

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Yates v. T.E. Gordon Home Inspections Inc., 2006 NSSM 55

BETWEEN:

WILLIAM YATES

CLAIMANT

-and -

**T.E. GORDON HOME INSPECTIONS INC., a body corporate, and
CHARLENE LOIS BARRY**

DEFENDANTS

**HEARD: July 26, 2006 and September 13, 2006
Decision December 11, 2006**

Adjudicator: David TR Parker

Counsel: Luke A. Craggs represented the Claimant.
Kelly Shannon represented the Defendant Charlene Lois Barry
T.E. Gordon represented T.E. Gordon Home Inspections Inc.

DECISION and ORDER

This matter came before the Small Claims Court of Dartmouth and Province of Nova Scotia on the 26th day of July and the 13th day of September, A.D. 2006.

The claim is in the amount near the jurisdiction of this court and involves a "coldroom at the front of the house that was not revealed to the Claimant." The Claimant suggests there was negligent misrepresentation and collateral warranties made by the Defendant which makes the Defendant liable to the Claimant. The Claimant also argues that the Defendant Home Inspection Company is responsible for not indicating there is any mold or moisture in the basement and that it should have detected there was a coldroom.

The coldroom was not visible on inspection by the Defendant inspection company. The Claimant on cross examination by Mr. Gordon said "It took me almost a year to find, so I guess it was hidden."

The coldroom was under the front deck of the house and hidden by lattice work and all the evidence in this case points to the fact that without invasive inspection there was no way of knowing the coldroom existed by the inspector.

The Defendant was straight forward in her testimony to this Court. She said she purchased the home in 1981 and sold it in 2004. She lived in the house with her common law husband until he left in 2000 and also lived there with her son.

She said her husband noticed the coldroom and as she told him she was not interested in using it her husband sealed it over again as it was sealed off by the previous owners. This happened around 1985.

In 1993 the Defendant and her husband built a deck at the front of the house over top of the area where the coldroom existed. This was done to provide a porch to sit. She said approximately one year after purchasing the home there was water in the basement furnace room and her husband sprayed and sealed this area to rectify the problem. The basement was fixed up as a recreational room and the Defendant's son moved into the basement until 1993.

She said she forgot there was any coldroom there. She did keep a humidex/dehumidifier in the basement and there was a sump pump. She said she met the Claimant but no questions were asked about the dehumidifier.

There is no evidence that there is a mold problem or water problems with respect to the foundation or that there is a problem with respect to the house as a result of the coldroom that was sealed off. The question becomes was the Defendant responsible in law for not revealing its existence. Mr. Craggs, Counsel for the Claimant, argues to suggest she just forgot about this falls below the duty of care of a prospective purchaser.

The Vendor does not have to notify the Purchase about everything about a home. Certainly if there is a latent defect that the Vendor is aware, the purchaser should be notified or if there is a defect that the Vendor attempts to hide from the purchaser, the purchaser will have recourse against the Vendor. This is not the case here. Contrary to what is pleaded there was no evidence to indicate there were any structural problems with the property, unrepaired damage or leakage in the foundation.

The Claimant also has a problem with proving its costs associated with filling in the coldroom. On cross examination of the person who was involved in costing out the filling in of the coldroom the witness would not answer the questions and simply got off the witness stand.

The Claim of Negligent Misrepresentation has not been met, there is not collateral warranty or

contract and the coldroom was not visible to the inspector.

For all these reasons the claim against the Defendants is dismissed with no order as to costs.

Dated at Dartmouth, this 11 day of December, 2006.

David T.R. Parker
Small Claims Court Adjudicator