COURT OF QUEBEC

Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

No: 500-32-131466-114

DATE: January 12, 2015

PRESIDED BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.

SEAN SPRACKETT
[…]Kirkland, Qc **[…]**

And

SHIRLEY TYMCHUK
[…]Kirkland, Qc **[…]**

Plaintiffs

v.

NEAL GREENBLATT
[…]Senneville, Qc **[…]**

And

NANCY MITCHELL
[…]Senneville, Qc **[…]**

Defendants

JUDGMENT

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[1] The Plaintiffs, Sean Sprackett and Shirley Tymchuk, purchased a residence from the Defendants, Neal Greenblatt and Nancy Mitchell, in Beaconsfield. The transfer of property took place on April 28, 2011.

[2] The Plaintiffs allege that, when they took possession of the home, they discovered that the heat pump was not functioning for the purpose of air-conditioning.

[3] On advice obtained by a specialised contractor, they decided to replace the heat pump. This led to the replacement of the furnace and the installation of some additional duct work.

[4] The Plaintiffs had this work done for a lump sum of $ 12,369.08. The Plaintiffs reduced their claim to $ 7,000.00. They assert that the cost they incurred was the result of a hidden defect in the air-conditioning system that the Defendants were aware of and failed to disclose.

ISSUES

[5] To resolve this case, the Court will address the following questions:

1) Was there a hidden defect in the heating and the cooling system of the house at the time of sale?
2) Were the Plaintiffs unaware of this defect?
3) What is the value of the prejudice associated with the hidden defect?

4) Were the Defendants aware of the defect and did they fail to disclose it?

FACTS

[6] The house, according to the listing (P-1) was built in 1989. The listing includes the description “Central air-conditioning”.

[7] In the Declarations by the seller of the immovable (P-2), the Defendants made certain declarations about the heating system. A text added into the form reads:

> **D10.1:** Furnace repaired and upgraded. New element system and switching modules. Invoices available.

[8] Questions under the heading “**D10.2:** Heat pump (air conditioning and heating)” are left blank.

[9] Under the heading “**D10.3:** Permanent air conditioning system”, to the question “To your knowledge: a) Are there or have there ever been problems with the air conditioning system? “The answer is “no”:

[10] The pre-purchase inspection report (D-9) contains some relevant passages concerning the “ELECTRIC FURNACE / Electronic air cleaner“, that indicate that the electronic air filter is missing components and is no longer in use. The recommendation is to repair or replace it. There is no other mention of the furnace itself.

[11] Under the heading “Cooling and Heat Pump”, the text reads:

> **AIR CONDITIONING Life expectancy**
>
> **Condition**: Old
> The heat pump has exceeded its normal life span.
> Budget for replacement.
> **Implication(s)**: Equipment failure / Reduced comfort
> **Task:** Replace
> **Time:** Less than 1 year
> **Condition:** Inoperative
> Attempted to start the unit in heating mode but the system was inoperative.
> **Implication(s):** Reduced comfort
> **Task:** Further Evaluation
> **Time:** Immediate
>
> **HEAT PUMP / Condensate drain line**
>
> **Condition:** Improper discharge point
> Noted the heat pump condensate line is discharging below the floor slab.
> This installation is not recommended because it can cause humidity and mold problems in the basement.
> Condensate should ideally be discharged into the sewer system.
> **Implication(s):** Chance of water damage to contents, finishes and/or structure Damage to equipment | Contaminants may enter house air
> **Location:** Basement Furnace Room
> **Task:** Correct
> **Time:** Less than 1 year

[12] Thus the Plaintiffs were aware that the heat pump did not function in the heating mode, but they assert that the Defendants declared to them during in the context of their pre-purchase visits, that the heat pump was operating in the cooling mode.

[13] In other words, the Plaintiffs were aware that the system was set so that the heat pump would only work for cooling and not as a heating system.

[14] In the Spring, when it was time to start cleaning the house, the Plaintiffs discovered that the heat pump did not work. They called upon Blair Lalonde of A1

Agence Technique Inc., to advice them. Mr Lalonde gave them two documents, both dated June 16, 2011. First, (P-3) states the subject as “Problems found during "Process for the Heat Pump Condenser Replacement”.

[15] In some rather technical jargon, he speaks of BTUs, the rating of the evaporated coil and states, among other things, that the evaporator coil in the system is rated for three tons or less.

[16] He points out as well that the air circulation blower was running only at the low speed setting, and that this could have contributed to a premature compressor failure. He also points out an insufficiency in the return air duct of the furnace system. It is only capable of carrying 1300 CFM at 0.1 inch static pressure when the requirement is 1600 CFM.

[17] In the second document (P-4), he speaks first of the cooling requirement for a house having 3,300 sq. ft living space.

[18] He states “If we had a reliable history on the home from the past owners, we would be asking “were you satisfied with the existing system”, and if they were, we definitely would not exceed the existing capacity.” He states however that the existing system has a 51,000 BTU heat pump and that at 48,000 BTU, which is the standard for manufacturing other than Lennox, the air requirement is 1600 CFM. For that reason, he recommends additional air ducts and relocation of some of the existing air ducts to optimise the functioning of the system.

[19] In his statement in lieu of testimony (P-16), Mr Lalonde explains as well that the York AHX48 blower, part of the furnace that had been installed in 2010 by the Defendants, will support an outdoor heat pump unit of a maximum of 36,000 BTU. He states:

> “As such the AHX48 furnace blower installed at the house, together with the shortage of return air ducts, was not capable of supporting the existing Lennox 51,000 BTU heat pump. This could explain why the heat pump failed as soon as it was turned on in the Spring of 2011”.

[20] He goes on to make a recommend action on the basis of “The ASHRAE (“American Society of Heating and Refrigeration Engineers”) Rules of Thumb. He states that, ideally, a 5 ton (60,000 BTU) heat pump should be installed, but that this would not be possible because of the limitation in the air ducts. “At best, we could only install a 4 ton heat pump if we upgraded the furnace air blower to an AHX60 and installed additional air return vents”.

[21] The Plaintiffs discovered as well, when they hired someone to clean the air vents, that many of them had been blocked with plastic bags in the lower floor of the house.

This is part of the basis on which they allege that the Defendants were aware of a latent defect.

[22] Neal Greenblatt testified that the furnace was replaced in 2010. It had been repaired previously. When the furnace was repaired, the heat pump, which was the one installed at the time of the construction of the house, was still working and it was not changed.

[23] It was loosing its effectiveness but worked so long as the coolant was topped up from to time to time.

[24] He explained that they blocked the flow of the air in the lower floor of the house in order to provide a better flow to the upstairs. The ground floor was too cold and the upper floor not cool enough.

[25] He stated that, during the time he lived in the house with his wife, they had no problem in terms of comfort.

[26] Both Mr Greenblatt and his wife Nancy Mitchell assert in their testimony that during their occupation of the house, the cooling system worked and they were not made aware that it was defective. It was however at the end of its useful life, as it had been original equipment installed in 1989.

ANALYSIS

[27] At the time of the sale, based on the Vendors' declarations and the Inspection report, the Plaintiffs anticipated that they would have to replace the heat pump within one year, but that the furnace had been "repaired and upgraded". More specifically that the Defendants had installed "new elements system and switching modules".

[28] The advice that they obtained led them to conclude that, according to ASHRAE rules of thumb and the inherent limitations of the building, the best type of replacement of the heat pump would also require changes to the furnace and additional duct work. This had the effect of upgrading the cooling system from one that, according to current standards, was insufficient to cool the house entirely to one where it was acceptably cooled. The changes they made also enabled them to use the heat pump as a heating as well as a cooling engine, an improvement over what they had expected when they purchased the home.

[29] In purchasing a house that was 25 years old, and despite the vague representation that the furnace had been repaired and "upgraded", they would not have reasonably expected the air-cooling capacity of the heat pump and the duct work to be suitable for cooling a home according to current standards.

[30] In his original recommendations, Mr Lalonde stated that, if the previous owners were satisfied with the existing system, he would not recommend exceed the existing capacity. He goes on however to talk about how the duct work in the house is not in conformity with good practices. Presumably, then, if he had received credible information that the cooling was adequate for the previous owners, which it was, he would not have recommended the changes that resulted in such for reading upgrades and replacements.

[31] On the whole of the evidence, the Court comes to the conclusion that what the Plaintiffs are complaining about is not a hidden defect. It is more probably the obsolescence of a 25-year-old heating and cooling system, a major part of which was known by the Plaintiffs, at the time of sale, to be at the end of its useful life and in need of a replacement within one year.

[32] The evidence does not establish that the system was inadequate according to the standards of the time of construction, some 25 years ago, and the Court can not presume that the standards of that time are as high as the ones currently referred to by manufactures and installers.

[33] By spending $ 12,000.00 to replace the heat pump and upgrade the other components, the Plaintiffs have actually added significant value to a property that they purchased on the assumption that it had an upgraded system with a furnace requiring certain repairs and a heat pump that they would have to replace in a very short term period. On that basis, they surely accepted a sale price lower than they would have if they had been shown a property having recently been put up to close-to-current standards.

[34] Presumably, they would have paid significantly more for an updated and state-of-the-art heating and cooling system as opposed to a 25-year-old system which, although partly functional, appeared in several aspects to not be in good working order.

[35] It can be presumed, as well, that when they sold the house, they were able to obtain a higher price because the heating and cooling system had been upgraded and was at the very beginning of its useful life span.

[36] Presumably, they recovered the added value when they sold the home.

[37] The Court therefore replies to the questions raised above as follows:

1) The elements compared of are not a hidden defect;
2) The Plaintiffs did not suffer a financial loss;
3) The Defendants did not know of a defect and fail to advise the purchasers.

[38] Because the Plaintiffs were very cooperative in avoiding a postponement of the case by submitting written evidence in their testimony, there will be no award of costs against them.

FOR THESE REASONS, THE COURT:

DISMISSES the Plaintiffs's action;

THE WHOLE, without costs.

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DAVID L. CAMERON, J.C.Q.

Date of hearing: October 6, 2014