

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Cholewa v. McAuley, 2011 NSSM 18

Between:

Justyna Cholewa and Pawel Cholewa

CLAIMANT

- and -

Alicia McAuley

FIRST DEFENDANT

-and-

SECOND DEFENDANT

Ron Bitar

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: February 10, 2011

Decision: February 10, 2011

Counsel: They were self represented

Franco Tarulli represented the defendant

Parker: -[oral decision] this matter came before the Small Claims Court in December 2010 when the claimant's requested an order for substitute service on all the defendants. The matter proceeded on February 10, 2011 with the third defendant Judy Steadman being discontinued on the claim.

The claimants purchased a home from Judy Steadman and alleged that they had insufficient water within 24 hours of purchasing the home and as such the defendant realtors, McAuley and Bitar are responsible for their losses as they were not informed about any problems with the well. In the pleadings they alleged their "realtor [Alicia McAuley] did not tell us that in the home we bought [there] is not enough water for four persons."

The defendants were aware of the fact that there "tends to be a shortage of water during excessive use" as indicated in the Property Condition Disclosure Statement. The claimants' own agent told the claimant to have the water tested and they did not do so. There is no evidence that the seller's realtor, the second defendant, was negligent. It was also clear that the claimants' were told by their good friend at the time they were getting a great deal on the home and even though the neighbors had advised that the home had shortages of water in the past it was worth the gamble.

While it was not the focus of the discussion the defendant that had the claim discontinued against her being a homeowner eliminated herself from any potential action contractually by eliminating any warranty that the home supplied adequate water for normal household needs for a family of four.

The realtors were not negligent in conducting themselves through out the transaction on behalf of their respective clients and the claimants were well aware of the potential shortage of water and that they might have to drill a new Well or at least deal with it.

It Is Therefore Ordered that the claim against the Defendants is dismissed