

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: Kraus v. Barney's Plumbing, Heating and Gas, 2017 NSSM 31

Claim No: SCCH 453358

BETWEEN:

Trevor Kraus

Claimant

v.

Barnaby Thomas Wood, c.o.b. as "Barney's Plumbing, Heating and
Gas"

Defendant

Editorial Notice: Addresses and phone numbers have been removed from the electronic version of this judgment

Trevor Kraus appeared on his own behalf;

Joshua E. Martin appeared for the Defendant, Barney's Plumbing, Heating and Gas;

DECISION

This is a claim for breach of contract for inspection work performed by the Defendant, Barney's Plumbing, Heating and Gas, a proprietorship operated by Barney Wood, at 34 Lindenwood Terrace, Dartmouth. The work consisted of the follow up inspection of the boiler located at that residence.

The decision has been filed beyond the sixty days prescribed by the *Small Claims Court Act*. As stated by the Supreme Court of Nova Scotia in *Towle v. Samad*, 2013 NSSC 260, that time line has been held to be directory rather than mandatory.

The evidence in this matter has been quite detailed and well presented. While there may be certain exhibits not specifically referenced in this decision, both parties can be assured that I

have given each exhibit and point raised in *viva voce* evidence due consideration in preparing this decision.

Background

On July 16, 2014, the Claimant, Trevor Kraus and his wife Bettina Kraus, entered into an Agreement of Purchase and Sale with Richard Morris and Veronique Kasatiya, for the purchase of 34 Lindenwood Terrace, Dartmouth Nova Scotia. The agreement contained the usual provision concerning a property inspection, namely, the buyer had the right to inspect the property at their own expense. The final date for the inspection was July 28, 2014. Mr. and Mrs. Kraus hired T.E. Gordon Home Inspections Inc. to conduct the inspection. In its report, the inspector noted corrosion on the top of the boiler and recommended it be reviewed by a natural gas heating contractor. Mr. Kraus' real estate agent recommended Barney Wood. Mr. Wood was retained by the seller, Rick Morris. Mr. Wood attended to the property, viewed the natural gas furnace and water heater and determined that an exhaust pipe and sensor needed to be replaced. Specifically, Mr. Wood reported that the condensing boiler had a leak on the three inch PVC exhaust that caused condensate to leak into the condensing boiler. This caused damage to a flue sensor. He estimated the cost to repair this approximately \$200-\$300 depending on the price of the sensor. Mr. Wood advised the real estate agent for the seller of the property, Talbot Sweeney, on August 11, 2014, that he had repaired both the exhaust vent and relief valve on the boiler and ordered a flue sensor. He felt it was not entirely necessary to replace the current sensor but felt it prudent to have a spare on hand in case it should fail at an inopportune time. He rendered a bill in the amount of \$294.40.

Mr. and Mrs. Kraus were not present for the inspection or the repairs as he was still working in Ottawa finishing his career in the military.

No evidence was tendered as to the closing, but presumably the sale closed successfully sometime on or after the agreed date of September 25, 2014 and prior to the date the Krauses moved into the property on October 14, 2014.

On January 10 and 11, 2015, the boiler shut down causing the heat to shut off, which triggered the water pipes freezing and resulting water damage. The Krauses were not present in the home when this occurred. The restoration of the home from the water damage was paid by the Claimant's insurance.

The Claimant hired Four Winds Mechanical to inspect the heating system, determine the problem and make any necessary repairs. They reported that the boiler exhaust vent was incorrectly oriented, the incorrect diameter piping was used, the boiler was placed at the wrong height off the ground and there is "neither a storm collar nor weather stripping around the exhaust vent so that the house could (not) be properly sealed from the outer envelope." Four Winds Mechanical replaced the burner and venting systems. The admissibility of this statement is questionable.

The Claimant alleges breach of contract on the part of Mr. Wood for negligent advice in that he failed to identify “latent defects” in the system. Mr. Wood alleges that his contract was with the seller of the property and/or their real estate agent only. Therefore, there is no liability for breach of contract or misrepresentation.

Issues

The issues in this claim are the following:

- Was there a breach of contract between the parties?
- Did the Defendant commit the tort of negligence or negligent misrepresentation to the Claimant?
- If the answer to either of those questions is “yes”, what is the extent of the damages?

The Evidence

Trevor Robert Keith Kraus testified that he and his wife, Bettina, are the owners of 34 Lindenwood Terrace, Dartmouth. Mr. Kraus is an engineer by profession, having just retired from the military. He was living in Ottawa at the time the contract was entered into and moved to Dartmouth in August where he lived in a condominium until the property closed. While not an expert in the field of natural gas boilers, he prepared well in learning the workings of his heating system. In addition, he has educated himself extremely well in preparation for proceedings in court. His presentation of his evidence was organized and very logical. His submissions followed a very impressive review of the law of contract and legal procedure in general. Throughout the hearing he impressed me (and counsel for the Defendant) on the amount of research he obviously conducted to prepare.

Mr. Kraus presented a substantial binder containing 23 tabs of exhibits. His evidence followed the documents in his binder, which essentially were presented in chronological order.

He identified the Agreement of Purchase and Sale. As a result of the clauses pertaining to home inspection, he hired Terry Gordon of TE Gordon Home Inspections Limited on the recommendation of his real estate agent, Richard Killeen Payne. The inspection report included the following:

“HEATING

Primary Heating Equipment

Condition of Primary Heating System:

Corrosion noted on top and inside the heating unit. It appears condensation from the exterior vent pipe is leaking into the heater. Contact a professional natural gas contractor for further evaluation.”

As a consequence of this recommendation, Mr. Kraus inquired of his agent for the recommendation of a plumber who is qualified to deal with natural gas heating. Mr. Payne recommended Mr. Wood.

The real estate agent was in touch with Mr. Wood respecting the outcome of the inspection of the furnace. (in fact, Mr. Payne contacted the seller's agent, Talbot Sweeney, who arranged for his client to deal with Mr. Wood). Mr. Payne reported to Mr. Kraus on July 29, 2014 that Mr. Wood did "a very thorough inspection of the furnace and said there is nothing else that looks like it has an issue apart from the exhaust pipe and the sensor". On July 30, 2014, Mr. Payne again reported to Mr. Kraus by e-mail that "we have agreed on them doing the work that Barney suggested, namely the pipework and the temperature sensor. I'm writing up another amendment to that effect and will also change the wording accordingly". The amendment appeared in evidence as well.

Mr. Talbot Sweeney, the seller's agent booked Mr. Wood to come by and do the work. He estimated the work to cost between \$200 and \$300. A copy of the invoice for the work was sent to Mr. Kraus and the resulting cost was \$294.40. The invoice was addressed to Rick Morris.

Mr. Kraus testified that on January 10, 2015, the boiler stopped working, the pipes froze and water damage occurred the following day once the ice began to melt and recede. The damage from the water was paid by the Claimant's insurance company.

Mr. Wood performed an emergency shutdown and the necessary radiators repairs. The cost was \$793.16. As he felt some of the repairs were beyond his depth, on Mr. Wood's recommendation, Mr. Kraus hired Steve Mansfield who operates under the business name of "Four Winds Mechanical" to complete the work.

Mr. Mansfield attended the home and, according to Mr. Kraus, identified the problem as the result of a poorly configured boiler exhaust vent and improper sealing of the exhaust vent due to a lack of a storm collar or weather stripping. (Mr. Kraus incorrectly refers to this as a latent defect, which is not relevant to this matter anyway.) As a result of the damage, Mr. Kraus testified that he was required to purchase and install a new boiler. He tendered into evidence documentation in support of the cost of the installation of a new boiler.

Mr. Kraus tendered into evidence an e-mail he prepared for signature by Mr. Mansfield. As noted later in this decision, Mr. Mansfield did not give evidence.

Mr. Kraus' claim of \$9832.26 consists of the Four Winds invoice of \$8549.93 for replacement of the boiler, \$980.43 for a pump and \$1136.49 for venting plus \$500 for the insurance deductible. He testified that \$1334.59 should be deducted from the total invoices as this represents the installation of a new thermostat for which he is not claiming liability on behalf the Defendant. Mr. Kraus also seeks general damages of \$100 plus costs.

Mr. Kraus sought compensation from Mr. Wood and wrote to him identifying the issue. There are letters in the binder between Mr. Kraus and Phillip Whitehead, Barney's solicitor in an effort to address liability for the issue.

Under cross-examination, Mr. Kraus acknowledged that he became aware of the heating issue as the inspector noticed some rust on the inside cover of the boiler. Specifically, in June 2014, Mr. Wood attended to the premises and noticed corrosion on the flue sensor when the cover was removed. He acknowledged that the sellers paid for the report by Mr. Wood and he reimbursed him by paying \$294.40 to Mr. Morris. No concern was raised by Mr. Morris at the time.

After the work was performed on July 29, 2014, Mr. Kraus believed the boiler was functional. However he was still in Ottawa at the time. He had an acquaintance living in the property while it was vacant.

On January 10, 2014, the pipes froze. Once they were repaired and the ice receded, on January 11, a leak occurred and the water seeped in when the copper fittings leaked, allowing water into one of the bedrooms causing damage to the floors. Mr. Wood told Mr. Kraus he did not feel qualified to tackle that degree of difficulty with the plumbing and the boiler and thus, he recommended Steve Mansfield. Mr. Mansfield signed a letter to Mr. Kraus, which Mr. Kraus actually prepared. There is an e-mail in evidence from Mr. Mansfield which is clearly written in a different style:

- In the Kraus letter, he acknowledges that the boiler exhaust vent was incorrectly oriented, piping of incorrect diameter was used and the boiler was the incorrect height off of the ground. There is neither a storm collar nor weather stripping around the exhaust vent so the house was not properly sealed. At the time, neither Mr. Wood nor Mr. Mansfield offered any reason why the sensor failed, although Mr. Wood later testified that the sensor was fried. Once the sensor fails then the boiler no longer runs.
- Mr. Martin tendered into evidence as exhibit D2 an e-mail to Mr. Wood from Mr. Mansfield. In Mr. Mansfield opinion, he does not believe that corrosion in of itself is indicative of a larger problem. He attributes this to boilers being hydronic.

Mr. Kraus testified that Mr. Mansfield recommended the boiler be replaced. He would not say whether he would have replaced it without Mr. Mansfield's opinion. Mr. Mansfield did not give evidence at the hearing. Further, he acknowledged that he did not call any expert evidence on his own behalf.

Richard Killeen Payne has been a real estate agent with Keller Williams for 4½ years. Prior to that, he was a Certified Management Accountant for five years in Nova Scotia and the UK. He acknowledged that the role of the home inspection was to locate any defects or otherwise in the house. He recommended Mr. Gordon to Mr. Kraus. He acknowledged that the issues that were

identified to him were rust and moisture issues in the boiler itself. He had good results with Mr. Wood in the past for service, which is why he recommended Barney's Plumbing and Heating.

Under cross-examination he acknowledged that Mr. Wood indicated the problem was with the thermocoupling although that was not mentioned in a written report. He acknowledged that he did not offer money from Kraus to Barney's Plumbing and Heating but his bill was paid by Mr. Kraus. He indicated that there was no contract with Mr. Payne or Mr. Kraus with Barney's Plumbing. He does not know if Mr. Gordon received word from Mr. Wood with respect to the condition of the boiler. He was aware that Mr. Wood identified the problem with the vent pipe recommended they replace the sensor. He was there when the work was completed by Barney's, and once it was completed, the house was turned back over to the sellers.

He acknowledged in redirect evidence that there was money exchanged between the seller and Mr. Wood. He got a summary report from Mr. Wood but again there was no money paid for that purpose.

Barnaby Thomas Wood has been a plumber for 10 years and that includes a gas Level II license which enables him to work on residential natural gas boilers of up to 400,000 BTUs. He believes he was given a copy of the Gordon report. He described the meeting at 34 Lindenwood Terrace namely that he met Richard Payne and Talbot Sweeney at that time. There were some discussions regarding latent and patent defects and he found that there was an obvious leak of the pipe which was causing damage. He felt that the water had penetrated through. He removed the cover, noted some physical damage and recommended the part underneath the cover be repaired as the flue sensor and fittings were corroded. He felt the parts were functioning but should not be left as is. Accordingly, he did the work and prepared an invoice for \$294.40 which was sent to Rick Morris.

He believed the sellers contacted their real estate agent, who, in turn contacted Mr. Wood. His role was to look at the boiler to determine if it was functioning properly. He told the sellers it was not functioning. His recommendation was to repair the pipe fitting and not replace the sensor but to order it just in case it failed. He was paid for his efforts by Mr. Morris.

In January 2015, he was contacted by Mr. Robinson, the man who was watching Mr. Kraus' home with a complaint of frozen pipes. It was determined that the boiler had shut down and the plumbing in the house was frozen. The pipes had been compromised as a result. The heating system was not circulating, so he attempted to restart the boiler. There was another plumber on site and said it did not work either. They identified several "bursts" in the plumbing and attempted to fix the breakages. They sucked the water after turning the system off. They believe that the sensor on the firing circuit could not turn the boiler off and thus, it was shut down. Mr. Mansfield determined that it was necessary to bypass the sensor, so the boiler was unplugged and the water allowed to run through the system. This was a temporary fix. Following that process, the boiler resumed operation. The boiler was functioning at that point. He believed the total cost to repair it would be \$50-\$100.

Under cross-examination, Mr. Wood acknowledged giving a quote for a job. He described Mr. Payne's instruction to do general inspection to identify any issue in the boiler room. He has known Mr. Mansfield for many years since they worked together in BC. He recalls being contacted by Mr. Kraus on October 14, 2015, when he took possession of the house. Mr. Kraus advised him the boiler was not working. He reset the boiler. According to Mr. Wood, this was a different sensor than the one which gave him trouble in August or January.

In January, he attended to the home, spoke to Mr. Robinson who he believed was the tenant at the time. He confirmed that the property was not vacant. When asked if he thought the boiler vent being incorrectly oriented would create the problem, Mr. Wood said he disagreed with Mr. Mansfield that it would stop the boiler from working. He simply attributes it to a faulty sensor which there are several in the system. There would be a sensor on the exiting water temperature. The sensor on the flue failed, and he described it as "fried".

In his opinion the problems on October 14 were caused by an outside sensor. He feels this differs from the heat exchange failure of the temperature sensor in January.

The Law and Findings

This case involves three issues, breach of contract/privity of contract, negligent misrepresentation and negligence. In all cases, the onus is on the Claimant to establish liability on the balance of probabilities. I have addressed the law and findings on each issue below:

Privity of Contract

In order to prove a breach of contract it is necessary to establish privity of contract. The doctrine of privity of contract is a longstanding principle of contract law. In the case of *Dunlop Pneumatic Tyre Company Limited v. Selfridge and Company Limited*, [1915] A. C. 847 (H.L.), Viscount Haldane, L.C. summarized the principle very succinctly at page 853:

“ only a person who is a party to a contract can sue on it...”

In reviewing the evidence of the parties, the question to be determined is if there was a contract between Mr. and Mrs. Kraus and Mr. Wood for the inspection of the natural gas system.

I find upon receiving the inspection report from Mr. Gordon, Mr. Kraus sought from his agent the name of a natural gas contractor to inspect the boiler and vent system. Mr. Payne recommended the services of Mr. Wood. The seller agreed and retained his services. Payment for the services was made by Mr. Kraus. Mr. Kraus was not in Nova Scotia and assumed he was engaging the services of Mr. Wood directly, presumably, because that was similar to how he retained his home inspector. Mr. Wood's evidence is that he took instructions and sent his bill directly to the seller, Rick Morris. Mr. Wood was aware that the information was being passed

along to the purchaser as part of the transaction. There is no evidence of any communication between the parties over this issue when it was done. It is unfortunate this step was not taken. Accordingly, I am not satisfied there is sufficient evidence to establish privity of contract between Mr. Wood and Mr. and Mrs. Kraus.

Negligent Misrepresentation

The second question for consideration is if the report constituted a negligent misrepresentation. In other words, does the preparation of a report at the behest of one party create liability to a third party if it is found to be negligent?

The representation is found in Tab 8 of the binder:

“The condensing boiler at 34 Linden Wood (sic) has a leak on the 3” PVC exhaust vent. This has caused condensate to leak into the condensing boiler and cause damage to a flue sensor.”

One can also infer from that statement that upon rectification of that particular problem, the leak on the PVC exhaust vent and purchase a new sensor, would the boiler be put in a suitable condition for the Claimant’s home? The boiler need not have been like new. It merely had to operate in a way consistent with its age that was suitable for its purpose. In his oral evidence, Mr. Kraus stated that he determined the boiler was 7 years old with a life expectancy of 15 years. I accept this as reasonable.

I note here that the tort of negligent misrepresentation was not raised by the Claimant. Justice Leblanc of the Supreme Court of Nova Scotia considered when legal issues are not raised in pleadings in the case of *MacIntryre v. Nichols*, 2004 NSSC 36. In that case he applied the comments of the Newfoundland Court of Appeal in *Popular Shoe Store Ltd. v. Simoni*, [1998] N.J. No. 57, where that courts stated the following:

“... If a claimant by his or her pleading or evidence states facts which, if accepted by the trier of fact, constitute a cause of action known to the law, the claimant should prima facie be entitled to the remedy claimed if that is appropriate to vindicate that cause of action. The only limitation would be the obvious one that if the case takes a turn completely different from that disclosed or inferentially referenced in the Statement of Claim, thereby causing prejudice to the other side in being able properly to prepare for or respond thereto, the court may either decline to give relief or allow further time to the other side to make a proper response.

A Small Claims Court judge has a duty, on being presented with facts that fall broadly within the umbrella of the circumstances described in the Statement of Claim, to determine whether those facts constitute a cause of action known to the law, regardless of whether it can be said that the claimant, as a matter of pleading, has asserted that or any other particular cause of action. Subject to considerations of fairness and surprise to the other side, if a cause of action has been established, the appropriate remedy, within the subject matter jurisdiction of the court, ought to be granted.”

In a previous case, *Earthcraft Landscape v. Clayton*, 2002 NSSC 259, his Lordship stated the duty of the Adjudicator more succinctly:

“It seems clear from the cases that the requirements of natural justice create a duty for a small claims adjudicator to assist unrepresented parties, particularly where a legal or procedural issue of which the party may not be aware is relevant in assessing the merits.”

I raised the issue of negligent misrepresentation with Mr. Martin. He provided his thoughts on negligence but did not provide comment on negligent misrepresentation. In my view, the issue of negligent misrepresentation ought to be considered even though it was not raised in Mr. Kraus’ pleadings.

The legal test for negligent misrepresentation is found in *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87:

33 The required elements for a successful Hedley Byrne claim have been stated in many authorities, sometimes in varying forms. The decisions of this Court cited above suggest five general requirements: (1) there must be a duty of care based on a "special relationship" between the representor and the representee; (2) the representation in question must be untrue, inaccurate, or misleading; (3) the representor must have acted negligently in making said misrepresentation; (4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

It is necessary to consider the individual elements of this case.

Special Relationship

In this case, Mr. Wood was retained by the real estate agent to offer an opinion on the state of the boiler. Mr. Wood has performed this type of work before. His report took the form of a very brief e-mail. There is no reference who was expected to rely upon it or limitations placed upon it. It was addressed “To Whom it May Concern”, rather than either agent or the seller. I find as a fact that Mr. Wood knew the statement would be relied upon by a purchaser with a view to facilitating the sale of the house. I find a special relationship exists between the representor (Mr. Wood) and the representee (Mr. Kraus)..

Untrue, Inaccurate or Misleading Statement

In support of this assertion, Mr. Kraus has submitted a statement he prepared for Mr. Mansfield to sign. According to Mr. Kraus, the statement was reviewed by Mr. Mansfield prior to his signing it and for which he made changes. Mr. Mansfield was not called by either party to give evidence. Further, neither report has been sworn.

In the Kraus e-mail dated February 2, 2015, Mr. Mansfield attributes the cause of the problem to the heating exhaust vent. Specifically, problems included that the vent was incorrectly oriented, used the incorrect diameter of piping and lacked a storm collar and weather stripping. This enabled the ingress of precipitation allowing water to enter resulting in water damage. This, in turn, led to the emergency shutdown of the boiler.

In a subsequent e-mail to Mr. Wood dated May 9, 2016, he appears to be addressing Mr. Kraus' letter to the Defendant's solicitor, Phillip Whitehead. In his e-mail, he notes that "Barney did repair a leak in the venting and what looked to be suspect temp sending unit....and without performing destructive testing (witch(*sic*) is not part of the inspection) there would be no way of proving one way or another the actual condition of this boiler."

Normally, these types of statements would not be admissible as they are clearly hearsay. However, section 28 of the *Small Claims Court Act* provides as follows:

EVIDENCE

28 (1) An adjudicator may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceedings and may act on such evidence, but the adjudicator may exclude anything unduly repetitious.

(2) Nothing is admissible in evidence at a hearing that

(a) would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) is inadmissible by any statute.

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.

Clearly unsworn documents from witnesses not called to testify may be used in Court, but they are subject to a principled approach to hearsay, specifically requiring consideration of necessity and reliability. In my view, the statements are the only source of such assertions and may be admitted. However, given the other evidence, for the foregoing reasons I place little weight on them.

Given the specific allegations of Mr. Mansfield and his familiarity with the boiler, I find it curious that he was not subpoenaed to testify in Court by either party. His comment regarding the cause of the boiler to shut down is significant. Likewise, Mr. Mansfield's e-mail stating that the boiler is hydronic (i.e. runs by hot water) which causes corrosion in general and may be the reason for the problem. Furthermore, the problem could now not be identified without a more invasive inspection. These contradict each other. His evidence would have been of great assistance.

Based on the testimony of Mr. Wood, I accept his evidence that the corrosion and failure of the sensor were caused by a leak which allowed water to enter the system. Mr. Mansfield's comment that it is not possible to determine the cause of the corrosion is refuted by Mr. Wood's observation. The next question is if the problem identified by Mr. Wood in August, the PVC valve and sensor was the only cause of the problem. The exhaust system failed in January due to a leak. I find on the evidence that if the problem had been correctly identified, and the problem rectified, the sensor would not have failed. Put another way, the statement given by Mr. Wood is inaccurate.

Acting Negligently

In order to determine if Mr. Wood acted negligently, one must determine if he acted like any reasonable plumber would in similar circumstances. He is not a guarantor or insurer of the boiler. In this case, Mr. Wood is a licensed plumber certified to do work on boilers of up to 400,000 BTUs. Unlike the home inspector, he does have specific expertise in this field. He was referred to Mr. Kraus for this purpose.

Mr. Payne's letter describes the work Mr. Wood did as "a very thorough inspection". There is no indication of what that might have consisted of. It is clear the parties' expectations were not in accord.

I find on the balance of probabilities that Mr. Wood believed the problem was solved after his work in August. He represented to the parties that it was. It was not. There is nothing in his report to limit the extent of his advice. Despite that there is no evidence of what else caused the leakage and failure, it is clear it was not the problem. The problem was caused by a water leak from a source other than what was identified by Mr. Wood. There is no evidence from Mr. Wood of what he did do to find leaks. While I do not believe it reasonable to expect him to perform an invasive examination without consent, I think he ought to have clarified that his observations were limited. The Claimant and the seller could have had the opportunity to address this in the course of the negotiations.

While there is clearly evidence to the contrary, I am satisfied on the balance of probabilities that the statement was made negligently. In arriving at this conclusion, I considered neither statement from Mr. Mansfield.

Reliance

I have no difficulty finding that the Claimant relied on the assertion that the boiler was suitable and would continue to work after Mr. Wood made the repairs in August.

Causation and Resultant Damage

There is no question that there was damage caused as a result of the shutdown of the boiler. The question to be determined is defined as a "but for test". But for the actions of the Defendant, would the boiler have shutdown resulting in the pipes freezing and corresponding water damage? In other words, were the negligent actions of the Defendant the cause of the shutdown? If I find the cause of the failure of the boiler to have been the result of something Mr. Wood ought to have identified, then I have no difficulty finding it allowed the Claimant to not repair it or accept it as is. In other words, I find the negligent statement caused the resulting damage.

Negligence

In order to establish negligence, the Claimant must prove a duty of care and a breach of the standard of care. For the reasons stated in the foregoing section, I find the Defendant negligent.

In summary, I find the Claimant liable in negligence and negligent misrepresentation.

Damages

I must now assess damages. I note that none of the contractors hired by Mr. Kraus gave evidence.

I am satisfied that the Claimant has proven it necessary to repair the boiler, but not replace it. I accept Mr. Wood's evidence that it could be made operational. It may have been prudent to replace the boiler, but there is nothing to suggest it was necessary to do so. Even if I had found it necessary to replace it, I would have reduced the amount paid for the boiler by a substantial betterment allowance of 7/15, based on Mr. Kraus' evidence, which I accepted, that the boiler was 7 years old with a 15 year life span.

The Claimant is entitled to something more than \$50-\$100 toward the cost of repairing the boiler. Given that the sensor alone costs \$55, I believe Mr. Wood is underestimating the cost. I allow \$1000 under this heading.

Mr. Kraus tendered into evidence two invoices of \$1136.49 and \$980.43, which are for reinstallation of the venting so it does not leak, and the pump which was damaged when the pipes froze. If the venting had been the cause of the leak, then the Claimant would have fixed it at the time. There is no evidence that it was damaged as a result of the leak. I disallow that item. I allow the cost of the pump.

I allow the claim for \$500 deductible.

I allow general damages of \$100 and costs of \$436.58

Thus:

Boiler repair:	\$1000.00
Pump:	\$ 980.43
Deductible:	\$ 500.00
General Damages	\$ 100.00
Costs	<u>\$ 436.58</u>
Total Judgment	\$2917.01

Summary

In summary, I find in favour of the Claimant and award him judgment of \$2917.01.

An order shall issue accordingly.

Dated at Halifax, NS,
on March 7, 2017;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)