

- [2] At the conclusion of the hearing on September 15th, I dismissed the claim as against the Defendant vendors. On the evidence presented, I could see no claim against the vendors at all. It was not alleged that they had somehow misstated anything on the Property Condition Disclosure Statement. Rather, the most that was said against them was that they ought to have inserted some comment in respect of the skylight and the cracked window in the section of the Property Condition Disclosure Statement entitled “additional comments”. In effect, what was being asserted on behalf of the Claimant was that any and all potential deficiencies with a used home were to be included in the “additional comments” section of the Property Condition Disclosure Statement. With all respect, there is no basis in the existing law for such a broad proposition.
- [3] The claim against the Defendant vendors stands dismissed.
- [4] I turn to the claim against the Defendant home inspector. The same two items are in issue here - the skylight and the cracked window. The Claimant asserts that the Defendant Rickard failed to “advise the Claimant of the damage to the skylight and the broken window”.
- [5] Dealing first with the skylight, the evidence was that there was no leak from the skylight and there never was a leak during the three and a half or so years that the vendors owned the home. The evidence further indicated that the Defendant Rickard did in fact inspect the skylight and found it to be functioning properly. He noted that there was a small crack in it which he referred to as a “grazing” and that such did not affect the functionality.
- [6] No evidence of leaking or anything else to suggest that the skylight was not functioning properly was brought forward by the Claimant. Accordingly, it follows that that must be dismissed.
- [7] That leaves the issue of the window. The evidence was clear that one of the windows was cracked and that this was the case and had been the case for some time prior to closing.

Mr. Rickard acknowledged that he did not see this defect in the window but argued that such an item is not a “major” item and therefore he is not legally liable.

[8] In the case of *Gesner v. Ernst* (2007), 254 N.S.R. (2d) 284, Smith, A.C.J. states as follows:

[203] In the case of Brownjohn v. Ramsay, [2003] B.C.J. No. 43 Stansfield, A.C.J. (Prov. Ct.) gave, in my view, a very useful review of the tort of negligent misrepresentation as it relates to home inspectors. He stated at paragraphs 16-24:

*16 The point made repeatedly in the PTP contract, and mentioned consistently in the various cases to which I was referred - but most importantly, which simply accords with common sense - is that **there are limits on what one reasonably can expect from a relatively brief visual inspection undertaken by someone who has no right to interfere with (and by that I mean no right to dismantle, nor to effect any permanent change in) the property which one must remember is now owned by the person requesting the inspection. As well, as a matter of common sense one has to recognize that a service performed for a fee of \$240.00 cannot be expected to be exhaustive.***

*17 The broad purpose of securing a residential home inspection is to provide to a lay purchaser expert advice about any **substantial deficiencies in the property** which can be discerned upon a visual inspection, and which are of a type or magnitude that reasonably can be expected to have some bearing upon the purchaser’s decision-making regarding whether they wish to purchase the property at all, or whether there is some basis upon which they should negotiate a variation in price. Broadly speaking, it is a risk-assessment tool.*

...

*21 The home inspector in the context of the average residential home inspection is involved in an inherently risky business. The inspector invites reliance. If prospective home purchasers did not believe they could secure meaningful and reliable advice about the home they are considering purchasing, there would be no reason for them to retain the inspector. **The matters about which the inspector is asked to opine - for example, roofs, foundations, and other basic home systems - are of interest to the purchaser precisely because they are the aspects of the home which would give rise to the***

greatest financial exposure were they to be discovered to be defective after completion of the purchase. [Emphasis Supplied]

[9] I also refer to the actual inspection report dated October 18, 2007, and the first page thereof where it is stated:

*The purpose of the inspection is to identify **major existing problems** with the property **that would affect a typical buyer's purchasing decision.** Emphasis is placed on **major problems and expenses** although more minor problems may also be addressed. We strive to add significantly to your knowledge about the property.* [Emphasis Supplied]

[10] It seems to me that on the basis of the written document issued by an inspector as well as the existing case law, the liability of an inspector and in particular in this case, is for substantial or major existing problems. This is to be judged relative to the circumstances - the purchase of a home for some \$300,000.00. Viewed in this way, the issue of one broken window, does not constitute a "major" problem.

[11] While one would hope that an inspector would take note of any broken windows, that does not mean that the law holds the inspector to that standard. It is my conclusion that the law generally and, in this particular case, does not hold an inspector liable for a cracked or broken window.

[12] Accordingly, I dismiss that part of the claim as well.

[13] The claim against the Defendant Rickard is dismissed.

Order and Disposition

[14] The claim against all three Defendants stands dismissed without cost to any party.

DATED at Halifax, Nova Scotia, this 20th day of October, 2008.

Michael J. O'Hara
Adjudicator

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