

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *St. Croix v. Thermo Dynamics Ltd.*, 2021 NSSM 60

Date: 2021-11-08
Docket: SCCH 492956
Registry: Halifax

Between:

Malcolm St. Croix

Claimant

- and -

Thermo Dynamics Ltd.

Defendant

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: November 4, 2021, in Halifax, Nova Scotia via zoom

Appearances: For the Claimant, Malcolm St. Croix

For the Defendant, Peter Allen, CEO

BY THE COURT:

[1] The Claimant is claiming the very specific amount of \$8,938.57 from the Defendant who, he alleges, supplied him with faulty solar equipment.

[2] Back in 2014, Halifax Regional Municipality (“HRM”) was promoting something called the Solar City Program, which was intended to facilitate homeowners reducing their power usage by installing subsidized solar hot water heating equipment. The program was partly funded by HRM and by the Nova Scotia Department of Energy.

[3] To qualify for the program a home had to pass a solar feasibility assessment performed by experts from the program. If the home was deemed suitable, then the homeowner had the option to proceed. Approximately 500 homeowners in Halifax took part in the program in that time frame. (The program continues to this day, though it appears to offer more options than were offered in 2014.)

[4] A feasibility report was completed on April 23, 2014, for the Claimant's home on Portland Estates Blvd., in Dartmouth. Based on specific measurements for that home it was estimated that the system could provide 55% of their domestic hot water needs. It also projected dollar savings into the future.

[5] The offer from HRM had a full purchase as well as a deferred payment option, the latter with payments of \$961.70 per year over a ten-year period (including 3.5% interest). The Claimant opted to pay off the system over ten years. He says he has two payments left to make.

[6] The Solar City program at that time exclusively used equipment manufactured by the Defendant, a local company, Thermo Dynamics Ltd. A separate company called Dr. Solar acted as the installer of the equipment.

[7] The Claimant and his spouse decided to go ahead with the proposal and signed a contract with HRM. Under that contract, the customer was to be provided with a two-year warranty from Thermo Dynamics Ltd.

[8] There is nothing to indicate that the Claimant had any contractual relationship with Thermo Dynamics Ltd., other than this two-year warranty. His contract was with HRM. This is significant when I come to consider whether the Claimant has any cause of action against Thermo Dynamics Ltd. for what he believes is substandard performance of the system.

[9] The system was installed on July 30, 2014.

[10] It is important to note that the system in question does not generate electricity, except to the very limited extent needed for the system's own internal operation. It is a "solar hot water" rather than a "solar electric" system. The idea is that it collects sunlight on roof-mounted solar panels, which preheat cold water circulating through the panels, which water is then fed into the home's hot water tank. As a result of the pre-heating, it requires less electricity for the water to reach domestic hot water temperature. The system generates more heat during the

summer months. During the winter the amount of heat generated can be minimal. On sunny days it will generate more heat than on cloudy days. But the idea is that it saves electricity measured over the course of a year.

[11] The system is equipped with sensors and software that allow its performance to be carefully measured. (The monitoring function seems not to be working currently, which is neither here nor there for my purposes.)

[12] It is unclear from the evidence whether the Claimant ever fully understood that he was not getting a solar system that could generate electricity, i.e., a photo voltaic system that is connected to the electrical system and sells power back to the energy grid. He appears now to believe that he was sold inferior technology. Mr. Allen on behalf of Thermo Dynamics Ltd. takes exception to that characterization, pointing out that this is still current technology that is simply different from photo voltaic.

[13] The evidence shows that after less than 6 months the Claimant started to have doubts about the suitability and efficacy of the system. He seemed particularly troubled by the fact that with the advent of cold weather there was not much gain. He also stated that his family did not use a lot of hot water during the summer months when the system was producing more hot water, which meant that some of that heat was wasted.

[14] The Claimant is convinced that his home was not an ideal candidate for this system, because it is 59° off south, the roof is only pitched at an 18° angle (rather than the optimal 45°) and there are a number of trees that partially shade his house.

[15] The Claimant had his system evaluated by another solar company who, he says, confirmed that his house was not a good candidate.

[16] The Claimant says that someone formerly with the Solar City Program at HRM promised to have the system removed, but that never happened. He also says that HRM told him he should pursue his complaint with Thermo Dynamics Ltd. rather than HRM which (that person said) was only acting in the capacity as financier.

[17] The Claimant testified that at one point two employees of Thermo Dynamics Ltd. showed up at his home intending to remove the equipment, but he sent them away because the time was inconvenient. They never returned. Mr. Allen testified

that, to his knowledge, no one from his company ever agreed to, or attempted to remove the equipment and that he never approved of such action. It will remain a mystery as to what actually happened that day.

[18] There things stood until almost five years later when the Claimant commenced this claim in early 2020.

[19] I have struggled to find any legal basis for this claim to succeed. And there are several clear reasons why it should not.

[20] The evidence before me shows that some properties present richer opportunities for cost saving than do others. The St. Croix property was less than ideal, but according to the parameters set by HRM it fell within the acceptable range. Perhaps the Claimant did not understand that his property was not ideal. But the solar experts working for HRM determined that it was still worth doing, and there is no evidence that anyone misled the Claimant.

[21] And there is nothing to indicate that Thermo Dynamics Ltd. made the determination that this property would qualify. Thermo Dynamics Ltd. supplied the equipment and a two-year warranty. Although I did not have that warranty before me, it is reasonable to assume that it applied to cover situations where because of some defect the system was not performing as expected. There is no evidence that the system has failed to perform as expected. It has only failed to meet the Claimant's expectations or aspirations.

[22] More fatal to the Claimant's case are two facts:

- a. The Claimant's contract was with HRM and not with ThermoDynamics Ltd.
- b. The two-year limitation period for civil actions expired sometime nolater than 2017.

[23] It is a fundamental legal principle that to hold someone responsible in a lawsuit there must be a legal relationship or legal duty that can be said to have been breached. On the facts here, the Claimant signed his contract with HRM. Although Thermo Dynamics Ltd. was the supplier of equipment, it did not enter into any contract with the homeowner. Thermo Dynamics Ltd. likely had its own contractual arrangements with HRM, but that does not provide any basis for the Claimant to sue Thermo Dynamics Ltd. In legal parlance, there is no privity of

contract between the parties. They are “strangers” in the legal sense.

[24] The law does allow people to sue “strangers” in some situations that bring them into contact, namely in negligence actions (e.g., a car accident) where the claim is based on a breach of a “duty of care.” Here there is no factual basis to hold that Thermo Dynamics Ltd. owed any general duty of care that extended to the Claimant. Nor is there any evidence that it misrepresented the performance or any characteristics of its systems. It simply supplied equipment at the direction of HRM that, in turn, was installed by Dr. Solar.

[25] As such, I am satisfied that there is no viable legal basis for the claim against Thermo Dynamics Ltd., and the claim would have to be dismissed on that basis alone.

[26] Even if the Claimant could make out a viable legal case, the limitation period is an insurmountable obstacle. The *Limitation of Actions Act* says:

General rules

8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

- (a) two years from the day on which the claim is discovered; and
- (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an actor or omission;
- (c) that the act or omission was that of the defendant; and
- (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

[27] It is clear that the Claimant believed he had a claim to have his system removed (and a refund given) by early 2015. Nothing new about the system came to light in the five years between then and when the claim was filed. As such, it would be statute-barred. It would have to be dismissed on that ground alone.

[28] The claim also ignores the fact that for seven plus years the system has been working and saving the Claimant a certain amount of electricity, though maybe not as much as he had hoped. Even if there were a viable cause of action, the Claimant would have to account for the benefits that he has enjoyed.

ORDER

[29] In conclusion, for all of the foregoing reasons the claim is dismissed.

Eric K. Slone, adjudicator