

1991
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

C.H. No.: 76113

I N T H E C O U N T Y C O U R T
O F D I S T R I C T N U M B E R O N E

BETWEEN:

SHEILA ANDREWS

APPELLANT

- AND -

JAMES ALLEN AND WENDY ALLEN

RESPONDENT

Derek E. Vallis, Esq., Counsel for the Appellant.
Norman B. Hill, Esq., Counsel for the Respondents.

1992, October 8th, Palmeto, C.J.C.C.: -
This is an appeal from a decision of Harold G. S. Adams,
Q.C., an adjudicator of the Small Claims Court of Nova
Scotia, bearing date the 18th day of September 1991. The
Appellant filed an application to State a Case on October
11th, 1991, appealing on the following grounds, namely:

(a) The decision of the learned
adjudicator was erroneous in point
of law; and,

(b) It constitutes a denial of
natural justice.

The Learned Adjudicator filed the Stated Case on November 25th, 1991.

A hearing on this appeal took place before me on April 9th, 1992 at which time the matter was remitted to the Learned Adjudicator for a re-statement and determination of special issues pursuant to Regulation 16(7) of the Regulations made pursuant to the Small Claims Court Act. This re-statement of the Stated Case and the determination of special issues was filed by the Learned Adjudicator on May 25th, 1992.

There is no need for me to set forth the facts herein as they are well stated in the Stated Case and re-statement thereof on file herein. On the ground of denial of natural justice I find no merit in this and, accordingly, this ground will be dismissed. This leaves the question as to whether there has been any error in law on the part of the Learned Adjudicator.

The action involved a water leak in the basement of a property sold by the Appellant to the Respondents, which manifested itself to the Respondents after the sale had been completed. The claim is for damages for repair of the basement wall and fixing the leak.

Among the many findings of fact found by the Adjudicator, and enumerated in the Stated Case, are the following important findings, namely;

1. The Appellant knew that she had a water problem in the basement of the property prior to the sale to the Respondents.

2. That the defect causing the water problem was a latent defect, that is, a defect which could not be discovered by a purchaser on an inspection of ordinary vigilance.

3. That this defect, and the water problem resulting therefrom, was not communicated by the Appellant to the Respondents prior to the sale, although the Appellant had mentioned a water problem to the Real Estate Agent prior to the sale but this had not been communicated to the Respondents.

4. That the Real Estate Agent

involved was the Agent of the Vendor,
the Appellant.

5. That the dwelling sold by the Appellant was appropriately 25 to 26 years old and the Appellant was the first original owner of the dwelling.

On an Appeal by way of Stated Case, it is not for this Court to interfere with findings of fact made by the Learned Adjudicator unless there is an error in law apparent from the Stated Case. This Court, again, cannot consider or go over the evidence presented before the Adjudicator, and accepted by him, in making his findings of fact.

In the face of the Stated Case I can find no error in law. Counsel for the Respondents submitted the doctrine of "Caveat Emptor" and submitted that the Learned Adjudicator erred in law in finding that there was a duty upon the Appellant to disclose these latent water problems to the Respondents. The Appellant further states that the Adjudicator erred in law in finding the defects were latent in nature, but it is clear that I cannot interfere with this finding.

Counsel for the Respondents referred to the case of Unrau and Unrau v. Gay (1983), 61 N.S.R. (2d) 256, which was the case considered by the Adjudicator as set out in his re-statement of the Stated Case. In Unrau, Clarke, J. (as he then was) referred to Halsbury's Laws of England (4th Ed.) Vol. 42, Para 29, at page 262 as follows:

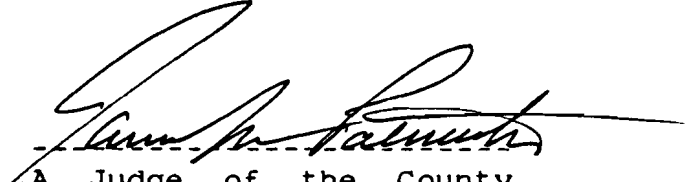
"However, any active concealment by the Vendor of defects which would otherwise be patent is treated as fraudulent, and the contract is voidable by the Purchaser if he has been deceived by it. Any conduct calculated to mislead a purchaser or lull his suspicions with regard to a defect known to the Vendor has the same effect."

In Unrau the Trial Division of the Supreme Court found liability for a defect which had been covered up by the Vendor, although without fraudulent intent, and which would otherwise have been voidable.

The Learned Adjudicator found there was a duty on the Appellant to disclose the defect, and by not disclosing, in effect lulled the Respondents into believing there was no problem. The fact that the Appellant had disclosed the problem to her Real Estate Agent prior to sale did not, in the opinion of the

Adjudicator, relieve her from making sure the Respondents were informed. With both of these conclusions I do not take issue and I find no error in law.

I will, accordingly, dismiss the Appeal herein and award costs to the Respondents in the amount of Fifty Dollars (\$50.00).



A Judge of the County
Court of District Number
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