

## COURT OF QUEBEC

«Small Claims Division»

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF HULL  
TOWN OF GATINEAU  
Civil Division

No: 550-32-018297-108

DATE: January 24<sup>th</sup>, 2012

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**BY THE HONOURABLE ROSEMARIE MILLAR, J.C.Q.**

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**Lee Wade**

[...], La Pêche, (Québec) [...]  
and

**Sharon Smith,**

[...], La Pêche, (Québec) [...]  
Plaintiffs

v.

**Denis Descarie,**

[...], La Pêche, (Québec) [...]  
Defendant

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### JUDGMENT

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[1] The plaintiffs, Lee Wade and Sharon Smith, claim from the defendant, Denis Descarie, the amount of 7 000\$ for a latent defect discovered after buying a property from the defendant.

[2] They complain about the hardwood flooring's incorrect installation in the property.

[3] On May 1<sup>st</sup>, 2008, the plaintiffs purchased and took possession of the defendant's property located at [...], in La Pêche.

[4] This property, purchased for the price of 245 000\$, was new and built by the defendant.

[5] At the end of June 2008, the plaintiffs noticed that the hardwood flooring, installed by the defendant a week before the possession date, was lifting, cupping and cracking.

[6] The plaintiffs spoke with the defendant who told them to contact Home Depot, supplier of the hardwood flooring.

[7] On July 2008, Mr. Wade called Home Depot and, at the request of a Home Depot's manager, an inspection was performed in August 2008 by a representative of Goodfellow, manufacturer of the hardwood flooring.

[8] On September 5<sup>th</sup>, 2008, a report was issued to Home Depot by the Goodfellow's representative (Exhibit P-4).

[9] This report was sent by Home Depot to the plaintiffs.

[10] In the report, the Goodfellow's representative observed no humidity control, high humidity in the home and lots of cupping.

[11] The Goodfellow's representative also concluded in his report that humidity had to be control quickly at 45%, that his observations were to the effect that this was not a manufacturing defect and that the floor should never be installed that fast after the foundation was done.

[12] On October 17<sup>th</sup>, 2008, the plaintiffs transmitted the report to Mr. Descarie (Exhibit P-5).

[13] On October 2008, Mr. Descarie sent a contractor to the property to remove a section of the floor from 2 of the bedrooms and a strip to stop the damages caused to the cabinets.

[14] Between October 2008 and April 2009, Mr. Wade had many conversations with Mr. Descarie trying to resolve the problem without success.

[15] On April 21<sup>st</sup>, 2009, a mediatory meeting was arranged with Mr. Descarie and the plaintiffs in the office of Mrs. Geneviève Parent, notary, where Mrs. Marie-Josée Brunelle, a real estate broker, was also present.

[16] According to Mr. Wade, at this occasion, Mr. Descarie verbally agreed to supply 1 400 square feet of standard quality hardwood floor if Mr. Wade would removed the original floor and install the new one at his expense.

[17] Mr. Descarie did not supply the new hardwood floor.

[18] On September 15<sup>th</sup>, 2009, Mr. Wade sent Mr. Descarie a letter of demand seeking an amount of 7 000\$ to replace the 1 400 square feet of hardwood floor (Exhibit P-1).

[19] On January 21<sup>st</sup>, 2010, Mr. Wade filed an action at the Small Claims division of this Court.

[20] At the hearing, Mr. Wade filed a letter dated November 2<sup>nd</sup>, 2009, signed by Mrs. Parent, where she confirms the meeting at her office and where she states:

*«At that meeting, the vendor agreed to pay for 1 400 square feet of hard woodfloor of standard quality and the purchaser agreed to proceed with the installation at his expenses.»*

[21] Mr. Wade presented no evidence to establish the cause of the defect, except the report filed as Exhibit P-4 which the Tribunal ruled was hearsay but was admitted into evidence solely to explain the facts' chronology.

[22] For his defence, Mr. Descarie refers to the deed of sale (Exhibit D-7) where the plaintiffs's obligations are to *«take the immovable property in its present state, declaring to have visited and examined same to his satisfaction»*.

[23] Mr. Descarie states that the flooring was installed according to the manufacturer guidelines in April 2008 a few weeks before the possession date but he presented no evidence on that matter except for the report ruled as hearsay by the Tribunal.

[24] Mr. Descarie's opinion is that the defects in the wood floor were caused by too much humidity in the house but, still, presented no evidence on that matter except for the report.

[25] Mr. Descarie denies having agreed at the April 21<sup>st</sup> 2009's meeting agreed to buy 1 400 square feet of hardwood flooring.

[26] According to Mr. Descarie, at the meeting, in good faith, he proposed to Mr. Wade to install new flooring that Mr. Wade would purchase if he arranged to remove the current flooring: Mr. Wade refused this proposition arguing that the defendant did not know how to install hardwood flooring.

[27] According to Mr. Descarie, no agreement was reached at the meeting.

[28] Mrs. Parent and Mrs. Brunelle were called as witnesses for the defendant.

[29] Mrs. Parent does not remember exactly what was said at the meeting.

[30] In November 2009, asked by Mr. Wade to confirm what had been said at the meeting, Mrs. Parent wrote a letter stating what she remembered at that time.

[31] According to Mrs. Parent, if she wrote that letter it's because at the time the letter was written, she remembered what is said in her letter.

[32] Mrs. Brunelle, which at the time was real estate broker for both parties, remembers the discussion about the wood floor but, according to her memory, no agreement was reached on the fact Mr. Descarie would buy wood floor.

[33] According to Mrs. Brunelle, Mr. Wade would remove the wood floor, would buy new wood floor, that Mr. Descarie would install but stated that she wasn't certain enough about who would pay for the wood.

## **ANALYSIS**

### **Latent defect**

[34] Sections 1726 and 1728 of the «*Civil Code of Quebec*» state:

*«Art.1726. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.*

*The seller is not bound, however, to warrant against any latent defect known to the buyer or any apparent defect: an apparent defect is a defect that can be perceived by a prudent and diligent buyer without any need of expert assistance.*

*Art.1728. If the seller was aware or could not have been unaware of the latent defect, he is bound not only to restore the price, but to pay all damages suffered by the buyer.»*

[35] To succeed in a claim for latent defect, the buyer needs to prove that the defect was harmful, serious, not apparent, that the latent defect existed before the sale and was unknown to the buyer.

[36] No expert evidence was presented on the matter.

[37] The Goodfellow's report contains written opinion on the presence and cause of a defect in the hard wood floor but, as ruled at the hearing, written testimony and hearsay are not admissible evidence.

[38] Nevertheless, the defect in the hard wood floor described by Mr. Wade is not contested by Mr. Descarie.

[39] For these reasons, the Tribunal concludes that there was a defect in the wood that is harmful and serious.

[40] Was the defect apparent?

[41] The evidence shows that Mr. Wade proceeded with an home inspection before buying the property: nothing was detected.

[42] The defect was not apparent.

[43] Was the defect present before the sale and unknown by the buyer?

[44] To answer this question, the Tribunal has to determine the cause of the defect.

[45] There is no admissible evidence as to the cause of the lifting, cupping and cracking of the hardwood floor.

[46] Is it because the floor was not installed according to the rules of art?

[47] Mr. Wade presented no evidence to demonstrate that the hardwood flooring was not installed according to the rules of art or was installed too early after the completion of the foundation.

[48] Is it because the property was too humid?

[49] No admissible evidence was presented by Mr. Descarie to establish that the defect is caused by high humidity in the property.

[50] Being the plaintiffs, Mr. Wade and Mrs. Smith have the onus to demonstrate that the hardwood flooring had a defect present at the time of the sale.

[51] No evidence was presented as to the presence of a defect at the time of the sale.

[52] In conclusion, the evidence does not show the existence of a latent defect according to the *Civil Code of Quebec*.

### ***Verbal agreement***

[53] Even if there is no conclusion of a latent defect, is there an agreement, a contract between the parties?

[54] Mr. Descarie denies having verbally agreed to pay for new wood.

[55] Mrs. Parent has no actual memory of an agreement but refers to a letter she wrote in 2009 when, she says, she should have memory of the said agreement since she wrote the letter.

[56] Mrs. Brunelle does not remember an agreement that Mr. Descarie was responsible to pay the wood.

[57] In these circumstances, the Tribunal concludes there was no such agreement between the parties.

[58] The Tribunal dismissed the reclamation.

**FOR THESE REASONS, THE COURT:**

**DISMISSES** the action;

Without costs.

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**ROSEMARIE MILLAR, J.C.Q.**

Date of hearing: December 5<sup>th</sup>, 2011