

COURT OF QUEBEC
Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

No: 500-32-139805-131

DATE: July 6, 2015

BY THE HONOURABLE ELIANA MARENGO, J.C.Q.

ROBERTO DI SALVO
and
CONSIGLIA RICCI
Plaintiffs

V.

ST-LUC RDP INC.
Defendant

JUDGMENT

- [1] **GIVEN** the evidence;
- [2] **WHEREAS**, on September 26, 2009, plaintiffs purchased a newly constructed property from defendant (deed of sale, exhibit P-5);
- [3] **WHEREAS** deed P-5 provides as follows:

" CONTRAT PRÉLIMINAIRE

Toutes les clauses, conditions et obligations mentionnées au contrat préliminaire signé par les parties font partie intégrante de la présente vente, comme si elles y étaient relatées au long et continueront à s'appliquer entre les parties même postérieurement à la signature du présent acte de vente. Cette clause constitue une obligation entre les parties au présent acte. S'il y a divergence entre la présente vente et le contrat préliminaire, l'acte de vente devra primer sur ce dernier. "

[4] **WHEREAS**, on March 8, 2009, the parties had signed a preliminary contract which provided, *inter alia*, as follows:

" AMÉNAGEMENT EXTÉRIEUR

[...]

Chambre froide de 10' X 10' à l'arrière. (Aucun isolant n'est prévu sur les murs et le plafond, aucune membrane n'est installée sur le pallier et les marches extérieures, nous ne pouvons garantir qu'il n'y aura pas de légères infiltrations d'eau et/ou de condensation.) [...]"

(sic)
("Specifications", page 5, exhibit P-4)

[5] **WHEREAS**, at trial, defendant's president Patrick Varin explained that prospective buyers were advised that if they wished to have a watertight balcony with a membrane and an additional 4 inches of concrete, they could request it, at an additional cost;

[6] **WHEREAS** plaintiffs chose not to add this feature to their list of specifications;

[7] **WHEREAS**, on June 10, 2009, plaintiffs requested that defendant finish the "chambre froide arrière", in the basement;

[8] **WHEREAS** the document referring thereto, entitled "**DATE REPORTÉE**", reads in part as follows:

" Le client accepte de reporter la date a condition St-Luc R.D.P. va finir la chambre froide arriere (2 x 4, laine, gyproc, joint)

** Le client dégage St-Luc R.D.P. pour infiltration d'eau qui pourrait endommager isolation et gypse. Excepté si défaut majeur. (Chaque fondation a dalle béton). "

(sic)
(exhibit P-1)

[9] **WHEREAS** the document is signed by plaintiff Di Salvo and defendant's representative;

[10] **WHEREAS**, according to Di Salvo, defendant finished said cold room; but, according to Varin, it did not;

[11] **WHEREAS**, on August 6, 2009, Di Salvo wrote to defendant complaining of, amongst other things, the following:

" 19. Back balcony is not draining off water – retains excessive water near Patio door – must be repaired.

20. Balcony front and back must be repaired as they are visually not acceptable and poorly done. "

(exhibit P-2)

[12] **WHEREAS**, on February 18, 2010, an inspector and administrator of the APCHQ rendered a decision dismissing the above cited complaints (exhibit P-2);

[13] **WHEREAS**, at page 7, this decision states, *inter alia*:

"ANALYSE ET DÉCISION (points 18 à 21)

L'administrateur est d'avis que les situations observées en ce qui a trait aux points 18 à 21 respectent les règles de l'art.

En effet, bien qu'une infime quantité d'eau demeure stagnante sur le balcon arrière, il est clair pour l'administrateur que cette situation ne rencontre pas les critères de la malfaçon.

[...]

Finalement, en ce qui concerne les points 19 et 20, le bénéficiaire a été dans l'impossibilité de nous démontrer de façon claire et précise ce qui l'indispose.

Par conséquent, puisque les critères de malfaçon ne sont pas rencontrés, l'administrateur ne peut donner suite à la demande de réclamation du bénéficiaire à l'égard des points 18 à 21. "

(decision, page 7)

[14] **WHEREAS** Di Salvo requested arbitration (exhibit P-2), but subsequently withdrew his request (exhibit D-5);

[15] **WHEREAS**, in 2013, plaintiffs decided to add a shower to the above cold room;

[16] **WHEREAS**, when plaintiffs removed the drywall and insulation, they discovered that there had indeed been water infiltration in the area;

[17] **WHEREAS** repairs were required to clean the mold and provide water tightness, before proceeding with the renovations;

[18] **WHEREAS** plaintiffs are suing defendant for repair costs in the amount of \$5,000.00, as well as an amount of \$2,000.00 "representing partial compensation for non-pecuniary damages";

[19] **WHEREAS** plaintiffs knew or should have known, when they bought the property, that the balcony was not watertight and that the cold room below was subject to water infiltration;

[20] **WHEREAS** this is clearly stated in the specifications;

[21] **WHEREAS**, furthermore, in document P-1, plaintiffs specifically undertook to hold defendant harmless, in case of water infiltration;

[22] **WHEREAS** plaintiffs did not present any technical evidence, by way of a report or the testimony of an expert witness to support their allegations, and did not meet their burden of proof regarding the precise cause of infiltration;

[23] **WHEREAS** the evidence presented does not allow the Court to determine whether or not there was a "défaut majeur" in the construction;

[24] **WHEREAS**, certainly, based on the APCHQ decision of February 18, 2010, there was none;

WHEREFORE THE COURT HEREBY:

DISMISSES plaintiffs' application, without costs.

ELIANA MARENGO, J.C.Q.

Date of hearing: June 12, 2015