

No. 22203
Nanaimo Registry



IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
SMALL CLAIMS COURT

BETWEEN

SUSAN A. CLAYTON and BRIAN W. CLAYTON

CLAIMANTS,

AND

GORDON HUBLEY and SHARRON HUBLEY,
ESTHER M. PETERS, LORI OHS, RICHARD DALE WILLIAMS
NRS BLOCK BROS. REALTY, REGIONAL DISTRICT OF
NANAIMO and IRVIN JOHNSON

DEFENDANTS.

JUDGEMENT

This is an action brought by the Claimants against the Defendants individually, personally and in their representative capacities. It is difficult to ascertain from the pleadings, and this is not said by way of criticism, what the Claimants seek as a remedy, but as their claim is limited to the jurisdiction of this court, the assumption must be that the Claimants are seeking damages.

As damages are sought in compensation for representations made or information withheld and there was no reference to fraudulence in either the pleadings of or the

evidence of the Claimants herein, who were represented by Mrs. Clayton only, I must assume that the action is based on innocent misrepresentation or non-disclosure.

Firstly, I will commence with the Defendant, Irvin Johnson, the owner of the subject property bought by the Claimants, who owned the said property some 16 years ago. I find that he was the builder of the residence but owed no duty to the Claimant. While perhaps negligent years gone by in not obtaining an occupancy permit, I find that this caused no damages to the Claimants and dismiss the action against him.

As to the Defendant, the Nanaimo Regional District, I find that, likewise, nothing was done by them to cause the Defendants any loss and the fact that no occupancy permit was issued 10, those years ago, was that it was not requested by the owner. I find the evidence to show that this was not an unusual happenstance at that time and had no reflection on the manner in which the home was built. I dismiss the action against this Defendant.

I believe it was conceded that Mr. Williams' involvement in the transaction had no relationship to the Claimants herein and that the action, which probably should never been commenced against him, is dismissed.

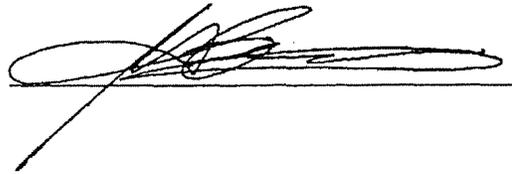
As to the real estate agents and the real estate company Defendants herein, I have heard all the evidence and I have been unable to find anything that was done by them that was not highly professional and in the best interests of the Claimants herein. The Claimants, in their pleadings, say that this was represented as a "well-built, well-maintained home in an area that required building inspections". I do not believe such requirements were stipulated by the Claimants, nor represented by the Defendants, but I do find that this 16 year old home meets those requirements nevertheless. As to the fact that permits were not obtained and provided to the Claimants by the Defendants, or any of them, I find that such requests were never made by the Claimants and I believe the evidence of Mr. Wickett, the representative of NRS Block Bros. Realty, that the practice of the trade in the real estate industry was not to provide such permits in any event. This being the case, I dismiss the action against Esther M. Peters, Lori Ohs and NRS Block Bros. Realty.

This leaves the Defendants Gordon and Sharon Hubley, the Vendors of the property. I heard their uncontradicted evidence, which I believe, that they listed the property for sale at a reasonable price, they made disclosure of the fact that renovations had been done and, in fact, were unfinished

and they gave the Claimants herein ample opportunity to inspect the premises. These opportunities were taken by the Claimants both in the presence of the owners and in their absence on request. It is difficult to imagine how the owners could have been more open in their dealing. I again find that Gordon and Sharon Hubley did nothing which would cause this court to award damages against them and the action herein against them is dismissed.

As there is no one who is a Defendant in this action that I find liable to the Claimants, I dismiss all actions with costs if any Defendant has costs which are allowable.

By the Court

A handwritten signature in black ink, appearing to be 'J. B. ...', written over a horizontal line.

DATED this 15th day of July, 1993