

SCCH 307178

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Daniels v. Gerald Mitchell Contracting Ltd., 2009 NSSM 18

Between:

Leigh Daniels

CLAIMANT

- and -

GERALD MITCHELL CONTRACTING LTD.

DEFENDANT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: June 2, 2009

Decision: June 3, 2009

Counsel: the Claimant was self represented

The Defendant was represented by Jillian E. Ryan

Parker -The defendant in this case built and sold a home to the claimant and the claimant has stated in his pleadings that the septic field is not working properly since the home was purchased.

The Claimant will not succeed in its claim against the Defendant in that he did not prove on the balance of probabilities that the septic system was not constructed according to code and in line with the system requirements for a C- 3 septic system. The main contention of the Claimant was there never was any sufficient Hump as required by this type of system and that is the main problem that resulted in the system not working. There were also other issues that involved the pump and alarm which the certification of the system said was included, however the absence of same did not affect the system and accept the installer's evidence that that was a mistake in completing the form. The Claimant contended along with his witness a professional engineer that there simply is no hump which is expected to be part of the system. The Claimant says there never was a hump and the system started to malfunction four months after he purchased a home. His witness the professional engineer said there was no hump when he viewed the property just recently.

The Claimant insists that the defendant knew there was a problem with the septic system when he asked for a load of sand four months after he purchased a home. The defendant disputed this saying that he did provide the Claimant with a load of sand but only because the Claimant was complaining that there was a wet area in his backyard and there was no complaint given to him at least concerning the septic system not working. Nor was installer ever told the septic system was not working.

Only after two years was the installer, and the Department of Environment brought into check out the septic system. The inspector from the Department gave evidence that coincided with the installer's evidence and the contractor's evidence that the C-3 septic system was in accordance with the codes and confirmed that there was a hump

which is part of the said system. The inspector went on to say that the real problem with the septic system resulted from the Claimant installing a soft water system which clogged the sand which formed the hump, with minerals. This caused the sand hump to malfunction resulting in effluent and iron and other minerals being pushed onto the surface of the septic field. The septic field was not able to act as a filter and thereby disposing of the effluent and breaking it down as it should have. There was no supporting evidence whatsoever that the septic system was not completed as required by code and as evidenced in the diagrams for this type of C-3 septic system. The septic system was changed by the Claimant some two years after it was installed and the only evidence I have that the septic system was in fact installed properly was from the testimony of the defendant in all its witnesses. I do believe the septic system was not working after 2002 and is still not working but all the evidence points to the fact that it is a result of a buildup of minerals and clogging of the septic field.

For all these reasons the claimant will not succeed.

IT IS THEREFORE ORDERED that the claim against the defendant be dismissed without any order as the costs