

[3] The Defendants raised several issues in its defence. I will not review each of them as the one I will mention is, in my view, determinative.

[4] The agreement signed by the Claimants contains the following provision:

“Notice of Claims - You understand and agree that any claim(s) or complaint(s) arising out of or related to any alleged act or omission of AmeriSpec in connection with the Services shall be reported to us, in writing, within ten (10) business days of discovery. Unless there is an emergency condition, you agree to allow us a reasonable period of time to investigate the claim(s) or complaint(s) by, among other things, re-inspection before you, or anyone acting on your behalf, repairs, replaces, alters or modifies the system or component that is the subject matter of the claim. You understand and agree that any failure to timely notify us and allow adequate time to investigate as stated above shall constitute a complete bar and waiver of any and all claims you may have against us related to the alleged act or omission unless otherwise prohibited by law.” (Bold in original)

[5] The evidence shows that the report regarding the vermiculite insulation was contained in a letter dated April 26, 2005, from Maritime Testing to the Claimant Stephen Wells. Unless there was a “emergency condition” (which I will comment on further below) the Claimants were therefore required to give notice of their complaint within ten days of April 26, 2005. The fact is they did not advise the Defendants of the complaint until January 2006, but meanwhile took steps in June 2005 to remedy the perceived problem.

[6] The clause quoted above requires that notice be given to the Defendant company to allow them a reasonable period of time to investigate the claim and potentially remedy it. This was not done. Therefore, I think the wording is very clear that by not doing so that “shall constitute a complete bar and waiver of any and all claims you may have against us...”.

[7] This contract was signed by the Claimant and there is no reason in law why it ought not to apply. As is often stated, a person is taken at law to agree to all provisions in the contract that they have signed.

[8] I would also observe that it is my conclusion that this provision in the context would also apply to the authorized agents and employees of AmiSpec Home Inspection Services, which would include the other Defendant here, Darren Smith.

[9] As noted above, there is an exception for compliance with this provision if it is an emergency situation. The evidence did not satisfy me that this was an emergency situation. The Claimants plead in paragraph 10 that the Claimants viewed the removal of vermiculite insulation as an emergency condition before their child was born in July 2005. I note however, that the Claimants did not have the insulation removed until June 22, 2005, nearly two months after the report of April 26, 2005. By their own actions, it seems to me that the Claimants have demonstrated that they did not treat this as an emergency situation that had to be dealt with immediately. Accordingly, I find that the clause does apply and the claim should be dismissed.

[10] For the above reasons it is ordered that the claim herein is dismissed.

DATED at Halifax, Nova Scotia, this day of September, 2006.

Michael J. O'Hara
Adjudicator

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