

Home Inspectors – The Problem of Providing Cost Estimates

How many times have you been asked by your client about the cost of repairing or replacing a defective condition? Possibly, do you or your clients rely on those ballpark estimates of cost referenced together with your inspection report? This issue of "Courtroom Corner" involves a claim between a purchaser and (defendant) home inspector. The case is cited as 2000 MBQB 138, Court Of Queen's Bench of Manitoba.

In this case, the purchaser claims repair costs in the sum of \$17,737 specified in paragraph the statement of claim, plus unspecified general damages for mental distress, interest and costs resulting from her purchase, on June 13, 1997, of a house with a defective foundation at (specified address) in Winnipeg Manitoba.

The purchaser stated that inspection results and opinions she contracted for and given her by the defendants were false and misleading and that she would not have purchased the home if she had received correct and accurate information and opinions prior to her purchase. Additionally the plaintiff claims that the defendants breached their agreement by failing to make a full and complete inspection and by failing to advise her "of certain fundamental defects in the dwelling and of the full extent of the building's defects" and misled her as to the cost of repair of those defects.

The important information arising in this case includes:

1. The extent of the defects and the cost of repairing the basement walls.
2. The defendants' responsibility for the alleged misinformation given by the home inspector. – "According to (the purchaser),(the home inspector) told her his estimate of the cost of repairing the basement foundation was \$1,000 for the north wall and a similar amount for the other walls if they were shown to require repair when exposed. According to (the home inspector), his estimate of \$1,000 was for repair of the north wall, which was visually capable of being inspected. He was unsure on the cost of or need to repair the remaining three covered walls. He did, however, concede that his estimate of \$1,000 per wall would be accurate for the concealed walls if they were in no worse condition. They were in no worse condition."

The court found:

[17] I accept (the purchaser's) evidence of what she was told by (the home inspector). When pressed, I believe he actually agreed with (the purchaser's) account of what transpired. He simply underestimated the cost of the work required to be done to repair the basement walls. (The purchaser's) evidence has not been seriously challenged by the defendants' evidence.

[19] In the opinion of (the structural engineer), the repairs were required to brace the cracked walls and restore structural integrity to the foundations.

[20] Based on the report, (the purchaser) engaged (a contractor), to perform work quoted at \$18,600. As (the purchaser) expected to pay \$1000 per wall, she deducted \$4000 from the repair cost as her responsibility.

[21] Further, (the purchaser) claims that - "as a result of the actions of the defendants...and as a result of the defendants' refusal to pay for the repairs to said dwelling, she has suffered mental distress and has purchased medicines".

[24] I am not satisfied that (the home inspector) reported to (the purchaser) the serious nature of the condition of the foundation wall, nor the possible consequences of the defects in the remaining walls. Nor am I satisfied that he advised her to obtain the services of an expert in foundation inspections. Simply put, I am satisfied that if he had told her a foundation expert was required she would have engaged one. Further, if he had done so, I am satisfied that he would have made special note of that advice in his written report. This was not done.

Conclusions:

[38] Her claim in contract against the defendant is accordingly allowed. If I am wrong in that conclusion, (the purchasers) alternative claim in negligence is allowed. (The home inspector) breached his duty of care when he grossly underestimated the defects in the Home's foundation and further grossly underestimated the cost of those defects.

[42] The mischief in (the home inspectors) conduct was his failure to describe accurately the defects in the foundation wall and, once he agreed to estimate the cost of repair, to provide a reasonably accurate estimate of the cost of repair. He had no duty to provide an estimate, but once providing it, he had a duty to be reasonably accurate in his opinion. Had he refused to offer an estimate, (the purchaser) would have had the responsibility to obtain an expert's opinion, refused to purchase the Home or complete the purchase at a greater risk to herself.

[49] I find that she expected to do some of the work as well as pay the \$4,000 estimated by (the home inspector). Accordingly, she is, in my opinion, entitled to the cost of repair actually paid, including an allowance for parging, the engineers' reports and drugs set out in the statement of claim, which I have totalled at \$16,778.99. (The purchaser) is therefore entitled to that amount less the \$4,000 she expected to pay, or \$12,778.99, for the repairs and out-of-pocket expenses.

[50] In addition, I assess as general damages for her anxiety, stress, emotional disturbance and inconvenience, the sum of \$5,000.

[58] In this case, however, there is no doubt that the making of the statements (giving of opinions) by the defendants was a contractual act. The plaintiff is entitled to the value the Home would have had if the statements were true. The cost of repairs, which was the difference between the actual repair cost and the opined repair cost, is the appropriate damage amount under that head.

[62] I believe it is common practice now in most purchases of homes of a certain age and condition to include an inspection clause. As purchasers are expected to bear the burden of repairs that become necessary and the buyer is cautioned to be wary, the inspection becomes an important part of the process. The reports issued by home inspectors should be clear and unequivocal, particularly where further inspection is recommended. Further, it is suggested that verbal recommendations be kept to a minimum, and they should be consistent with the written report.

[63] In the report issued by the defendants in this case, under the heading "The Bottom Line", it is stated that "potentially significant expenses (\$500/\$1000/\$) over the short term are identified below". They indicated both the "Exterior" and the "Structure". The ordinary person would expect to be informed that a further inspection was required if that was in fact the case. The above description may or may not be consistent with the report at items 4.18 and 3.0.

[66] There has developed in this community an unregulated and unlicensed industry engaged in performing home inspections. While professing to follow certain standard procedures, these are standards generally unknown, and the failure to meet those standards has no reliable sanction.

Perhaps the legislators of Manitoba are reviewing these operations presently and perhaps not. It would do no harm for the Minister of Justice to ask his officials to review the current status.

Reference source - credit is acknowledged to – Canadian Legal Information Institute:

<http://www.canlii.org/mb/cas/mbqb/2000/2000mbqb138.html>

Personal Comments:

Aside from the obvious agreement of underestimating cost for repair, the home inspector, provides trust on this information. Article [42] of this case highlights the key finding for concurrent liability in contract and tort. The judge awarded damages to the inspector's client – the purchaser. Article [24] indicates the vital importance of noting all information and advice given to the client in the written report. In addition, in the later statement of article [62] the judge emphasized the implication of report writing. "The reports issued by home inspectors should be clear and unequivocal, particularly where further inspection is recommended. Further, it is suggested that verbal recommendations be kept to a minimum, and they should be consistent with the written report."

It should be of particular concern to note, article [66] indicates the need and importance for home inspection for "regulation" of the "industry" and proper acknowledgement of "standard procedures". Even to this date, it is the view of others that there is no widely accepted or reliable benchmark recognized by the courts. Possibly many home inspectors can recognize the good judgment in a nationally endorsed "standard" of practice, and a means to sanction and discipline those that fail to meet those standards. In the meantime, home inspectors should be cautious in providing services beyond the current standards. To do so may simply invite additional liability.

By Claude Lawrenson