**SMALL CLAIMS COURT OF NOVA SCOTIA**
**Citation:** *Stubbs. v. White*, 2026 NSSM 9

**Date:** 20260123
**Docket:** 542167
**Registry:** Annapolis Royal

**Between:**

Kirsten Stubbs, Mark Stubbs, and Melanie Stubbs

v.

Wylie White and Carol White

**Adjudicator:** Sarah A. Shiels

**Heard:** October 28, 2025

**Decision:** January 23, 2026

**Counsel:** Kirsten Stubbs, Mark Stubbs, and Melanie Stubbs, self-represented
Oliver Janson, for the Defendants

**By the Court:**

## Background

[1] The claimants, Kirsten Stubbs, Mark Stubbs, and Melanie Stubbs, seek reimbursement for the cost of repairs to a chimney and woodstove mantle. They claim the defendants, Wylie White and Carol White, neglected to disclose the condition of the chimney and woodstove upon the sale of residential real property to the claimants.

[2] The defendants deny they were negligent in completing the property disclosure statement ("PDS"). They say they did not mislead the claimants regarding the state of the chimney. The WETT certificate they obtained was from a certified individual. They deny they should be held liable for any repair costs.

## Facts

[3] In the spring of 2024, the claimants purchased a home for Kirsten Stubbs to reside in with her young family. The claimants personally inspected the property prior to the purchase and believed that the wood stove was in good working order. The stove appeared to be in use and the documentation provided by the defendants did not suggest any issue with its functionality.

[4] Kirsten Stubbs testified that she was aware the owner was cleaning the chimney, as provided by the Solid Fuel Heating Questionnaire (“SFHQ”), but this did not cause her concern because the chimney was cleaned twice a year, the house was well maintained, the stove was WETT certified, said to be in good shape, and she believed the stove was in use.

[5] In the fall of 2024, Kirsten Stubbs attempted to use the stove but was not able to keep a fire lighted. She contacted a local WETT certified inspector, Adam Gillis, to check on the stove for her.

[6] Mr. Gillis inspected the stove on October 27, 2024. Mr. Gillis was not called to testify but his report dated July 16, 2025 noted that a new stainless steel liner was installed on October 28, 2024 and that he had removed an excessive amount of creosote and soot which had blocked the chimney off. He further noted there was an existing issue with the chimney and that a chimney fire had taken place. He recommended installation of a non-combustible mantle.

[7] The defendant Mr. White testified that he cleaned the chimney himself. He said the wood stove was used all winter long and was the main source of heat for the residence. He also cut, stacked, and dried wood for the stove. He estimated the amount of wood used was 2-3 cords per winter. Mr. White acknowledged that a

chimney fire had occurred. He estimated this happened 14 to 15 years ago but in the course of his testimony he also admitted: “my memory isn’t wonderful either”.

[8] The PDS, dated January 3, 2024, indicated that the wood stove/fireplace insert was properly installed by certified personnel, that the defendants were not aware of any problems or malfunctions with the chimney, that there was a clay liner in the chimney, that the chimney was last cleaned in the fall of 2023, and of a heat pump as a repair or upgrade to the heating/cooling sources.

[9] The SFHQ was dated February 26, 2015 and was completed by Bernard Morine. Mr. Morine was called to testify. He is a bricklayer and is now semi-retired. His WETT certificate lapsed approximately two years ago. Mr. Morine’s recollection of visiting the house was limited, but he recognized the stove in a photograph.

[10] The SFHQ indicated that the unit had been inspected by someone who was WETT certified since the installation but also that modifications had been made to the heating unit or chimney since it was installed or inspected. Mr. Morine testified that the statement contained in the SFHQ regarding the non-occurrence of a chimney fire was made on the basis of information provided to him by the Whites.

**Law**

[11] The issues raised in this case touch upon a number of legal principles including negligent misrepresentation, *caveat emptor*, and whether a property disclosure statement can be considered a warranty. The law with respect to these principles is set out below. A helpful discussion of these principles by Adjudicator Nickerson can also be found in *Atwood v. Fullerton*, 2020 NSSM 22.

[12] The oft-cited test for negligent misrepresentation is provided in *Queen v. Cognos Inc.* [1993] 1 S.C.R. 87 at para. 33:

> 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. In the case at bar, the trial judge found that all elements were present and allowed the appellant's claim.

[13] The principle of *caveat emptor* in the context of real estate transactions was summarized by Justice Arnold in the case of *Apogee Properties Inc. v Livingston*, 2018 NSSC 143 starting at paragraph 36 of his decision:

> [36] In general, the *caveat emptor* rule applies to real estate transactions and a buyer will take the property “as is” (subject to certain exceptions). The British Columbia Court of Appeal said, in *Nixon v. MacIver*, 2016 BCCA 8, [2016] B.C.J. No. 22:
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> > 31 The doctrine of *caveat emptor* was colourfully summarized by Professor Laskin (as he then was) in "Defects of Title and Quality: Caveat Emptor and the Vendor's Duty of Disclosure" in Law Society of Upper Canada, *Contracts for the sale of land* (Toronto: De Boo, 1960) at 403:
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> > > Absent fraud, mistake or misrepresentation, a purchaser takes existing property as he finds it, whether it be dilapidated, bug-infested or otherwise uninhabitable or deficient in expected amenities, unless he protects himself by contract terms.

> 32 The leading decision on the maxim is *Fraser-Reid v. Droumtsekas* (1979), [1980] 1 S.C.R. 720 at 723, in which Mr. Justice Dickson (as he then was) recognized the continuing application of the doctrine of caveat emptor to the sale of land:
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> > Although the common law doctrine of *caveat emptor* has long since ceased to play any significant part in the sale of goods, it has lost little of its pristine force in the sale of land. In 1931, a breach was created in the doctrine that the buyer must beware, with recognition by an English court of an implied warranty of fitness for habitation in the sale of an uncompleted house. The breach has since been opened a little wider in some of the states of the United States by extending the warranty to completed houses when the seller is the builder and the defect is latent. Otherwise, notwithstanding new methods of house merchandising and, in general, increased concern for consumer protection, *caveat emptor* remains a force to be reckoned with by the credulous or indolent purchaser of housing property. Lacking express warranties, he may be in difficulty because there is no implied warranty of fitness for human habitation upon the purchase of a house already completed at the time of sale. The rationale stems from the laissez-faire attitudes of the eighteenth and nineteenth centuries and the notion that a purchaser must fend for himself, seeking protection by express warranty or by independent examination of the premises. If he fails to do either, he is without remedy either at law or in equity, in the absence of fraud or fundamental difference between that which was bargained for and that obtained.
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> 33 The doctrine continues to apply to real estate transactions in this province, subject to certain exceptions: fraud, non-innocent misrepresentation, an implied warranty of habitability for newly-constructed homes, and a duty to disclose latent defects.
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> 34 A vendor has an obligation to disclose a material latent defect to prospective buyers if the defect renders a property dangerous or unfit for habitation. A latent defect is one that is not discoverable by a purchaser through reasonable inspection inquiries... [Emphasis in original.]

[14] Justice Arnold also dealt with the differentiation between latent and patent defects at paragraph 37 of his decision as follows:

> [37] Therefore, where there are defects that could have been discovered during a routine inspection by an ordinary purchaser (patent defects), the *caveat emptor* rule of “buyer beware” will apply. However, *caveat emptor* will not shield vendors who have

made fraudulent or negligent misrepresentations with respect to latent defects. A latent defect is one that is not discoverable by a purchaser through reasonable inspection. Warner J. distinguished between patent and latent defects in *Thompson v. Schofield*, 2005 NSSC 38, [2005] N.S.J. No. 66:

> 18 A second legal question requiring clarification, for the purposes of this decision, is, what is a patent defect and what is a latent defect? A patent defect is one which relates to some fault in the structure or property that is readily apparent to an ordinary purchaser during a routine inspection. A latent defect, as it relates to this case, is a fault in the structure that is not readily apparent to an ordinary purchaser during a routine inspection. For the purposes of the decision, it is not disputed that whatever the defect was that caused the flooding in the basement, that it was a latent defect, that is, a defect which was not apparent on an ordinary inspection of the property. The defendants claim that because it was latent, they also were not aware of it. My understanding of the defendant's memorandum is that they acknowledge that, because the basement was finished and because neither building inspector nor the plaintiffs had the right, before the closing, to take the basement apart, their ability to determine any defects in the property was limited to those defects which would be apparent without taking apart the walls or the floors or the panelling that covered the cement walls.

[38] See also *Gesner v. Ernst*, 2007 NSSC 146, [2007] N.S.J. No. 211, at para 44, and *MacDonald v. Barbour*, 2012 NSSC 102, [2012] N.S.J. No. 142, at para. 26.

[15] The jurisprudence is clear that a property disclosure statement is not a warranty with respect to the condition of property. This point was addressed by Justice Smith in the case of *Gesner v. Ernst,* 2007 NSSC 146 at paragraph 54:

> [54] A Property Condition Disclosure Statement is not a warranty provided by the vendor to the purchaser. Rather, it is a statement setting out the vendor's knowledge relating to the property in question. When completing this document the vendor has an obligation to truthfully disclose her knowledge of the state of the premises but does not warrant the condition of the property (see for example: **Arsenault v. Pedersen et al.**, [1996] B.C.J. No. 1026 and **Davis v. Kelly**, [2001] P.E.I.J. No. 123.)

[16] In the event that misrepresentation is established, the appropriate measure of compensation is to restore the fortunes of the innocent party. This principle was

described by Adjudicator Pink in the case of *Day v. Young*, 2024 NSSM 79 as follows:

> [16] In the event of a misrepresentation, be it negligent or fraudulent, the measure of compensation is to put the innocent claimant in the position they would have been but for the misrepresentation. In the normal sale of a house, the disclosure of defects results in a reduction of the purchase price, or a portion of the purchase price being held back to allow for repairs. In both instances the estimate is that of making the deficiency go away. It is not to allow the buyer to benefit from the misrepresentation.

**Analysis**

[17] The claimants seek reimbursement for the cost of repair efforts necessary to render their stove and chimney safe for use. They did not anticipate having to pay to address these issues when they purchased the residence.

[18] The condition of the chimney, as determined by Mr. Gillis' inspection, raises questions regarding the adequacy of the defendants' cleaning efforts; however, the Court finds that the defendants did not deliberately mislead the claimants. Rather, the defendants were unaware of the problematic condition of the stove and chimney at the time of sale. The defendants had been using the stove regularly and believed it was functional.

[19] The defendants' failure to notify the claimants of a material change to the information in the SFHQ regarding the non-occurrence of a chimney fire was misleading. Perhaps, if the defendants had advised the claimants of this fact, the

claimants would have taken steps to perform a more thorough inspection, and would have discovered the problematic condition of the chimney.

[20] However, the SFHQ pre-dated the closing by approximately nine years and indicated modifications had been made since the unit was inspected or installed. The SFHQ also made it clear that the homeowner was performing cleaning efforts. The Court finds that it was not reasonable for the claimants to rely on the SFHQ (or the PDS) to conclude that there were no issues with the stove or chimney. Alternatively, even if it was reasonable for the defendants to rely on the SFHQ, they have not proven that their repair costs resulted from any misrepresentation in that document.

[21] The SFHQ says that the chimney has been inspected by someone who is WETT certified since the installation (section 8). The construction portion of the SFHQ indicates the installer is "unknown" and is blank with respect to WETT certification (section 5). It also indicates that undescribed modifications to the heating unit or chimney were made since it was installed or inspected (section 8).

[22] Mr. Gillis' report indicated "a chimney fire had taken place" and "the clay liner is broken and contained a tremendous amount of creosote and soot buildup", but he was not called to testify regarding the extent of any damage caused by the

chimney fire or any remedial requirements. In the absence of direct evidence, the Court will not assume that the undisclosed chimney fire was the cause of the claimants' losses.

[23] As determined by Justice Smith in *Gesner v. Ernst*, cited above, the PDS reflects the knowledge of the seller. The seller is responsible for the accuracy of the information contained in the PDS. In the present case, the PDS was accurate so far as the defendants' knowledge was concerned; they did not believe there was any issue with the functionality of the stove and chimney. Considering the relevant case law, the Court also accepts the defendants' argument that the PDS was not a warranty as to fitness or repair of the chimney.

[24] Finally, the claimants have not satisfied the Court that the alleged defects were latent: the mantle material-type was readily apparent, and the creosote and soot build-up, along with the condition of the clay liner, were discovered during the course of a routine chimney inspection.

[25] In sum, this claim fails because: (1) the PDS accurately reflected the defendants' knowledge and did not contain any express representation regarding a chimney fire; (2) the SFHQ significantly pre-dated the closing and was not authored by the defendants; (3) there was no evidence of any contractual

agreement or warranty that the stove and chimney were in good repair; and (4) there is insufficient evidence of any causal connection between the alleged misrepresentation and the damages the claimants are seeking.

**Conclusion**

[26] Considering the evidence tendered and the applicable jurisprudence, the claimants have not proven that the defendants should be held liable for the claimed repair costs. This claim is hereby dismissed without costs to either party.

Sarah A. Shiels, Small Claims Court Adjudicator