

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Ramsey v. Sunnybrook Yacht Brokers, 2015 NSSM 63

Claim No: SCCH 443044

BETWEEN:

Name David Hazen Ramsay **Claimant**

Name MacPhee Yachts Limited c.o.b. as **Defendant**
“Sunnybrook Yacht Brokers”

Date of Hearing: October 22, 2015;

Date of Decision: November 20, 2015;

Editorial Notice: Phone numbers and addresses have been removed from this electronic version of the judgment.

David Ramsay appeared on his own behalf;

James Snair appeared on his own behalf and on behalf of the corporate Defendant;

DECISION

The Claimant, David Ramsay, purchased a sailboat from the Defendant, Sunnybrook Yacht Brokers in 2012. The boat was a 2013 Hunter 33 Sailboat built by Hunter Marine Corporation (“Hunter”) in Alachua, Florida. The purchase price was \$131,831. When Mr. Ramsay took delivery, he identified several deficiencies in the boat which he wanted rectified by the vendor. He dealt with seller throughout. While the vessel came with a manufacturer’s warranty, the Defendant alleges that that the manufacturer filed for Chapter 11 bankruptcy protection in the US, prior to the closing of the transaction. No certificate or other evidence acceptable to this Court has been tendered into evidence to establish this. The manufacturer and the Defendant have taken the position that their respective liabilities are nullified by a bankruptcy. This Court

has no jurisdiction to address issues of bankruptcy, particularly those originating in the United States. In any event, this matter concerns the liability of those parties in Nova Scotia.

At the beginning of this hearing, Mr. Snair advised the Court that the business name, “Sunnybrook Yacht Brokers” (“Sunnybrook”) is registered to the Defendant, MacPhee Yachts Limited (“MacPhee”). That is the name used on the contract between the parties. The Defendant also tendered into evidence a printout from the Registry of Joint Stock Companies confirming Sunnybrook is registered to MacPhee. Further, I do not find there was any contract with the Defendant, James Snair, in his personal capacity. I order the style of cause amended as set out in this decision. The claim against Mr. Snair in his personal capacity is dismissed without costs.

The Issues

Is a seller of goods in a consumer transaction liable to the purchaser for defects in quality of a sailboat?

If so, has the purchaser established liability in breach of contract or through these implied warranties?

The Evidence

David Ramsay testified that he purchased the sailboat from the Defendants in 2012. It was a 2013 “33 Hunter” sailboat. He provided details of the various deficiencies which he claims were never addressed or were not adequately repaired by the Defendant. Those issues have been set out specifically and addressed further in this decision where I have summarized my findings. He claims the repairs to the deficiencies total \$26,191.25 but seeks the maximum amount allowed under the *Small Claims Court Act*, namely \$25,000.

James Snair is the principal and sole director of MacPhee Yachts Limited. He testified that the sailboat was ordered through Hunter. The parties signed a new yacht purchase agreement dated May 30, 2012. A copy of this agreement was submitted into evidence. The sailboat came with a limited warranty, which was also tendered into evidence. The warranty purports to limit any manufacturing claims to one year after the date of purchase, except for the hull structure and bottom blister warranty which runs for five years. Page 3.5 of the warranty lists several items which are not covered by it. They include several items which are the subject of this litigation, including paints, sealants and adhesives, engines, engine parts, bilge pumps, and equipment not manufactured by Hunter. Mr. Snair submits that as a result of this warranty, Mr. Ramsay no longer has a claim, and therefore, the claim should be dismissed.

The Law and Findings

Mr. Snair testified that the price for the boat according to the contract signed between the parties on June 24, 2013 was \$131,831 before taxes. He attempted to discredit Mr. Ramsay’s

understanding of the transaction under cross examination. It is not difficult to see where the confusion took place. The initial documentation from Hunter showed the purchase price at \$144,831 less a deposit of \$13,000 for a balance of \$131, 831 plus GST of \$7242. The purchase contract charged \$131,831 and gave Mr. Ramsay a credit of \$13,000 for the deposit.

Mr. Ramsay and his spouse purchased the boat in their own name and have used it throughout their ownership solely for the purposes of leisure. They do not use it for charter or any other commercial purposes. I find this was a consumer transaction. Accordingly, the provisions of the *Consumer Protection Act* apply. I have quoted only those provisions that apply to this matter.

Section 26(3) of the Act provides as follows:

“26(3) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

...(d) where there is a contract for the sale of goods by description, there is a condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description;

(e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, a condition that the goods shall be reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(f) where goods are bought by description from a seller who deals in goods of that description, whether he be the manufacturer or not, a condition that the goods shall be of merchantable quality, provided that, if the purchaser has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;...

...(h) a condition that the goods are of merchantable quality, except for such defects as are described;...

...(j) a condition that the goods shall be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.”

The language at the beginning of the section is clear, these warranties are in effect notwithstanding any provisions in the contract to the contrary. Further, one must consider s. 28 of the *Act*:

28 (1) Any written term or acknowledgment, whether part of a contract of sale or not, that purports to negative or vary any of the conditions or warranties set out in this Act or states that the provisions of this Act or the regulations do not apply or that a benefit or remedy under this Act or the regulations is not available, or that in any way limits or abrogates, or in effect limits, modifies, or abrogates, a benefit or remedy under this Act or the regulations, or that in any way limits, modifies or abrogates any liability of the seller including any limitation, modification or abrogation of damages for breach of any of the conditions or warranties set out in this Act or the regulations, is void.

In other words, it does not matter what is provided in the language of a limited warranty of a manufacturer in any consumer transaction. A seller may still be found liable under the provisions of the *Consumer Protection Act* if the warranties are breached.

In this transaction, there were three parties, the buyer, Mr. Ramsay, the seller, MacPhee, and the manufacturer, Hunter. Nothing in these sections of the Act address the issues between a manufacturer and a buyer. That is a matter of negligence law. However, this matter involves the seller (MacPhee) and a buyer (Ramsay) in a consumer transaction. The Act and these warranties apply.

The second issue is if the seller, David Ramsay, has established with evidence on the balance of probabilities any breaches of these warranties. I have carefully reviewed the evidence provided by Mr. Ramsay, most notably photographs and hard copies of e-mails between the parties. He provided a quote to repair the various deficiencies from Larlow Marine Interiors Limited. There are no descriptions in the quote. Nobody appeared on behalf of that company. Mr. Snair provided no evidence to rebut the amounts quoted. I find that there was liability in very limited circumstances, mostly due to Mr. Snair's unfulfilled promises to repair the items. I find there is not sufficient evidence to have proven liability for most of the deficiencies claimed by Mr. Ramsay.

Below are my findings with respect to each item:

Claims Allowed:

Tachometer and other instruments

In his evidence, Mr. Ramsay provided a photograph of the instrument panel showing the tachometer and other instruments. When the boat was first purchased, he experienced considerable moisture inside the casings of the instruments. The lights on the panel no longer work. His e-mails show that the work required was not performed to his satisfaction. Furthermore, there are e-mails from Mr. Snair indicating that the replacement instruments are at its location but they have never been installed. I find this to be an acknowledgement by the Defendant that the instrument panel should be replaced. The Claimant has provided an estimate of the cost to repair and replace the panel. I allow the estimate of \$625 plus HST for the part but I allow only part of the labour cost, namely \$600, for a total of \$1225 plus HST or \$1408.75

Fresh Water Leak/Shower

Mr. Ramsay has provided a photograph of a damaged or cross threaded shower head. He expressed to Mr. Snair in an e-mail that this has caused significant wetness and leakage on the vessel. Mr. Snair replied that he would repair and replace it, or at least "raise it with Hunter". The shower has not been repaired or replaced. I accept Mr. Ramsay's evidence that the fresh water leak was the result of a cross threaded connection. Accordingly, he has acknowledged the

problem. I find a shower on a sailboat should last longer than a year, and, consequently, it should be replaced. I have an estimate in evidence of \$240 for parts and \$390 labour to repair and reinstall the shower. No evidence was provided of the extent of the work required, particularly by the individual who provided the quote. As with other portions of the estimate, I have concerns with the amount claimed under this heading. I require more evidence to support a \$630 claim to fix a shower head. There is no evidence of leaky pipes or other repairs. The claim appears to be limited to the showerhead. I reduce this amount to \$300 for both parts and labour and inclusive of HST.

Salt Water Leak in Boat

There appears to be a leak in the vessel referenced in the e-mails which is acknowledged by both parties. There has been caulking performed which has improved the situation but not completely solved the problem. The estimate provides for materials and labour of \$550 and \$2080, respectively. There is no description as to what may be required in this instance. The Claimant has satisfied me that a leak exists requiring repair. Consequently, I order a flat fee of \$1000 to make that repair.

Cabin Cushions

Mr. Ramsay claims that the cabin cushions were soaked and damaged to the point that they require replacement due to a salt water leak. He claims \$650 for replacement cushions and \$130 and labour to install them. I find that leaks did cause the cushions to be soaked. Furthermore, in Mr. Snair's e-mails, he acknowledged that he would order new cushions. This acknowledgment is key to my finding of liability on this item. Otherwise, I would not have attributed the cause to leaks which were the responsibility of the Defendants. I allow a total of \$780 plus HST or \$897.00.

Claims Declined

I find the Claimant has not established liability for the following deficiencies, and, therefore, I decline to award any compensation:

Delaminating items

There are several wooden items on the vessel which have been delaminated, i.e. faded and possibly cracking. These items may be found as tabs 5-8 and 19. These photographs were taken in 2015. Mr. Ramsay testified that he has sailed the vessel many times since its purchase and has left it outside in the sun. Mr. Ramsay has not provided sufficient evidence to demonstrate that this was in fact a design flaw or that it relates in any way to a breach of any of the implied warranties under the Act. I disallow all four of these items.

Tabs 3 and 18

These matters were not raised prior to the hearing. The Defendant had no opportunity to either attempt to repair them or address them in his submissions to the Court. Therefore, as a matter of fairness, I cannot permit their inclusion in evidence. Even if they had been considered, I am not satisfied that the Claimant has proven that they were the result of a breach of warranty or contract.

Bubble in Finish

This item is shown under Claimant's Tab 9. Mr. Ramsay alleges that this damage was the result of a design flaw. However, in the foreground of the photograph is a metal chain at approximately the same height and whose links are roughly the same size as the damage. I find on the balance of probabilities that the damage was the result of contact with the free hanging chain.

Tabs 10, 14, 20/21, 23

These items would have been in existence and plainly visible at the time of the purchase of the boat. They were either not raised or received only fleeting reference in the e-mail correspondence between the parties. I find several of these, such as item 23, minimal at best. For all of these reasons, I disallow any compensation for these items as they were patent and therefore, specifically excluded by the provisions of the Act.

Bilge pump

Mr. Snair testified that the problems with the bilge pump have been corrected. He has provided invoices to that effect. I find they had been rectified and order no further compensation for this amount.

Tabs 13 and 16

These items relate to specific leaks and deficiencies in the cabin of the boat. I have looked at the photographs and find no evidence of any such damage at all. I am not satisfied they are related to a breach of warranty and disallow these claims.

Grommets

As with the items above, I find the problems with the grommets have not been proven to be the result of a breach of warranty.

Damages

In summary, I find the Defendant, MacPhee, liable under the *Consumer Protection Act* for the following deficiencies:

Instrument panel lights and deficiencies	\$1408.75
Replace and install outdoor shower	\$ 300.00
Complete repair of salt water leak on hold	\$1000.00
Cabin cushions	<u>\$ 897.00</u>
Total Damages	\$3605.75

Costs

In this matter, I have found the Defendant liable to the Claimant for a significantly lower amount than was originally claimed. Accordingly, I am prepared to award Mr. Ramsay only a portion of his costs. I award him \$99.75 in costs, which is filing fee for a claim of less than \$5000.

Summary

For the foregoing reasons, I find the Defendant, MacPhee, liable to the Claimant, David Ramsay, as follows:

Damages Awarded	\$3605.75
Costs	<u>\$ 99.75</u>
Total Judgment	\$3705.50

Order accordingly.

Dated at Halifax, NS,
on November 20, 2015;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)