

CITATION: *Miller Desjardins v. JF Lajoie Construction Inc. et al* 2025 ONSC 2522
COURT FILE NO.: CV 22-9
DATE: 2025/04/25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Monique Miller and Michel Desjardins

-and-

J.F. Lajoie Construction Inc. carrying on business as J.F. Lajoie Inspections and Jacques Lajoie

BEFORE: Justice Flaherty

COUNSEL: Taayo Simmonds for the Plaintiffs

Vincent Carney for the Defendants

HEARD: March 21, April 2, 3, and 4, 2025

REASONS FOR DECISION

[1] This case is about a home inspection conducted by the Defendant, Jacques Lajoie.

[2] The Plaintiffs submit that the inspection was inadequate and failed to identify significant deficiencies in the home, notably in the foundation, the windows, and the roof. The Plaintiffs say they relied on Mr. Lajoie's inspection report in deciding to purchase the home. They seek compensation for the repairs they say were incurred because of the inadequate inspection.

[3] At the hearing, counsel for the Plaintiffs clarified that their only claims are against Mr. Lajoie. The Plaintiffs are not pursuing any claims against the Defendant corporation.

[4] Mr. Lajoie states that the inspection was carried out in a reasonable and prudent manner, in keeping with the standard of care. According to Mr. Lajoie, the Plaintiffs must bear responsibility for their own decision: they knew they were buying an older home, but failed to appreciate or further investigate the risks and deficiencies identified by Mr. Lajoie. He also submits that the damages claimed are disproportionate to the fees charged for the inspection.

[5] The claim was brought under Rule 76 as a simplified procedure. Charbel Azzi testified for the Plaintiffs and was qualified as an expert in residential home inspections. Both of the Plaintiffs testified, as did the Defendant, Mr. Lajoie.

[6] For the reasons that follow, I find that Mr. Lajoie was negligent and made negligent misrepresentations. His inspection did not meet the standard of care of a reasonable and prudent home inspector because he failed to report on significant deficiencies that were visible based on a non-invasive home inspection. The Plaintiffs reasonably relied on his inspection and are entitled to damages for the cost of certain repairs to the home.

OVERVIEW

[7] Most of the key facts are not in dispute. In 2020, the Plaintiffs made an offer to purchase a house in Alexandria (the “Property”). The offer to purchase was “as is,” but conditional upon the completion of a satisfactory inspection.

[8] The Plaintiffs’ realtor recommended and arranged for Mr. Lajoie, to inspect the Property. Neither the Plaintiffs nor the realtor signed a home inspection contract with Mr. Lajoie. There is no contractual clause purporting to limit the Defendants’ liability.

[9] Mr. Lajoie’s fee of \$425 was paid by the realtor. However, the report was addressed and provided to the Plaintiffs.

[10] When contacted by the realtor on October 28, 2020, Mr. Lajoie was told the inspection was urgent, as the sale of the Plaintiffs’ previous home seemed imminent. As of October 27, 2020, the Agreement of Purchase and Sale had a closing date of December 1, 2020. It gave the Plaintiffs until November 14, 2020 to give notice that the inspection condition was either fulfilled or waived.

[11] Mr. Lajoie identifies himself as a professional home inspector and conducts this work through a sole proprietorship. Mr. Lajoie also owns and operates J.L. Construction Inc., a named Defendant in this matter. As noted, the Plaintiffs are no longer pursuing any claims against the corporation.

[12] Mr. Lajoie initially testified that he was a certified home inspector. In cross-examination, however, he acknowledged that he does not hold any home inspection certification. He has experience in construction and certification in septic systems and heating and ventilation. However, Mr. Lajoie has no educational background, training, or certification specific to home inspections. Although Mr. Lajoie was once a member of the International Association of Certified Home Inspectors, he has not been a member of that or any professional home inspection association for approximately 20 years.

[13] Mr. Lajoie attended at the Property on October 29, 2020. The realtor and Mr. Desjardins were present for at least part of his inspection. Ms. Miller was not present.

[14] Mr. Lajoie made verbal comments about the Property to Mr. Desjardins during the inspection. Some of what was said is in dispute. For example:

- a. The parties agree that Mr. Lajoie insisted that Mr. Desjardins look at the attic with him. Mr. Desjardins' evidence is that Mr. Lajoie only pointed out a lack of insulation. Mr. Lajoie says he also showed him moisture stains.
- b. Mr. Lajoie testified that he did not inspect certain rooms because Mr. Desjardins asked him not to. Mr. Desjardins denies this.

[15] The parties agree that Mr. Desjardins was distracted during the inspection. Other than some cracks in the bricks and the need for insulation in the attic, Mr. Desjardins has little recollection of Mr. Lajoie pointed out to him during the inspection.

[16] On October 30, 2020, Mr. Lajoie emailed his inspection report to Ms. Miller. He invited the Plaintiffs to contact him if they had questions about the report. Neither Mr. Desjardins nor Ms. Miller has any particular knowledge of home construction. The Plaintiffs each testified that they reviewed the report and did not understand it. They texted Mr. Lajoie on November 1, 2020 and asked him to call them to discuss their questions about the report. Mr. Lajoie responded "sure."

[17] Mr. Desjardins and Ms. Miller say they spoke with Mr. Lajoie on the phone. Mr. Lajoie has no recollection of this call, although he does not dispute that it may have taken place.

[18] The Plaintiffs recall little of what was said during the phone call. Ms. Miller says Mr. Lajoie spoke about the insulation in the attic. She recalls this because she made a note of the type of insulation he recommended. According to the Plaintiffs, Mr. Lajoie told them “it is a good house” that “just needs some TLC.” While Mr. Lajoie does not recall the phone call, he testified that he would not have given these opinions, particularly given the issues he identified during his inspection of the Property.

[19] The Plaintiffs intended to renovate part of the home to install a hair salon. However, they testified that they would not have bought the Property had they known it required other renovations or significant repairs. Ms. Miller testified that they budgeted approximately \$300,000 to purchase a new home. The purchase price of the Property was \$290,000, exclusive of fees such as land transfer tax and legal fees and disbursements.

[20] The Plaintiffs testified that they felt reassured after their call with Mr. Lajoie. They advised the realtor that the inspection condition had been satisfied and proceeded with the purchase of the Property. Almost immediately upon taking possession, however, they experienced water leaks originating from the dishwasher and from the roof. There were also leaks or water damage from a window on the main floor and from a patio door.

[21] The Plaintiffs had a second inspection done on December 2, 2020, by Mr. Slaney. They had a third inspection done by Mr. Azzi on November 25, 2021. Mr. Charbel Azzi also provided an expert report.

ISSUES

[22] The Plaintiffs’ claim raises the following issues:

- a. Is Mr. Lajoie liable for breach of contract?
- b. Is he liable in negligence?
- c. Is he liable for negligent misrepresentation?

- d. If the answer to any of the above questions is “yes,” what, if any, damages should be awarded to the Plaintiffs?

ANALYSIS

Breach of Contract

[23] I find that there is no contract between the Plaintiffs and Mr. Lajoie. The Plaintiffs’ realtor arranged for and paid Mr. Lajoie for the inspection. The Plaintiffs themselves provided no consideration for the inspection and inspection report. Neither the realtor nor the Plaintiffs signed an inspection contract with Mr. Lajoie.

[24] The fact that Mr. Lajoie’s report was addressed and provided to the Plaintiffs does not create a contract in the absence of the requisite legal elements, including consideration. The Plaintiffs argue that had the realtor not paid Mr. Lajoie’s invoice, they would have been required to do so. However, this speculation that the Plaintiffs had a secondary obligation to pay Mr. Lajoie’s invoice does not establish consideration.

[25] As there was no contract between the parties, there can have been no breach of contract.

Negligence

[26] To establish negligence, the Plaintiffs must demonstrate that: (1) Mr. Lajoie owed them a duty of care; (2) his behaviour breached the standard of care; (3) the Plaintiffs sustained damage; and (4) the damage was caused by the Defendant's breach.

There is a Duty of Care

[27] There is no dispute. The parties agree that Mr. Lajoie owed the Plaintiffs a duty to conduct the home inspection in accordance with a reasonable standard of care.

The Standard of Care

[28] The applicable standard of care is what a qualified home inspector, acting reasonably, would have done in similar circumstances: *Deters v Elliot*, 2017 ONSC 4224 at para. 93 (“*Deters*”).

[29] Mr. Azzi testified for the Plaintiffs and was qualified as an expert witness. The Defendants did not seek to provide any expert evidence.

[30] Mr. Azzi’s evidence is relevant and necessary to assist the trier of fact, to understand the duty of care owed by home inspectors and whether it was met in the circumstances. As the court explained in *Deters*, at para. 100, the question of what action a home inspector reasonably ought to take to determine the condition of components is a technical matter that lies outside the knowledge of an ordinary individual. There was no allegation that Mr. Azzi’s evidence was partial.

[31] In essence, Mr. Azzi testified that the industry standards are established by the Canadian Association of Home and Property Inspectors (“Association”). He specifically referred to the 2012 national standards of practice (“Standards”), which were in effect when Mr. Lajoie inspected the Property in 2020. Standards such as these have been applied by courts determining the standard of care in home inspection cases: *Deters*, at paras. 102 – 104 and *Henrico v. Frontline Home Inspectors and Consultants Limited*, 2018 ONSC 1312 at paras. 23 to 25. I accept that the Standards establish the standard of care applicable in this case.

[32] The Standards state that inspections are not technically exhaustive or meant to identify concealed conditions or latent defects. The Standards reflect the inherent limitations of an visual and non-invasive inspection. Most relevant to this case, the Standards direct inspectors to:

- a. inspect readily accessible, visibly observable installed systems and components of the building.
- b. report on those systems and components that have a significant deficiency, are unsafe, or are near the end of their service lives.
- c. report on recommendations to correct or monitor the reported deficiency.

- d. report on any system or component that was present at the time of the inspection but that was not inspected and provide a reason why it was not inspected.
- e. inspect a representative number of components such as windows and electric outlines. A representative sample is defined as one component per room for multiple similar interior rooms. For the exterior, a representative sample is one component on each side of the building.
- f. Describe certain components of the home, including the roof coverings; the foundation; the wall, ceiling, and roof structures; and the windows and doors.

[33] Significantly, the Standards define reporting as “to communicate in writing.”

[34] Counsel for Mr. Lajoie submits that the Standards do not apply to Mr. Lajoie for two reasons: because he is not a member of the Association and because the inspection was done on an urgent basis. I disagree.

[35] In assessing the standard of care, the issue is what a qualified home inspector, acting reasonably, would have done in similar circumstances. Mr. Azzi testified, and I accept, that the reasonable expectations of a qualified home inspector are set out in the Standards. Indeed, in his own testimony, Mr. Lajoie acknowledged that the Standards establish the applicable norms. The fact that Mr. Lajoie is not a member of the Association does not mean that his home inspections are held to a different standard of care.

[36] I accept that Mr. Lajoie was asked to do the inspection on an urgent basis. However, these circumstances do not modify or dispense with the standard of care. There is no evidence to suggest that Mr. Lajoie had insufficient time to conduct a reasonable and prudent inspection. The Plaintiffs ultimately had approximately two weeks to complete or waive the inspection report.

Did Mr. Lajoie Meet the Standard of Care?

Summary of Mr. Lajoie's Report

[37] Mr. Lajoie provided a 13-page inspection report. The report begins by identifying the scope of work. It then identifies what was not inspected, specifically:

cosmetics; outbuildings; swimming pools and spas; and specialty systems including telephone, cable, TV, alarm systems and lawn sprinklers.

[38] There is a dispute between the parties about whether Mr. Desjardins told Mr. Lajoie not to inspect certain rooms in the house. Notably, Mr. Lajoie makes no indication of this in the report.

[39] The report briefly identifies some “building design features” of the Property, such as the number of bedrooms and bathrooms, the type of heating system, and the basement type. Next, Mr. Lajoie’s report sets out the following recommendations:

Window and door replacement, all exhaust fans outside, gutters and downspout extensions, electrical maintenance, heating vents connections, lower flower beds and landscape, waster water pipe connections, attic insulation and ventilation, sealed attic hatch, brick repair, washroom faucets dysfunctional.

[40] These recommendations are followed by a chart, where some components of the home are colour coded and categorized as either good, review, maintain, budget, or problem. The report does not describe what is meant by each category. Mr. Lajoie testified that any major issue would be characterized as “problem” and that, where some spending is required, the item would be characterized as “budget.” There was no information in the report to explain or distinguish between good, review, and maintain.

[41] In his report Mr. Lajoie:

- a. did not characterize any component of the Property as “problem.”
- b. labelled the garage doors and wall protection; windows and patio doors; plumbing; and ventilation fans as “budget.”
- c. labelled the front entrance, roof canopy, and deck; the exterior wall coverings; the attic and insulation; and washroom as “maintain.”

[42] The remainder of the report is a series of photos of the home, most of which have brief captions.

[43] Mr. Lajoie's report is not a model of clarity. As I discuss in more detail, below, there are inconsistencies between his recommendations and the information he included in the chart. It is not clear from the photos or captions whether the photos are intended to identify areas of concern. As noted, the labels he used for the different components are not defined and some are unclear. Some components of the home, such as the roof coverings, are listed in the chart but not labelled or commented on at all.

The Slaney and Azzi Reports

[44] The Slaney and Azzi inspection reports are considerably lengthier, more detailed, more extensive than the report provided by Mr. Lajoie. At the hearing, some time was spent comparing the investigation reports. I note that my role is not to determine the best reporting methodology, but rather to determine whether Mr. Lajoie's report is adequate to meet the standard of care.

[45] In considering whether Mr. Lajoie met the standard of care, I have primarily been guided by the Standards. The Slaney and Azzi reports, as well as Mr. Azzi's expert report, provide insight into what deficiencies were apparent to other home inspectors. However, the timing of these inspections is important. The Slaney inspection occurred within approximately 30 days of Mr. Lajoie's. Mr. Azzi's inspection occurred over a year later, after the Plaintiffs did some repairs and renovations. Given this timing, the Slaney report is of greater assistance. Mr. Slaney did not testify at the hearing, but the parties agreed that his report would be placed in evidence.

[46] Mr. Lajoie states that his report identifies similar deficiencies as the other two inspectors. To the extent that there are any discrepancies in the three home inspection reports, he says these merely show that visual home inspections can vary as inspectors identify different patent defects. I disagree.

[47] While there may be variations in home inspections, all home inspectors are held to a standard of care and any variations in reporting must fall within the standard of care. Applying the Standards, inspectors are required to (among other things) report in writing on significant, patent, and visible deficiencies. It is relevant that the other inspection reports identified significant, visible, and patent deficiencies that Mr. Lajoie did not. While the timing of the various inspections is

relevant, there was no dispute that the deficiencies identified by the other inspectors were patent and visible to them at the time of their non-invasive inspections of the home.

Mr. Lajoie's Verbal Comments During the Inspection

[48] Mr. Lajoie relies on the verbal comments he made to Mr. Desjardins during the inspection to show that he met the standard of care. In this respect, Mr. Lajoie relies on *Dickey v. Flagstone Home Inspections*, 2007 NSSM 45, a decision of the Nova Scotia Small Claims Court. The deputy judge in that case held that information the inspector provided verbally was relevant to assessing whether a plaintiff reasonably relied on information contained in a written report. Importantly, in *Dickey*, the court had no evidence of standards of practice of home inspectors in Nova Scotia or elsewhere.

[49] In the case at hand, the Standards are in evidence and, as Mr. Azzi's testimony confirms, they require home inspectors to report deficiencies and make recommendations *in writing*.

[50] The importance of a written report is particularly evident in this case. Mr. Desjardins was distracted during the inspection, he had limited knowledge of home construction and, according to Mr. Lajoie, he paid little attention to what was said about the Property. Moreover, Ms. Miller was not present at the inspection and Mr. Lajoie owed a duty of care to her as well.

[51] In sum, the standard of care requires a reasonable and prudent inspector to report in writing about significant deficiencies in the home. To meet that standard, it was not sufficient for Mr. Lajoie to make verbal comments, particularly to just one of the Plaintiffs.

Did Mr. Lajoie Fail to Meet the Standard of Care?

[52] The Plaintiffs allege that Mr. Lajoie failed to identify a number of deficiencies, the most important of which concern: (a) the foundation; (b) the roof; and (c) the windows.

The Foundation

[53] Mr. Lajoie's report does not make any recommendations about the foundation. It includes the following comments:

- a. In the chart and in reference to the front entrance, Mr. Lajoie wrote: “foundation has some problems, front porch tilted.” This item is labelled “maintain.”
- b. One of the photos in the report shows part of the garage door and the adjacent walls. The caption states: “Garage door framing, some structural review.”

[54] In contrast, both Mr. Slaney and Mr. Azzi reported significant issues with the foundation and the structure of the home. For example, the Slaney report states:

Cracks in the concrete will require monitoring, if movement or moisture entry noted, recommend epoxy injection be performed. Pitting was noted on the interior foundation from past moisture. Cracking, stair step cracks and loose mortar noted on the block foundation. Recommend repairs by a qualified foundation contractor. It should be part of a regular maintenance routine to inspect block foundations and have necessary repairs made to maintain the integrity of the foundation including parging.

[...]

Differential Movement: Settlement Noted, Settlement cracks noted - NOTE: Alterations and additions were added to the original structure. Some settlement/movement was noted. See notes on the foundation. Finishes, insulation, furnishings and storage conceal structural components, preventing/restricting inspection. It is not possible to determine the presence or of ongoing movement based on a one-time visit. [Emphasis added.]

[55] Mr. Azzi’s inspection report, prepared over a year later, also noted a weakened structure, cracks, heightened risk of water damage, and chance of structural movement. The Azzi report commented on ridge sagging on the roof and noted that this could be a sign of weakened structure or of structural movement.

[56] There is no dispute that the outside of the foundation was visible as part of a non-invasive, visual inspection. It is significant that Mr. Slaney (and later Mr. Azzi) identified significant deficiencies in the foundation on this basis. Applying the Standards, which require an inspector to report in writing about the patent defects visible on a non-invasive inspection of the home, I find that Mr. Lajoie’s failed to meet the standard of care.

[57] The evidence establishes that there were patent defects in the foundation, which were both significant and visible based on a non-invasive inspection of the home. While Mr. Lajoie’s report contains some comments about the structure or foundation, these relate only to the front porch and

the framing of the garage doors. He labelled issues related to the porch as “maintain.” Based on the Lajoie report, the Plaintiffs could not reasonably have understood that the foundation was significantly deficient and in need of major repair.

The Roof

[58] The Lajoie report does not identify any concerns or make any recommendations about the roof. The roof covering, trusses, and framing are identified in Mr. Lajoie’s chart, but they are not labelled or colour-coded. The chart contains only the following comments:

- a. Roof covering: no signs of roof leak on main portions of house.
- b. Roof trusses and framing: built roof rafters.

[59] The Lajoie report includes a single photo of the exterior of the roof. It includes four photos of the roof rafters, with the following caption:

Framing is good, no sign of water leakage, insulation and air ventilation should be increased.

[60] In contrast, Mr. Slaney’s report contains the following description and comments about the roof:

Advanced wear, curling and degradation of roofing shingles was observed. Granular loss and cracking was higher in areas. Uneven areas noted. Life expectancy of a shingled roof is 12 - 20 years. Roof shingles near end of useful life. A qualified roofing contractor is recommended to evaluate and estimate repairs. [Emphasis added.]

[61] Mr. Azzi reported patching on the roof, loose and open seems, aged shingles, as well as a heightened risk of water damage.

[62] There is no dispute that these issues were visible to Mr. Slaney and Mr. Azzi based on a non-invasive inspection of the home.

[63] Mr. Lajoie testified that he inquired and was told that the shingles were about 8 years old. This seems to have been a main factor informing his views of the roof. In his report, Mr. Lajoie

does not describe the roof coverings. Moreover, in direct contradiction to his alleged verbal comments to Mr. Desjardins about moisture stains in the attic, Mr. Lajoie's written report makes only positive comments about the roof. The report is silent about moisture stains or leaks in the attic.

[64] Again, Mr. Lajoie failed to meet the standard of care. The evidence establishes significant deficiencies in the roof and roof coverings, which were visible based on a non-invasive inspection of the home. Based on Mr. Lajoie's report, the Plaintiffs would not reasonably have known about the roof's significant deficiencies.

The Windows

[65] Mr. Lajoie testified that he inspected a representative sample of the windows, in accordance with the Standards. The parties agree that, during the inspection, Mr. Desjardins asked Mr. Lajoie if the windows could be repaired by sanding the window frames and painting them. Mr. Lajoie said that would be appropriate.

[66] However, Mr. Lajoie's written report is confusing as to the actual degree of recommended window repair or refurbishment. As part of his recommendations, Mr. Lajoie wrote that the windows and doors should be replaced. Later, the report states that the windows should be "refurbished." In his chart, Mr. Lajoie labels this component as "budget." The report does not describe the windows and doors. However, it includes two photos of windows, with brief captions.

[67] Mr. Slaney's report is both clearer and more extensive. Mr. Slaney does not recommend the replacement of all windows and doors. Among other things, he identifies deterioration in the wood frames of some windows, the need for caulking improvements, and lost seals. For the basement windows, Mr. Slaney recommended, "immediate improvements to prevent moisture intrusion and potential damage to the window framing." For the other windows, he recommended additional caulking followed by ongoing monitoring.

[68] I find that Mr. Lajoie's reporting on the windows failed to meet the standard of care. On this issue, his written report is unclear, contradictory, and does not adequately inform the Plaintiffs about the state of the windows or the extent of the necessary repairs. Based on the Lajoie report,

the Plaintiffs could not reasonably have understood whether the windows were significantly deficient or what repairs were required.

[69] As indicated, verbal comments do not meet the standard of care. However, even if Mr. Lajoie's verbal comments were considered, this would only add to the confusion. Neither the written report, nor the verbal comments inform the Plaintiffs of the windows' significant deficiencies.

Other Issues

[70] Although little time was spent on this at trial, the Plaintiffs also claim that Mr. Lajoie failed to report or adequately report on the following issues: missing or deteriorated caulking at various locations on the exterior of the house, improper lot grading, uneven walkways and driveways, aluminum electrical wiring, exposed electrical panels and wires, a missing cover plate on electrical system junctions boxes, deficient electrical system outlets; an inoperative heating system humidifier, a near-end-of-life expectancy air conditioning system, inadequate waste plumbing piping, deteriorating caulking and grout near the bathtub, loose handrails and guardrails, no self-closer on a door between the garage and the house.

[71] These deficiencies were identified in Mr. Azzi's and/or Mr. Slaney's reports. While the Lajoie report does refer to some of these issues, the Plaintiffs' position is that the report does not meet the standard of care because it fails to provide an adequate description of the components.

[72] Mr. Lajoie describes his report as concise and easy for a homeowner to read and understand. In my view, the Lajoie report is more than concise: it lacks some of the information that he is required to provide under the Standards. Even where issues are identified in Mr. Lajoie's report, this is often done in a very cursory manner.

[73] For example, the Lajoie report recommends "electrical maintenance." However, the chart contains no comments about electrical issues and these items are not labelled. There are two relevant photos in the report, but they provide no real information. The first is of two grey metal boxes and is simply labelled "electrical." The second photo appears to be an outlet on an interior wall and is labelled "some electrical maintenance." Mr. Lajoie's report provides no description of

the electrical system, no description of why it is deficient, and no information about what maintenance or repair is required.

[74] That said, it is not strictly necessary for me to determine whether he met the standard of care in reporting on these issues. The Plaintiffs testified that they would not have purchased a property with significant defects that required costly and immediate repair. However, there is no basis to conclude that the Plaintiffs would not have purchased the Property or sustained damages but for the Defendants' failure to adequately advise them about more minor issues. The Plaintiffs have not provided evidence of the costs to repair all of these issues. Where they have provided evidence about costs, these seem relatively minor. For example, the cost of the electrical repairs was \$1,292.72. The Plaintiffs were able to do some of the other repairs themselves and provided receipts for material that totals a few hundred dollars.

Causation

[75] The Plaintiffs must show that Mr. Lajoie's negligent conduct caused or contributed to their injury: *Aristorenas v. Comcare Health Services*, 2006 33850 (ON CA). The Plaintiffs submit that, in deciding to purchase the Property, they relied on Mr. Lajoie's report and verbal assurances.

[76] There is a factual dispute about whether Mr. Lajoie provided verbal assurances to the Plaintiffs about the quality of the Property. It is not necessary for me to resolve this dispute. Even absent verbal reassurance from Mr. Lavoie, I find that it was reasonable for the Plaintiffs to rely on the written inspection report to conclude that there were no major problems with the Property. As noted, none of the components were labelled "problem." The report identifies no significant deficiencies with the roof or the foundation. The information about the windows is unclear. Even assuming (without finding) that Mr. Lajoie pointed out the moisture stains in the roof to Mr. Desjardins, the report's silence on the issue is telling. It was reasonable for the Plaintiffs to understand from the report that any moisture stains did not amount to a significant deficiency.

The Plaintiffs' Conduct

[77] Mr. Lajoie submits that the Plaintiffs were contributorily negligent and failed to meet the standard of care of the prudent and diligent buyer. He submits that the Plaintiffs were negligent because:

- a. they did not give the inspector any specific instructions;
- b. only Mr. Desjardins attended the inspection, he showed limited interest, and he ignored Mr. Lajoie's verbal comments;
- c. Mr. Desjardins told the inspector not to inspect certain rooms;
- d. the Plaintiffs did not consult their realtor about the inspection report before waiving the condition and purchasing the Property;
- e. they did not have further inspections by specialists or other home inspectors to review deficiencies identified in the Lajoie report; and
- f. they did not seek an abatement in the purchase price in light of the Lajoie report.

[78] Separate statements of defence were filed on behalf of Mr. Lajoie and the corporation. Neither of these plead contributory negligence. Even assuming this argument could be advanced, the Defendants provided no evidence about the standard of care of a home purchaser. There is no basis to conclude that a prudent home purchaser, acting reasonably, is required to attend the inspection, provide instructions to the inspector about what to inspect or how to do so, or conduct further inquiries where (as here) the initial inspection report did not identify problems or significant deficiencies.

[79] Mr. Lajoie's evidence was that prospective homeowners do not generally read his reports and they almost never contact him with questions. In this case, the Plaintiffs reviewed the report and contacted Mr. Lajoie to ask questions about it. Based on Mr. Lajoie's evidence, the Plaintiffs acted with more prudence than most of his clients. In the circumstances, I would not conclude that the Plaintiffs were negligent.

The Plaintiffs Suffered Damages

[80] Mr. Lajoie did not dispute that there were leaks almost immediately after the Plaintiffs took possession of the Property. Leaks from the roof and from some of the windows and doors caused damage to the Property that required repairs. Moreover, like the court in *Henrico, supra*, I am satisfied that the Plaintiffs suffered a detriment in purchasing the Property because of the heightened risks arising from the deficient components of the home.

Findings Regarding Negligence

[81] For these reasons, Mr. Lajoie was negligent. He owed a duty of care to the Plaintiffs. He failed to report in writing about significant deficiencies in the home that were visible on a non-invasive inspection. In this way, he did not meet the standard of care. The Plaintiffs reasonably relied on Mr. Lajoie's report in deciding to purchase the Property. They suffered damages as a result.

Negligent Misrepresentation

[82] To establish negligent misrepresentation, the Plaintiffs must show: (1) a duty of care based upon a special relationship between the plaintiff and defendant; (2) an untrue, inaccurate or misleading statement by the defendant; (3) negligence on the part of the defendant in making the statement; (4) reasonable reliance by the plaintiff on the statement; and (5) damage suffered by the plaintiff as a result: *Soboczynski v. Beauchamp*, 2015 ONCA 282 at para 70.

[83] For the reasons already provided, I find that the Lajoie report contained inaccurate and misleading information regarding the state of the roof, the windows, and the foundation. In failing to accurately and adequately report in writing on those issues, Mr. Lajoie breached the standard of care. The Plaintiffs reasonably relied on the inspection report in deciding to purchase the Property and they suffered damages as a result. Accordingly, I find that Mr. Lajoie made negligent misrepresentations.

Quantifying the Damages

[84] Counsel for Mr. Lajoie submits that a home inspection is not a guarantee and any damages must be proportionate to the home inspection fee: *Rayne v. Martin and Buck*, 2006 BCPC 422 at

paras. 53 and 54. In concluding that damages for negligent home inspections should be proportionate to the inspection fee, the judge in *Rayne* cited the following passage from *Biggs v. Harris* [1999] O.J. No. 4831 (Ont. S.C.J.):

The standard of care owed is that of a reasonable visual inspection done in accordance with ASHI standards but, I would add, what is reasonable is to be determined, as well, by the cost of the inspection and the known level of expertise of the inspector.

[85] The comment in *Biggs* relates to the standard of care and what can reasonably be expected of a visual non-invasive inspection that is provided for a relatively modest fee. I agree that a home inspection is not exhaustive and it does not provide a guarantee. That is not required under the Standards and it is not the applicable standard of care. In this case, Mr. Lajoie was negligent – not because he failed to conduct an exhaustive technical review of the Property – but because he failed to report on significant deficiencies in the Property that were visible based on a non-invasive inspection. As other courts have found, where the standard of care is breached, a home inspector’s liability is not limited to the cost of the inspection or to an amount proportionate to the inspection: see *Henrico v. Frontline Home Inspectors and Consultants Limited*, 2018 ONSC 1312.

[86] In asserting their claim for damages, the Plaintiffs rely on:

- a. invoices and estimates that Ms. Miller received from eight companies she approached about repairing the Property;
- b. the Slaney report, which identifies the need for repairs, notably to the windows, the foundation, and the roof; and
- c. Mr. Azzi’s inspection and expert reports, which identify several components in need of “immediate repair.”

[87] Mr. Lajoie did not present any evidence about damages, including evidence about alternative costs to those included in the invoices and estimates. Mr. Lajoie’s position is that the Plaintiffs cannot establish damages without the testimony of the individuals who prepared the relevant invoices and estimates. I cannot agree.

[88] This is a simplified proceeding. A requirement that each of the service providers give oral evidence is not feasible or proportionate, and it would have extended the trial well beyond the five-day limit.

[89] In addition to the invoices and estimates, the Plaintiffs also relied on Mr. Azzi's evidence to establish what repairs were required. Mr. Azzi testified at trial and it was open to the Defendants to cross-examine him on this issue. They did not do so.

[90] Mr. Azzi's evidence was that the following was required immediately:

- a. The aging roof should be replaced and the roof framing should be repaired;
- b. Deteriorated windows should be repaired or replaced;
- c. The structure should be repaired because it is compromised and at risk of leaks.

[91] The Plaintiffs submitted the following estimates:

- a. replacement of windows and doors: \$23,500, including taxes;
- b. repair work on the foundation: \$29,375, before taxes of 13%; and
- c. roof replacement: \$14,058.33, including taxes.

[92] Some of the other damages the Plaintiffs seek relate to minor repairs and improvements, such as painting and wallpapering. This aspect of the Plaintiffs' claim is denied. Improvements to the appearance of the home are unrelated to the inspection report. In addition, as noted, the evidence does not establish that the need for minor repairs (some of which the Plaintiffs did themselves) would have prevented them from closing the transaction.

[93] In my view, the Plaintiffs damages are limited to the costs to repair the foundation, the windows, and the roof. These components required were significantly deficient and required major repairs. I accept the Plaintiffs' evidence that they would not have purchased the Property but for Mr. Lajoie's negligence in reporting or failing to report on those issues. I find that the evidence provided by the Plaintiffs is a sufficient basis to establish the damages they suffered.

[94] In my view, Mr. Lajoie should not bear the full cost of replacing all windows and doors. Both Mr. Azzi and Mr. Slaney recommend that some, but not all windows and doors be replaced. In the circumstances, it is reasonable for Mr. Lajoie to bear 2/3 of the cost of the estimated work, which totals \$15,666.67. In reaching this conclusion, I considered Mr. Slaney's particular concerns about the condition of the basement windows as well as the fact that some doors and windows on the main floor caused leaks.

[95] Some of the other claims and estimates provided by the Plaintiffs are not sufficiently particularized. For example, the estimate for repairs to the foundation includes a base price of \$29,375 and three "options" for additional work, including: the construction of a frost pit in front of the garage (at an additional cost of about \$10,000); the stabilization of 17 linear feet of the front entrance on steel piles for (at an additional cost of \$10,000); and the stabilization of 60 linear feet of the front entrance on steel piles (at a cost of \$30,000). The Plaintiffs provided no evidence to explain the options or establish which (if any) is necessary repair work. Absent this evidence, I cannot conclude that Mr. Lajoie should bear the cost of these "options."

[96] The Plaintiffs also submitted an estimate for the repair of an addition, in the amount of approximately \$10,000. There was no evidence to show how this proposed repair related to significant deficiencies that Mr. Lajoie negligently failed to report. It is not clear how any issues with the addition (including ridge sagging) would not be addressed by repairing the foundation and replacing the roof.

[97] Accordingly, the Plaintiffs have established that they suffered damages of \$62,918.75 as a result of Mr. Lajoie's negligence and negligent misrepresentations. This amount is comprised of: (a) \$33,193.75 (including taxes) for repair work on the foundation; (b) \$14,058.33 (including taxes) for the replacement of the roof; and (c) 2/3 of the cost of replacing the windows and doors, which amounts to \$15,666.67 (including taxes.)

DISPOSITION

[98] For the reasons provided, Mr. Lajoie is liable in negligence and negligent misrepresentation. The Plaintiffs are awarded damages of \$64,211.80, which represents the cost to repair the foundation, replace the roof, and replace some of the windows and doors.

[99] The parties are encouraged to resolve the matter of costs. If they are unable to agree on costs, they may each submit a cost outline, attaching a draft bill of costs and any authorities, within 30 days of the release of these reasons. The cost outline submitted by each party shall not exceed three pages in length.

Date: April 25, 2025

Justice Flaherty

CITATION: *Miller Desjardins v. JF Lajoie Construction Inc. et al* 2025 ONSC 2522
COURT FILE NO.: CV 22-9
DATE: 2025/04/25

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Monique Miller and Michel Desjardins,
Plaintiff(s)

-and-

J.F. Lajoie Construction Inc. carrying on
business as J.F. Lajoie Inspections and
Jacques Lajoie, Defendant(s)

COUNSEL: Taayo Simmonds for the Plaintiff(s)

Vincent Carney for the Defendant(s)

REASONS FOR DECISION

Flaherty J.

Released: April 25, 2025