

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Hines v. Servicemaster, 2006 NSSM 36

2005

Claim No. SCK244023

Date: 20060228

BETWEEN:

Name: **Sherman Hines and Andrea Hines** Claimants

- and -

Name: **Servicemaster of the Valley** Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on December 13, 2006. This decision replaces the previously distributed decision

Appearances:

Claimants: Self Represented

Defendant: Harry Harmes

D E C I S I O N

[1] This proceeding was heard in Kentville on December 12, 2005. The Claimants, Sherman Hines and Andrea Hines, both gave evidence. Harry Harmes gave evidence for the Defendant.

[2] The claim is based on alleged negligent or improper cleaning of an expensive area rug. The cleaning of the rug took place in March, 2004, at the Hines' residence in Brooklyn. According to Mr. Hines, the technician applied the solution and either used too much or not enough and in the result, the rug was not cleaned as it should have been and the areas around the perimeter of the rug buckled. The rug had laid flat previously. Mr. Hines

indicated that the effect of the buckling was that the rug could trip him, it was unsightly, and it was not something they could avoid.

- [3] At a point following the cleaning, the rug was taken to the Defendant's shop in Kentville where efforts were made to take out or eliminate the buckling at the perimeter. At some point it was taken back to the Claimants residence following that but was refused by the Claimants. It has remained with the Defendant up to the present time.
- [4] Mr. Harmes' evidence was that it was clear that the family dog or dogs had urinated on the rug and he tendered as Exhibit 10 a photograph taken on December 12th, 2005, showing a number of stains. Mr. Harmes indicated that he counted 50 stains. He testified that he went to the residence on April 27, 2004 and that there were ripples in the perimeter of the carpet. He called the manufacturer (Elite) while still at the Hines residence and spoke to a representative and was apparently advised that the backing on the carpet can breakdown. Mr. Harmes took the carpet back to hang in his shop and went on vacation. When he got back it was still there. His staff told him that Ms. Hines had refused to take it back. He testified that it is still in his warehouse as of the date of the hearing.
- [5] Mr. Harmes indicated that if there are special cleaning requirements that these instructions are normally stated on the back. There were no such instructions on this carpet. He testified that generally if something shrinks that it will shrink evenly. He further testified that his staff receive extensive training and that there was a manual that they are required to be familiar with regarding the cleaning of carpets and rugs. Mr. Harmes entered as Exhibit 7, a photograph of the carpet laid out in his warehouse floor and suggested that the ripples are very minuscule and that a person would not trip on them.
- [6] He further testified that he has owned the Defendant business since 1980 and has cleaned thousands of rugs of all manner and type. He says he has never had a problem or at least a problem of this type. In his view the backing was breaking down as a result of the animals abuse, and in particular, urinating on the rug.

- [7] On cross examination, Mr. Harmes indicated that the fact that the carpet did not have special instructions means that it can be cleaned without any special processes or measures taken. The first thing to do is to look for that label and that such inquiry is industry standard. He said that there was no indication that his company had over-saturated the carpet. The technician that had worked on the carpet had been with him for about 8 months and would have trained with another technician for 2 weeks prior to going out on his own and have completed the 2 day course in New Brunswick and been tested and had training in the Defendant's shop as well.
- [8] Mr. Harmes said there were some wrinkles on the rug and that he worked on it and that he improved it by approximately 75% as the photos (Exhibit 7) show. He did acknowledge that it was buckled at first.
- [9] Mr. Harmes said that his company did nothing wrong.

Findings

- [10] I find that the carpet did get buckled at the perimeter following the Defendant's cleaning in March, 2004. However, as to whether that buckling occurred because of improper procedures on the Defendant's behalf, I am left unsure. There is no direct evidence that any particular process was not followed or that something was done improperly. The only evidence is that there was some buckling or some rippling at the edges of the carpet that followed the cleaning.
- [11] Mr. Harmes expressed his opinion that the backing was breaking down as a result of the animals urinating on it that this could have caused the rippling at the edges. Recognizing that Mr. Harmes has a vested interest I do observe nevertheless, that this is on the face of it a perfectly plausible explanation for the rippling at the edges. As well, clearly there were a number of stains as shown in Exhibit 10 and there was certainly evidence that the Claimants had at least one dog if not more at other times.

[12] In a civil case, the Claimant must prove his case on a balance of probabilities. In this case that means the Claimant has the burden to prove on a balance of probabilities that the Defendant company had improperly or negligently cleaned the carpet. Based on the evidence I find that the Claimant has failed to discharge that obligation. It follows that the claim is dismissed.

[13] I would add as well, that even had I found that the Defendant was liable, the question still remains as to what would the damages be. The photographic evidence contained in Exhibit 7 indicates a very minor amount of wrinkling in the edges. This supports Mr. Harmes suggestion that he had cured the problems by approximately 75%. The photographic evidence indicates to me that the rug is still quite usable. The slight rippling apparent in the photographs **might** reduce the value but in my view, it would be insignificant.

[14] The claim is dismissed. I will allow the Counter-Claim but, in the circumstances, I will limit it to the amount of the original invoice of \$233.45.

[15] The rug obviously remains the property of the Claimants and I expect that they will make arrangements directly with the Defendant to have it picked up. It should not be thought that the right to the possession of the carpet is tied to the payment of \$233.45.

Disposition

[16] It is hereby ordered that the Claim of the Claimants is dismissed.

[17] It is further ordered that the Defendant's Counter-Claim is allowed in the amount of \$233.45 and it is ordered that the Claimants pay to the Defendant the amount of \$233.45

DATED at Halifax, Nova Scotia, this day of February, 2006.

Michael J. O'Hara
Adjudicator

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