

**COURT OF QUEBEC**  
Small Claims Division

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF BEAUHARNOIS  
LOCALITY OF VAUDREUIL-DORION  
Civil Division  
No: 760-32-014981-122

DATE: The 11<sup>th</sup> day of September 2013

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**IN THE PRESENCE OF: THE HONOURABLE CÉLINE GERVAIS, J.Q.C.**

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**STEVEN SPIDELL and BRIAN CHIASSON**  
Plaintiffs - cross defendants

v.

**DAVID DE BRUCE and ROOM SERVICE INTERIORS LTD**  
Defendants - cross Plaintiffs

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**JUDGMENT**

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[1] This is a claim for a balance due on the sale contract of a trailer and its accessories, for \$ 4000. The purchaser files a cross-demand, alleging the presence of latent defects in the trailer, and claiming \$ 7000 for the cost of repairs.

**THE FACTS:**

[2] On August 24, 2011, Steven Spidell and Brian Chiasson sell to Room Service Interiors Ltd a trailer, attached cabin, attached screened porch, a hot tub, a storage shed, a plastic storage bin, as well as the content of the trailer, cabin, porch, and bin. The trailer was located at Camping Plein Bois in Ste-Marthe. The purchase price was

\$ 10 000, of which \$ 6000 was paid upon signature, and \$ 4000 having to be paid no later than April 1<sup>st</sup>, 2012.

[3] As they did not receive said amount of \$ 4000, Mr. Spidell and Chiasson have sued David De Bruce. When the Court noticed that the sale agreement was made with Room Service Interiors Ltd, it suggested an amendment to add Room Service Interiors Ltd as defendant, which was accepted by all parties.

[4] Three days later, a second contract, entitled Agreement of Purchase and Sale, was signed by Mr. Spidell and Chiasson and Room Service Interiors Ltd, which second contract presents a few differences with the first one.

[5] This second contract was provided to Mr. Chiasson and Spidell by the direction of Camping Plein Bois, who suggested to them that this agreement should be signed instead. Both the buyer and the seller decided that they would not reveal the sale price in this second contract. This agreement though contains a limitation of liability clause, under which the buyer *"declines to take any action, present or future, against the seller for whatever reason, even one based on a latent defect not known to the seller."*

[6] In his defense, Mr. De Bruce alleges that he should not pay the balance, because of numerous defects that were found in the trailer. He insists on the fact that a turnkey property was a priority for him, as he was running on a tight budget. In particular, the furnace does not function well, the shower, toilet and hot tank leak, which cause the floor to be rotten. The electrical installation is not safe, and the fridge is not functioning at all.

### **ANALYSIS AND DECISION:**

[7] The first question to be decided is the identity of the defendant. In the first contract, it is clearly stated that Room Service Interiors Ltd has purchased the trailer and all accessories. Under Mr. De Bruce's signature are the following: *"purchaser: David De Bruce, representing Room Service Interiors Ltd."*

[8] On the second contract, the name of Room Service Interiors Ltd was also added.

[9] There is no choice but to acknowledge the fact that the sale of the trailer and all of its accessories intervened between Mr. Spidell and Chiasson and Room Service Interiors Ltd, and not with Mr. De Bruce personally. Nowhere in the first document, entitled Bill of Sale of August 24, 2011, do we find any mention that Mr. De Bruce personally obliges himself to pay the sale price; only Room Service Interiors Ltd has undertaken that obligation.

[10] The second question is to know which one of the two sale contracts shall be considered binding between the parties. The first contract shall be considered as being the real contract. This Court still does not understand after the audition why Camping

Plein Bois decided to recommend to Mr. Spidell and Chiasson, after a first valid contract has been signed, to sign a second one. There is no reason why Camping Plein Bois should protect its clients that are selling a trailer rather than the ones who are buying.

[11] A limitation of liability clause has to be agreed upon between the parties, and with such a way of proceeding, Mr. Spidell and Chiasson have not proven that Room Service Interiors Ltd has agreed to such a clause.

[12] As for the balance, it is clearly due, as the second payment was not made to Mr. Spidell and Chiasson on April 1<sup>st</sup>, 2012, nor any time after, as it was supposed.

[13] This being said, Room Service Interiors Ltd shall be entitled to compensation if it has proven that the trailer was in fact affected by some latent defects.

[14] Room Service Interiors Ltd has filed a summary of its claim. All the repairs listed amount to \$4528.84, and a sum of \$1400 is claimed as lost of use, for a grand total of \$5928.84.

[15] Some conditions have to be met for the Court to conclude that some latent defects exist:

1. The defect must be serious and it must diminish the purchaser's use of the property;
2. It must have existed prior to the sale;
3. It must be unknown to the purchaser;
4. It must be hidden, (it could not have been perceived by a prudent and diligent buyer, without any need of expert assistance);
5. The purchaser must notify the vendor of the defects within a reasonable delay of their discovery.

[16] The trailer that was sold on August 24, 2011, was 35 years old. Mr. Spidell and Chiasson had been the owners of such trailer for less than 1 ½ year and have not lived in it very long, as they rent it most of the time. They testified that they were not aware of the problems with the leaking of the shower, toilet, and hot water tank, as no tenant has ever complained about any problem.

[17] To support his cross-defense, Room Service Interiors Ltd has filed a certain numbers of invoices, a summary of its claim as well as a written declaration by one of its neighbors.

[18] Exhibit D-4 is a bill by Plomberie François Myre to fix, on a temporary basis, the leak on the hot water tank and shower, at the cost of 296.69\$. Plomberie Myre has also filed a quotation to remove and install a new shower, sink and toilet, which would be supplied by Mr. De Bruce, replace the sub-floor and fix piping, for a total amount of \$ 856.56.

[19] The existence of such leaks do constitute a latent defect, as it surely diminishes the use of the property by Room Service Interiors Ltd, and is serious enough to qualify as a latent defect. It could not be known to Room Service Interiors Ltd until they used the trailer, and certainly did exist at the time of the sale.

[20] These two amounts may be claimed by Room Service Interiors Ltd as a reduction of the sale price.

[21] Room Service Interiors Ltd has also filed a quotation for the purchase of a new fridge in the amount of \$ 2468.95. In its testimony, Mr. De Bruce explained that the fridge worked well when he bought it and that it still works, but the freezer does not function well, as the freezer door fell shortly after the purchase. The fridge was not replaced, and a smaller one was bought instead.

[22] Mr. Spidell has testified that the fridge was a very old one. The Court does not consider that the defects in the fridge constitute a latent defect, as they are most probably caused by the age of this appliance rather than by a defect. The warranty of quality does not cover things that are no more functional because of their age.

[23] Many of the amounts claimed in the summary have not been proven and therefore, they cannot be awarded. As for the amount claimed for loss of use, such damages can be granted only if the Court concludes that the sellers were aware of the existence of the latent defect. Such a proof has not been made.

[24] Consequently, Room Service Interiors Ltd's claim can be granted for an amount of \$ 1153.25.

**FOR THESE REASONS, THE COURT:**

**GRANTS** in part the action;

**CONDEMNS** the Defendant, Room Service Interiors Ltd, to pay to Plaintiffs, Steven Spidell and Brian Chiasson solidarily, the amount of \$ 4000.

**GRANTS** in part the cross-demand;

**CONDEMNS** Plaintiffs, Steven Spidell and Brian Chiasson solidarily, to pay to Room Service Interiors Ltd, the sum of \$ 1153.25;

**AND APPLYING THE RULES OF COMPENSATION, THE COURT CONDEMNS** Defendant, Room Service Interiors Ltd, to pay to Plaintiffs, Steven Spidell and Brian Chiasson solidarily, the amount of \$ 2846.75, with interest at the legal rate plus the additional indemnity provided for in section 1619 Q.C.C., from June 14, 2012, date of receipt of the demand;

**DISMISSES** the action against David De Bruce;

**THE WHOLE**, each party paying its own costs.

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CÉLINE GERVAIS, J.Q.C.