

Claim No: 293344

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Marston v. L'Heureux, 2008 NSSM 30

BETWEEN:

ELAINE MARSTON

Claimant

- and -

JOHN L'HEUREUX and MARSHA L'HEUREUX

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 29, 2008

Decision rendered on April 30, 2008

APPEARANCES

For the Claimant self-represented

For the Defendants Michael Duggan, counsel

BY THE COURT:

- [1] The Claimant purchased a 26-year-old home from the Defendants in Colby Village, with a closing date of November 22, 2007. Over the course of the next few days, during and after heavy rains, the Claimant had to contend with significant flooding caused by leakage through the foundation walls into the basement. She has sued for the cost of repairs (\$3,385.61) which were professionally done to seal the cracks that were found to be the source of the leaks.
- [2] She bases the claim on answers given in a Property Condition Disclosure Statement (PCDS) which she believes cannot have been true when answered. Unless she can prove a misrepresentation, she is out of luck because a purchaser of real property is subject to the buyer beware principle.
- [3] The Claimant has no direct evidence that the Defendants knew that they had a leaky basement. She bases her claim on the inference that one might be tempted to draw that foundation cracks which produce significant leaks on November 27th and in the days following must have existed on and before November 22nd when the property changed hands. She also points to evidence that there was mould growth on the insulation and drywall that was removed to get at the foundation, and on the underside of a carpet that was soaked during the flooding.
- [4] The evidence of the Defendants establishes that one of the two cracks had been discovered and repaired in 1994, with some follow-up repairs in 1998. The Defendant John L'Heureux testified that there had been no

further leaks since 1998, to his knowledge, and that he and his wife were not aware of any leakage into the basement when he filled out the PCDS. The PCDS would have required him to disclose any foundation repairs within the last five years, and any current leakage of which he was aware.

- [5] As such, for the Claimant to succeed I must be prepared to find that the Defendants knew that there were leaks when the PCDS was signed and knowingly or negligently represented otherwise.
- [6] The real estate agent who listed the home described it as in immaculate condition. She hosted five open houses and numerous individual showings of the home, as did other agents who reported back to her. She stated that of the more than one hundred people who went through the home, no one ever reported to her any wet conditions in the basement, nor any dampness or musty odours. The Claimant herself agreed that the home was immaculate, which was what attracted her.
- [7] On the one hand, it is hard to believe that the Claimant could be so unlucky as to have the foundation start leaking through not one, but two cracks, within days of her taking possession. Any thinking person would have a high rate of suspicion that these problems were pre-existing and concealed.
- [8] On the other hand, it is difficult to believe that the Defendants could have had possibly hundreds of visitors into their home over a period of approximately three months, and been able to conceal from everyone the evidence of regularly occurring water leakage.

- [9] The Defendant John L'Heureux impressed me as a sincere and diligent individual who would likely have attended to any defects, had he known about them. One of the things he could have done - had he been aware of leaking - would have been to make a claim on the 20-year guarantee given by the company which repaired the foundation leak in 1994.
- [10] The Claimant had a home inspection done, which alerted her to a small crack on the outside of the foundation, but did not detect any damp or mouldy conditions in the basement.
- [11] I should mention that there was another issue about a leaky shower drain, which may have been the source of some water leakage, and which was repaired at minimal cost by the Claimant. I think the shower is a bit of a red herring, because the real issue is foundation cracks.
- [12] In the final analysis, the Claimant has the burden of proving that the condition of the basement and foundation was misrepresented to her. While I am sympathetic to her plight and find her suspicions to be a natural reaction to the facts, I am unable to find that she has proved her case. I cannot find on the evidence that the Defendants were experiencing leaks and yet succeeded in hiding them (or were inclined to do so) from their agent, the Claimant, all of the other agents and people who viewed the home, and the Claimant's home inspector.
- [13] There are a number of possible explanations for why the Claimant got so unlucky. The Defendants kept a dehumidifier running in the basement, which may have been sufficient to dry up the result of any small leaks before they became obvious.

- [14] Also, historical rainfall charts show an extraordinary amount of rainfall for the Halifax area on November 27, 2007, measuring some 2.7 cm. It is possible if not probable that the cracks had been developing over time and were simply overwhelmed by the large amount of water that fell.
- [15] Whatever may have been the case, it remains that the Claimant must prove on a balance of probabilities that the Defendants breached a legal duty to her, and I am unable to say that they did.
- [16] As such the claim is dismissed.

Eric K. Slone, adjudicator