not a problem. On the other hand, for the Claimant, who used the basement differently, such leaks may have been a problem because of that different use. However, she had notice that there was an issue concerning the leaks and, that being the case, the onus was on her to investigate further to determine whether the "no big problem" identified by the Defendant might be, for her, a "big problem."

[26] I accordingly dismiss the Claimant's claim, on the basis that there was no misrepresentation by the Defendant.

Dated at Halifax, Nova Scotia this 8<sup>th</sup>  
day of April 2004.

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**ADJUDICATOR**

W. Augustus Richardson

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