

SUPREME COURT OF NOVA SCOTIA

Citation: Tingley v. Wellington Insurance Company, 2010 NSSC 465

Date: 2010/12/29

Docket: Hfx No. 115328

Registry: Halifax

Between:

Patricia M. Tingley, Kelli L. Smith, Todd A. Smith
and Margaret M. Burton

Plaintiffs

- and -

Wellington Insurance Company, a body corporate
and Larry D. Hay

Defendants

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Judge: The Honourable Justice A. David MacAdam

Heard: (119 days), in Halifax, Nova Scotia

Written Decision: December 29, 2010

Subject: Negligent misrepresentation; equitable fraud; credibility and fact-finding

Background: The plaintiffs claimed against their insurance company and an adjuster on account of the handling of an alleged incident of chemical contamination in a house occupied permanently by certain plaintiffs, and sporadically by another. The house was broken into, and a substance that was never definitively identified was apparently spread in the house. The plaintiffs alleged that the defendants later told them the house was safe to occupy. They alleged that they subsequently suffered from Multiple Chemical Sensitivities as a result of their exposure to a toxic substance in the house, and claimed against the defendants in negligent misrepresentation and equitable fraud. The defendants denied that the presence of any toxic substance had been established, and denied telling the plaintiffs that the house was safe. In the alternative, the defendants took the position that any such statement would have been reasonable and neither negligent nor fraudulent.

Reasoning: The plaintiffs were unable to establish that the defendants had made the statements alleged, that a toxic substance was spread in the house, or that any substance they encountered in the house had harmed them. While the evidence supported the conclusion that the plaintiffs had experienced various health problems, it did not support a causative link with their occupancy of the house after the break-in or with any substance they encountered there. The plaintiffs' medical witnesses were unaware of the plaintiffs' full medical histories, and their principal medical expert admitted on cross-examination that various aspects of his diagnoses would have been different had he been provided with more accurate medical histories. The defendants' principal medical expert did not believe that the plaintiffs suffered from Multiple Chemical Sensitivities. There were significant issues of credibility and reliability in relation to the plaintiffs' evidence.

The claim of negligent misrepresentation was not made out. While there was a duty of care owed to all of the plaintiffs, the evidence did not establish either that the statements alleged were made, or that any exposure to toxic substances caused their health problems. Had the other elements been established, however, reliance would have been found. The evidence did not make out the claim of equitable fraud, given the absence of evidence of dishonesty on the part of the defendants.

Result: The plaintiffs' claim was dismissed.

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