

Claim No: 316797

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: MacPherson v. Integrity Homes 2000 Inc., 2009 NSSM 57

BETWEEN:

JOHN MacPHERSON and RAYNA MacPHERSON

Claimants

- and -

INTEGRITY HOMES 2000 INC.

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 14, 2009

Decision rendered on December 16, 2009

**APPEARANCES**

For the Claimants            self-represented

For the Defendant         James D. MacNeil  
   Counsel

**BY THE COURT:**

[1] In 2005 the Claimants purchased from the Defendant a new townhouse at 49 Woodhaven Close in Dartmouth. This action concerns certain repairs to correct water leaks, performed in April of 2009.

[2] The Defendant is a well-known and reputable builder in the Halifax area.

[3] The subject townhouse is one of 34 units in the development. The units are all contained within buildings containing 4, 5 or 6 units. The Claimants' unit is one of 4 in the particular structure.

[4] The Defendant was already aware of leaks in many of the units in the development, and was in the midst of a first attempt at repair of this unit when the Claimants first viewed the property. The Defendant provided assurances that the leaks would be looked after and the interior properly restored, which it was by the time the Claimants took possession.

[5] Unfortunately, further leaks developed some months later, which necessitated another round of repairs by the Defendant.

[6] The problem proved more persistent, however. According to the testimony of Andrew Holley, the Defendant's construction manager, there had been widespread deficient workmanship by the mason or masons that had done the original construction, leading to persistent water incursion in all the units sharing particular design features involving a bay window. The problem was worse during fall and early winter rainstorms with their swirling winds that sometimes send water up through the brickwork.

[7] When the problems recurred in 2007 and 2008, the Claimants became increasingly concerned. Several emails to the Defendant were sent without any indication of a reply. The problem was highlighted in an email dated October 16, 2008 from the Claimants to the Defendant. The message concluded with the words:

“We would appreciate hearing from you and letting us know what you can do for us as the problem needs attention before further damage occurs.”

[8] The damage referred to included most visibly wet drywall and blistering paint around the bay windows in the living room. No doubt the Claimants were also concerned about what the water might have been doing inside the walls.

[9] The evidence before me does not disclose any communication over the winter, but by April of 2009 the Claimants decided to take matters into their own hands. They hired a company, Deseret Home Improvements Limited, and had significant repairs done at a cost of \$9,589.73. This is the amount that they seek to recover from the Defendant.

[10] The evidence discloses that, at or about the same time, the Defendant had determined to its own satisfaction the cause of the problems with the units, and had negotiated an arrangement to have repairs done to some five units at a per-unit cost of approximately \$1,800 plus HST. Two of the affected units were in the same building as the Claimants' unit.

[11] It appears that the work on the Claimants' unit must have been completed within days of the work starting on the other units.

[12] The position taken by the Defendant is that it acknowledges that the unit required repair, and that it had a responsibility to the Claimants; however, it says that the Claimants ought not to have gone outside and hired someone to do the work at a significantly higher cost than what was expended on other units in the development.

[13] The Claimants say that they did what they felt was prudent to protect their property.

[14] The record is very thin in terms of communication between the parties. The position of the Defendant would be a lot stronger if it could point to some written communication advising the Claimants that the problem was being taken seriously and solutions actively being sought. In the face of such (hypothetical) communication the actions of the Claimants could be seen as unreasonable and precipitous. However, what I see before me are homeowners living with unsightly and wet patches in their living room persistently recurring over four years, in a new home, and little evidence that their builder was interested in anything other than patchwork solutions which had been largely ineffective.

[15] It is well known that water in the walls can wreak havoc, leading to the growth of mould and creating persistent air quality problems that are difficult to root out. While I do not doubt the bona fides of the Defendant, I find that their communications with the Claimants fell well short of what would have been desirable to put their minds at ease. The Claimants cannot be faulted for believing that they had to take matters into their own hands to protect the value of their property and the health of their family.

[16] Having said that, there are two problems with the contract that they entered into with Deseret to repair the property. One is that the contractor was asked to perform other work to fix a portion of the roof on the side of the unit, which had created some water leakage. There was no evidence that this roof damage had anything to do with the original deficiencies for which the Defendant is responsible. Unfortunately, the invoice is not broken down to indicate how much of the money related to that repair.

[17] The other slight concern that I have is that the Claimants did not solicit a second quote, which would have given me more confidence that the price they paid was reasonable.

[18] Given the thin evidence before me, I must try to achieve a balance as best I can.

[19] The fact that the Defendant spent \$1,800 per unit doing repairs is of some, but limited value, because it is far from clear that the repairs done for that price were of the same calibre as those done by the Claimants. Also, the price was for five units and was discounted accordingly.

[20] Based upon the evidence, I find that the repairs to the side roof and the consequent interior repairs were much less than half of the total, and probably less than one third.

[21] Based on all of the above considerations, I believe that it is just to hold the Defendant responsible for \$6,000.00, inclusive of HST, toward the repairs done by Deseret on behalf of the Claimants.

[22] The Claimants are also entitled to their costs of issuing the claim in the amount of \$179.35, for a total judgment of \$6,179.35.

**Eric K. Slone, Adjudicator**