**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *Strug v. I.M.P. Group Limited*, 2025 NSSC 149

**Date:**20250429
**Docket:** HFX No. 510077
**Registry:** Halifax



**Between:**

Stanley Strug and Cynthia Joyce Robertson

*Plaintiffs*

v.

I.M.P. Group Limited

*Defendant*

**Judge:** The Honourable Justice D. Timothy Gabriel

**Heard:** February 3, 4, and 5, 2025, in Halifax, Nova Scotia

**Counsel:** Dennis James, K.C., for the Plaintiffs
Erin McSorley and James Pinchak, for the Defendant

**By the Court:**

[1] The phrase *caveat emptor* is familiar to most people, even those without legal training. Even many of those unacquainted with the original Latin aphorism are familiar with the English equivalent of "buyer beware". Despite the fact that its origins are lost in antiquity, it concisely summarizes a legal concept which retains its vigour and relevance today. Those situations to which it is applicable, and, ultimately, whether it has application to the case at bar, will be among the issues explored in this decision.

[2] In light of the conclusions at which I have arrived as to the evidence, or lack thereof, in this matter, I will provide a more fulsome account of each witnesses' testimony than would ordinarily have been the case. With this said, of course, I will not recount it exhaustively.

## A. Background

[3] In 2012, the Defendant I.M.P. Group Limited ("IMP") purchased a 14-acre piece of land in HRM. I will refer to it as "the parent parcel". At the time, the parent parcel had only two structures upon it, a house and a garage.

[4] The garage was demolished, and the house ended up on Lot 23 when the parent parcel was subdivided. The subdivision was marketed under the title "Boscobel on the Arm".

[5] The parties' dispute has its origin in the Plaintiffs' purchase of Lot 23, which equates to civic address 65 Boscobel Road. The house and subdivided lot at 65 Boscobel (I will, at times, refer to it as "65 Boscobel", or "Lot 23") was vacant, and had been listed for sale by the Defendant for approximately eight years before the Plaintiffs purchased it on August 17, 2020. The Listing Cut (Exhibit 2, Tab 2) prepared by the broker (Sandra Bryant of Bryant Realty) and viewed by the Plaintiffs, disclosed that the water and sewage facilities were "municipal". This had not always been the case and, in fact, as it pertains to the sewage facilities, the Plaintiffs contend that such a descriptor did not tell the whole story even at the time they purchased the property. I will explain.

[6] As has been noted, when the Defendant first obtained the parent parcel, it contained a house, along with a garage. The house was (at the time) serviced by a private septic field. After the process of subdividing the parent parcel had

concluded, the house itself was on Lot 23 (as indicated) but the septic field which serviced it was not wholly contained on that lot any longer. Rather, a portion of it was under a neighbouring lot. Over time, IMP and its realtor gradually came to the conclusion that 65 Boscobel would be more competitive in the marketplace if it was connected to municipal services.

[7] Bryant Realty made inquiries of the Defendant at times throughout the duration of the listing, before the Plaintiffs' purchase. Information had been provided by IMP that 65 Boscobel had municipal sewer brought up to (but not over) the property line at the time of subdivision. For a time the property remained on private septic.

[8] Lot 23 sloped downhill from the property line, hence, from the municipal sewer infrastructure. IMP began advising prospective purchasers in that particular area of the subdivision that a grinder pump would be needed in order to pump the effluent to the property line, and into the municipal sewer lines. The installation of such a device would require an outlay of approximately $24,000.

[9] However, in late 2016, IMP, at its own expense, decided to have a grinder pump installed to connect 65 Boscobel to municipal sewer. This latter step was undertaken, with the advice of Bryant Realty, on the ostensible basis that this would make this property more attractive to prospective purchasers.

[10] The installation was performed by Atlantica Mechanical Contractors ("Atlantica"). They were retained by the Defendant in October 2016 and their mandate was to install a new sewer system connecting the house to the line at the property edge. A grinder pump would be a necessary part of the system.

[11] Atlantica subsequently issued a Certificate of Completion dated April 12, 2017, which indicated that the installation had been finished on February 10, 2017. The total cost of the project was $33,530 (*Exhibit 1*, Tab 1, p. 28).

[12] The specifics of the installation were transmitted in correspondence from IMP to Bryant Realty. The latest example of their discussion of the system (prior to the Plaintiffs' purchase of the property) occurred in email correspondence dated October 22, 2019 (*Exhibit 2*, Tab 8) between Sandra Bryant and Candace Dion. Ms. Dion was Senior Director of Real Estate and Property Management for IMP at the time. This and some earlier correspondence on the topic will be examined later in these reasons.

[13] Now, to the Plaintiffs. They are a couple who have owned and lived in several properties over the course of their relationship. Stanley Strug's ("Mr. Strug") professional real estate experience, however, is much more extensive than this. For many years he worked as a general contractor for real estate developers in Québec and Florida. This provided him with a sufficient background to assume control of a family business called STR Projects ("STR") in 2001.

[14] In 2001, STR owned six properties which contained, cumulatively, hundreds of residential apartment units. The company was eventually wound down, and all of the sales of the units which were associated with that process were completed by approximately October 2022.

[15] Mr. Strug had also acquired a real estate broker's license. It had been issued by the Province of Nova Scotia in 2002. He never practised as a real estate broker, however. From 2002 to 2014, he worked with Macro Realty Group, where his principal involvement was with commercial and industrial properties.

[16] When they first learned that the property was for sale, the Plaintiffs owned (and lived in) a nearby residence on Melvin Road. They arranged for a viewing of 65 Boscobel with the listing agent, Sandra Bryant, in June 2020. The listing price at that time was $1,975,000.

## B. Plaintiffs' Evidence

### *(i) Stanley Strug*

[17] The Plaintiffs attended the property multiple times before they purchased it. They made a point of advising Ms. Bryant that, in addition to prioritizing waterfront properties, they were primarily interested in properties that were connected to municipal water and sewage services. Their (then) residence on Melvin Road was on a private well/septic. They wanted their next residence to be one that would not require them to have involvement in the maintenance and upkeep of such a system. The listing cut with which they were provided described the property's water and sewer as "municipal".

[18] Mr. Strug did have occasion to observe the pump controller and equipment associated with the sewage system. It was located in the basement of 65 Boscobel, and he observed it on more than one occasion before the Plaintiffs' purchase. His testimony was that he assumed that the pump controller related to the old septic system that had been on the property. He did not ask Sandra Bryant whether this

was the case, nor did he undertake any investigations himself, or retain others to investigate the issue. This is despite what he (eventually) acknowledged on cross-examination was his curiosity with respect to the property's manner of connection to the sewer. He was aware that Lot 23 was well below the elevation of Boscobel road itself, and also below Hearthwood Crescent ("Hearthwood"), to which Boscobel adjoined. More specifically, he was aware that it was under Hearthwood that the municipal septic pipes ran, after they branched off of Boscobel.

[19] Mr. Strug also acknowledged that he had observed a subpanel adjacent to the pump controller. This included a metal BX cable which attached the two. He testified that the breakers on the subpanel were in the "off" position when he looked at it, and that one of the descriptors on the subpanel (at the time) made reference to a "garage". Having been aware that there was originally a garage on the parent parcel of property out of which the property had been subdivided, and that the house and this garage had been the only two structures originally upon that parent parcel, he assumed that the panel's role had been to supply power to the old garage, before the latter had been torn down.

[20] The pump controller had a label "E One sewer systems", and although he subsequently (after purchasing the property) "googled" the name and obtained more information as to the function of such a system, Mr. Strug testified that he gave it very little thought at the time, since he had been told that the property was connected to municipal sewage. He thought that all of this apparatus pertained to the prior, now defunct, private sewage disposal system that had serviced the property in earlier days.

[21] In addition to the above, there is an exterior chamber which houses the effluent moved from the house (the "exterior pump chamber"). It is a 70-gallon capacity chamber, and the grinder pump housed therein is activated when that quantity of waste is present. It grinds the sewage into smaller particles and pumps it to the property line where it carried into the municipal sewage system. This chamber is located in the backyard of Lot 23, near its boundary line with Lot 22. Prior to the purchase, Mr. Strug observed the cap to the chamber of the exterior pump chamber, while standing in the backyard. Again, his assumption was that it was associated with the old septic holding tank which had formerly serviced the property, before the property had been connected to municipal sewer. Once again, he did not ask anyone about it.

[22] As to the proximity of the exterior pump chamber to the (indoor) pump controller, Mr. Strug explained that the latter was located in a closet off of the vestibule in the basement of the property. In addition to the BX cable, the pump controller is also attached to a pressure gauge. When he first observed the set up, the gauge was at zero. He assumed that it was not operational and that he did not have to worry about it.

[23] The closet, in turn, is located to the left of the door from the basement leading to the backyard. This door leads out into a terraced part of the yard. The exterior pump chamber is to be found about 75 feet away on terrain that slopes downward from the back door.

[24] On June 25, 2020, Mr. Strug testified, the Plaintiffs put forward an offer to purchase the property at a price of $1,750,000. The offer was contained in a standard Nova Scotia Real Estate Association form Agreement of Purchase and Sale ("APS") (*Exhibit 1*, Tab 1, p. 41). It was subject to the usual conditions with respect to financing, property inspection, insurance, and any restrictive covenants that might negatively affect the property. The Plaintiffs waived receipt of a Property Disclosure Statement. The Defendant issued a counteroffer with certain amendments and additional conditions. This did not purport to affect the purchase price that the Plaintiffs had offered (*Exhibit 1*, Tab 1, p. 54). It was accepted.

[25] To conduct the inspection, the Plaintiffs retained Ed Pottie from "Greener Inspection Services". There is no evidence that Mr. Pottie was asked to look at the pump controller and/or associated equipment in the basement vestibule, or the exterior pump chamber. Mr. Strug testified that he never asked him anything about it, either.

[26] In the aftermath of Mr. Pottie's inspection, the Plaintiffs arranged to have a number of contractors attend the property with respect to the plumbing, roofing, electrical, and ventilation work which they perceived to be necessary. A list of the remedial work, and the quotes which they received for that work, was compiled. It came in at $85,057 (*Exhibit 3*).

[27] Further concerns were also brought to Ms. Bryant's attention by the Plaintiffs. These were, in addition to those noted in Exhibit 3, necessary repairs to the stone retaining walls, landscaping necessary to comply with current restrictive covenants, and hot water heater and fridge replacement. The cumulative renovation cost stood at "well over 100K" at this point. The Plaintiffs instructed the agent to

seek merely a further $35,000 reduction in the purchase price from IMP (*Exhibit 1*, Tab 6, p. 433).

[28] IMP agreed to the price reduction, and on July 10, 2020, the parties executed an Amendment to the APS. The purchase price became $1,715,000, and the document also included the following term:

> 3) The buyer acknowledges and agrees that the property, including all chattels and appliances are being accepted on an "as is where is basis".
>
> (*Exhibit 1*, Tab 1, p..55)

[29] A pre-closing inspection was conducted in August 2020. Mr. Strug testified that he was satisfied with the results of the inspection and did not recall taking another look at the basement vestibule housing the pump controller. “If we did [look at it] we did so very casually and very quickly”, he testified. The closing took place on August 17, 2020, and the Plaintiffs moved in around the end of that month.

[30] Prior to moving in, contractors completed some plumbing work (three toilets and a hot water tank replaced). In addition, Mr. Strug explained that faucets in the ensuite bathroom were replaced approximately one month after the Plaintiffs moved in. They also arranged for some electrical work to be done (installation of storage heaters, light fixtures and a new garage door).

[31] Sometime in late February 2021, Ms. Robertson advised Mr. Strug that she had noticed a smell of sewage in the vicinity of the exterior pump chamber on the property. She told him she had been about halfway up the hill leading from the water to their home when she became aware of it. It was in the area of the pump cap, which is the portion of the exterior pump chamber which is visible above ground. She also told him that she saw evidence of overflow which appeared to have emanated from the cap. Neither of them undertook any investigations or follow up at that time.

[32] From the date of purchase of the property in August 2020, to March 26, 2021, only the two Plaintiffs had resided in the property. They lived there continuously and full-time during that interval.

[33] Mr. Strug testified that on March 26, 2021, they experienced a sewage backup. The effluent backed up from the environs of the vestibule area in the basement in which the pump controller is housed.

[34] The Plaintiffs contacted plumbers at “Iron Dog” to assist with the problem. Mr. Strug observed the plumber start with a 30-foot residential snake, however no issues were encountered. The plumber then came back with a 50-foot snake and again detected no blockage problems. However, as the plumber attempted to extricate the larger snake, he could not do so. It was stuck. The plumbers ended their work for the day.

[35] Mr. Strug then inquired of one of his neighbours as to whether they had experienced any sewage issues. These inquiries led him to information relating to his property’s specific dependence upon the grinder pump and exterior pump chamber to transport the sewage from their property up to the municipal sewage line located on Boscobel Road, and, ultimately, to Hearthwood. He passed this information along to Iron Dog, whose personnel advised him that he would have to arrange to empty out the exterior pump chamber prior to the plumbers’ return to the property.

[36] Upon this having been attended to, and the plumbers’ return to the property, it was discovered that the 50-foot snake had been caught in the grinder pump (in the exterior pump chamber) itself. The Plaintiffs incurred an expense of $4,830.44 as a result of Iron Dog’s efforts (*Exhibit 2*, Tab 12).

[37] Although the damaged pump could have been repaired, Mr. Strug testified that he and Ms. Robertson opted to have it replaced with a new one of the same make and model. This new grinder pump was installed on March 27, 2021 by Sansom Equipment Limited (“Sansom”), at a cost of $15,064.54 (*Exhibit 2*, Tab 9). A complete remediation of the problem, which had begun with the effluent backup, had therefore been affected by the evening of March 27, 2021, in other words, in a little over 24 hours. The Plaintiffs continued to reside in the property (albeit with some restrictions) during the interval while these repairs are being carried out.

[38] Sansom provided the Plaintiffs with no manual or training as to how to maintain or operate the grinder pump or the system. In effect, according to Mr. Strug, the Plaintiffs were shown the breakers that controlled the pump, and instructed not to touch them. He also testified that there is nothing special required to operate or maintain the system. If they were going to be away from home for a period of time, they were told to flush the system with clean water and turn off the power to the control. The process was not a complicated one.

[39] During the interval between the Plaintiffs’ purchase of the property in August 2020, and the sewage backup in March 2021, the breaker controlling the

grinder pump had been switched off, therefore it was nonoperational. Wastewater would flow down the hill to the sewage chamber, which houses approximately 70 gallons. Mr. Strug testified that although the two Plaintiffs showered or bathed normally, flushed toilets, and ran a dishwasher and washing machine at the property for approximately six months, they never noticed a problem, except on a few occasions when the toilets appeared to be slow to flush, resulting in the occasional need to use a plunger (but not to a degree that it raised any concerns) and the previously mentioned observation by Ms. Robertson (approximately one month before the backup had occurred) with respect to the unpleasant smell of sewage in the vicinity of the chamber.



[40] Mr. Strug was asked on direct whether he would have proceeded with the purchase had he been aware of the grinder pump and associated apparatus beforehand. He said that it would definitely have been a consideration and that he would have tried to obtain a further concession with respect to the purchase price in such an event.

*(ii) Cynthia Robertson*

[41] Ms. Robertson testified that she has a graduate degree in business. Although currently retired, she had been employed in different capacities during her working career. For example, she worked 13 years for the Province of Nova Scotia, and later for a corporation in which she fulfilled the role of Vice President of Government Communication. In that role she provided policy advice for infrastructure to her employer. She and Mr. Strug returned to Halifax from Toronto in 2014, and they have lived in the area ever since. Her final employment was a 13-year stint with the Bank of Nova Scotia.

[42] Broadly speaking, Ms. Robertson described the antecedents to the Plaintiffs' purchase of 65 Boscobel in the same manner as Mr. Strug. However, she did provide some additional details. For example, prior to this purchase, they had bought about eight properties together, one in Toronto, and seven in HRM. The last one before Boscobel was the property on Melvin Road. Ms. Robertson testified that they were happy on Melvin, but wanted something either on or closer to the water, since they own boats. As a consequence, they decided to look at waterfront properties. Their other condition was that the house had to be on municipal water and sewer. They simply did not want the bother of maintaining either a well or septic system any longer.

[43] Prior to the events which led to their purchase of the property in 2020, the Plaintiffs had actually visited 65 Boscobel in the 2016 – 2017 time range. She recalled that the agent had hosted an open house around that time, which was one of the reasons they decided to have a look. In fact, Ms. Robertson testified that she knew the original owners of the house, as they were parents of a school friend of hers. She recalled that these people had built it around 1988, but knew no other details.

[44] After that open house, the Plaintiffs did not see the property again until years later, in June 2020. They were "house shopping" and had been scheduled to visit a different property that day with agent Sandra Bryant. The latter talked them into going to see 65 Boscobel when, for some reason, an impediment arose to visiting the property they had originally intended to see.

[45] Within a day or so of having viewed the property, the Plaintiffs entered into a "Transaction Brokerage Agreement for Common Law" (*Exhibit 1*, Tab 1, p. 52). This is described as "Form 411", one which is "approved by the Nova Scotia Real Estate Commission (NSREC) for use by licensees under the *Nova Scotia Real Estate Trading Act*."

[46] The Plaintiffs and Ms. Bryant signed the Brokerage Agreement on June 25, 2020, while Candace Dion, on behalf of the Defendant IMP, signed a day later. All parties signed electronically.

[47] Among other things, the Brokerage Agreement provided:

> **1. Transaction Brokerage**
>
> 1.1. Transaction Brokerage occurs when a real estate brokerage enters into an agreement, in which the brokerage acts as an impartial facilitator for the Seller and the Buyer in the same transaction. Entering into Transaction Brokerage requires the written consent of all parties and must be done prior to an offer being prepared.
>
> 1.2. The Brokerage is only permitted to practice Transaction Brokerage with the fully informed and voluntary written consent of the Buyer, the Seller and the Brokerage.
>
> **2. What the Brokerage <u>Cannot</u> Do**
>
> 2.1. In Transaction Brokerage, the Transaction Facilitator cannot:
>
> a) provide utmost loyalty to the Buyer or the Seller;
>
> b) act in the best interests of either the Buyer or the Seller;

c) offer advice or recommendations to either the Buyer or the Seller; and

d) disclose confidential information learned in the previous relationships to either the Buyer or the Seller.

2.2. The Transaction Facilitator shall not disclose the following without the informed written consent of the Buyer or the Seller. **These are examples, but are not limited to:**

a) that the Buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase;

b) that the Seller may be prepared to accept a lower price or terms other than those contained in their Brokerage Agreement;

c) the motivation of the Buyer or the Seller for wishing to respectively purchase or sell the Property; and

d) subject to clause 2.1(d) of this Agreement, confidential information relating to the Buyer or the Seller and other information disclosed at any time in confidence by either to the Transaction Facilitator.

**3. What the Brokerage <u>Can</u> Do**

3.1. In Transaction Brokerage, the Transaction Facilitator can:

a) treat the interests of both the Buyer and the Seller in a fair and impartial manner;

b) disclose all other potential conflicts of interest;

c) exercise reasonable care and skill in the performance of its mandate under this Agreement;

d) promptly present to the Buyer and the Seller all offers and counter-offers, even when the Property is already the subject of an Agreement of Purchase and Sale;

e) keep the Buyer and the Seller informed regarding the progress of the transaction to the extent required in this Agreement;

f) disclose to the Buyer, all material latent defects affecting the Property known to the Transaction Facilitator;

g) disclose to the Buyer that there are competing offer(s) and backup offer(s) on the Property;

h) disclose to the Seller, all material facts relevant to the Buyer’s ability to purchase the Property known to the Transaction Facilitator;

i) provide real estate statistics and information on the Property, including comparable property information, upon request by the Buyer or Seller;

> j) offer the names of real estate service providers, upon request by the Buyer or the Seller;
>
> k) hold all monies received in respect to the transaction in trust in accordance with the provisions of the *Nova Scotia Real Estate Trading Act*, its Regulations and the NSREC Bylaw; and
>
> l) ensure compliance with the Brokerage's policies and procedures governing the Transaction Facilitator, the Nova Scotia Real Estate Trading Act, its Regulations, the NSREC Bylaw and the Brokerage's support staff.
>
> [emphasis in original]



[48] On their first visit to the property in June 2020, Ms. Robertson testified that they spent a total of an hour there, or thereabouts. She said there was a lot of information to take in. She recalled two subpanels, one of which was smaller than the other, sitting opposite of one another. The smaller subpanel was to the left of the egress door in the basement. Ms. Robertson did not recall whether she looked at either panel during the first visit.

[49] What she did recall about this visit was going around the home and discussing its features. She and Mr. Strug figured they needed to take another visit, and they did so before they made their offer.

[50] As to the backyard, Ms. Robertson recalls that it was overgrown, and the wharf had not yet been installed. She said Ms. Bryant accompanied them on both the first and second visits. She said they signed the Transaction Brokerage Agreement before they made the offer, which latter was signed on June 25, 2020.

[51] Ms. Robertson clarified that Boscobel Road is not a road, *per se*, but rather a driveway leading off of Hearthwood Crescent, which services the property and several of their neighbours. She also clarified that the pump controller, the exterior pump chamber and the grinder pump itself are parts of the same system, which is designed to carry the effluent from 65 Boscobel to the property to the property line. By this means, it connects to the municipal system through an easement which services 65 Boscobel and several neighbouring lots, and carries it up to the municipal sewage lines running under Hearthwood.

[52] Ms. Robertson described the process of the offer, counteroffer, and the basis for the reduction in price which they received, in the same manner as Mr. Strug. With respect to Exhibit 3, she identified her writing at the top and bottom of the document. She was not sure whose writing was in between, but confirmed that the

numbers matched the figures for the cost of some of the remedial work which needed to be done to house and environs.

[53] Her attention was drawn both to the APS and the Amendment thereto, the latter of which was prepared subsequent to the Plaintiffs' counter-offer (*Exhibit 1*, Tab 1 p. 55). The three operative clauses in the latter provide:

> 1.1 The Buyer proposes to amend the Agreement of Purchase and Sale as follows … :
>
> 1) Buyer requires an extension of the due diligence period regarding clause 4.1 (ONLY restrictive covenants review), 8.1 (lawyer review) and 10.2 (Title review) in the Agreement of Purchase and Sale, for lawyer to complete due diligence. Date for these conditions to expire is July 15, 2020
>
> 2) Purchase Price is One Million Seven Hundred Fifteen Thousand Dollars ($1,715,000.00)
>
> 3) The buyer acknowledges and agrees that the property, including all chattels and appliances are being accepted on an "as is where is basis"

[54] Much of the parties' original APS was unaffected by these amendments. Among those terms unaffected were paragraphs 6.2 and 7 thereof, which provide as follows:

> 6.2 The following chattels, as viewed on the Property by the Buyer on the date in clause 6.1 and owned by the Seller, shall remain with the Property and be included in the purchase price and shall be conveyed to the Buyer in good working order, free and clear encumbrances, on that date of closing:
>
> Fridge, Dishwasher, Other: See Section 7, Other: All keys, Other: Cooktop, 2 wall ovens, all built-ins. Any/all hung bathroom mirrors.
>
> 7. Section 6.2 Continued: Dock, 2 wharf floats and any/all related accessories. Any/all manuals. Fireplace (s) and any/all related accessories. Window screens.

[55] Ms. Robertson testified that Exhibit 1, Tab 3 comprises all "appliance manuals and warranties" with which the Plaintiffs were provided upon their purchase of the property. They included faucet instructions, Honeywell doorbell instructions, inclined wheelchair install, info sheet for ratings plate, Jenn-Air stovetop, Miele dishwasher instructions, Miele oven instructions, Steffes heater manual, Sub-Zero freezer Warranty, thermostat for in-floor heat, Eureka vacuum guide, and Waste-Go product information.

[56] Ms. Robertson confirmed that these manuals and instruction booklets were left for them in the kitchen drawer. Prior to the purchase, she and Mr. Strug were not provided with the manual related to the "E/1 Extreme DH071 grinder pump" (*Exhibit 1*, Tab 2, p. 103) or any information at all related to the grinder pump system. Rather, this document was provided to them by Atlantica Mechanical when that company replaced the original grinder pump, in the aftermath of the sewage backup on March 27, 2021.

[57] There is another set of instructions detailing the features of, and the correct installation of, the DH071 grinder pump (*Exhibit 1*, Tab 2, p. 123). Ms. Robertson testified that the Plaintiffs were not provided with this document prior to the sewage backup either. Rather, as will be seen when Ms. Dion's testimony is discussed, this document was found in the office of the person formerly responsible for the property while it was being marketed, who was no longer with IMP when the Plaintiffs purchased the property.

[58] Ms. Robertson also testified that, in addition to the booklets with respect to the grinder pump and system (after the backup) she also received user instructions which, among other things, provided the Plaintiffs with a list of items that they were not to put in the sewer (*Exhibit 4*). It is reproduced below:

> … regulatory agencies advise that the following items should not be introduced into any sewer, either directly or through a kitchen waste disposal unit:
>
> | | | |
> |---|---|---|
> | Glass | Seafood shells | Diapers, socks, rags or cloth |
> | Cotton swabs | Personal/cleaning wipes & sponges | Disposable toothbrushes |
> | Metal | Plastic objects (toys, utensils, etc.) | Kitty litter |
> | Aquarium gravel | Sanitary napkins or tampons | Cigarette butts |
> | Syringes | Latex/vinyl items | Dental floss |
>
> **Caution: Kitchen garbage disposals do not keep grease/oil out of the plumbing system**
>
> In addition, you must **never** introduce into any sewer:
>
> | | | |
> |---|---|---|
> | Explosives | Strong chemicals | Lubricating oil and/or grease |
> | Flammable material | Gasoline | |
>
> Items introduced in the sewer system from your home can potentially impact the water environment. Proper disposal of household wastes such as window cleaners, unused/expired pharmaceuticals, paint thinners, fats, fruit labels, etc. is important.
>
> …
>
> [emphasis in original]

[59] She said that these requirements have made her more cautious and aware of what goes into the waste drain. She further testified that she feels she could have convinced Mr. Strug not to purchase 65 Boscobel had they been aware (before the purchase) of the way the property was connected to municipal sewage, and what was involved with the apparatus which facilitates that connection.

*(iii) Sandra Bryant*

[60] Ms. Bryant is an experienced real estate agent, one of the principals of Bryant Realty. Through her agency, the property was sold to the Plaintiffs. She had also been the agent who sold the entire (14-acre) parent parcel, including the original house and garage that were on it, to IMP's predecessor in title. As noted earlier, Lot 23 (which today is 65 Boscobel) contains the original house that stood on the parent parcel prior to subdivision being affected. Ms. Bryant had also acted as the Plaintiffs' agent when they had purchased their (then) current residence on Melvin Road.

[61] Ms. Bryant testified that she, at all times, took her instructions from Candace Dion at IMP. The Seller Brokerage Agreement (*Exhibit 1*, Tab 1, p. 12) was originally executed on March 7, 2016. It provided for a listing price of $2,275,000. This agreement was subsequently extended a number of times prior to the sale of the property to the Plaintiffs. For example, the amendment (at *Exhibit 2*, Tab 3) provided for a new expiry date of January 11, 2019. In this amendment, the listing price also changed to $2,150,000. The list price underwent a series of further reductions until it reached its nadir at $1,975,000 on November 28, 2019 (*Exhibit 2*, Tab 6).

[62] On October 22, 2019, before her involvement with the Plaintiffs in relation to the property, Ms. Bryant exchanged emails with Ms. Dion. Herein, the agent was advised that IMP had installed a "grinder" pump". I will reproduce this correspondence shortly.

[63] Ms. Bryant did not recall this correspondence, but did recall being told that the property had a grinder pump. She did not attribute any special significance to the words "grinder pump". She did not inquire, nor did Ms. Dion elaborate. Her testimony was that, as far as she was concerned, the property was hooked up to municipal services, and that was good enough for her. She was not instructed by Ms. Dion to put any language in the listing, purchase and sale agreements and/or amendments, or provide any notification to the Plaintiffs about the infrastructure, or as to how it was maintained and operated.

[64] However, when the two lots adjacent to Lot 23 were subsequently sold, Ms. Bryant became aware that IMP had put "language" into the agreements, to the effect that a grinder pump needed to be installed on those premises in order to pump the effluent uphill to the respective property lines where it would enter the municipal system. The difference between those lots and 65 Boscobel, was that their prospective purchasers needed to be made aware of the additional cost of installing a pump system when they built their residences, whereas 65 Boscobel was already built, and its grinder pump was already installed.

[65] Ms. Bryant was aware that the two main criteria in which the Plaintiffs were interested were that their new house be on or near the water, and that it be connected to municipal water and sewage.

[66] She claimed not to have seen the email exchange of October 22, 2019 referenced above, and said that her assistant at the time, "Brooke Godsoe" had access to her emails and often communicated in her name. It is reproduced below:

> Good Morning Candace,
>
> We have some feedback from Sunday's showing at your 65 Boscobel. They thanked you very much for the showing and are still giving the property some strong consideration. They did make a note in relation to the sewage system that we thought might be important to pass along:
>
> "Is the sewage pumped from the basement up to the sewer system? There is a pump and something under pretty high pressure?"
>
> We have been told that there is an offer in on 37 Boscobel. As we have more details, we will share.
>
> Kindest, Sandra
>
> Hi Sandra:
>
> Yes, when we hooked up to municipal services a grinder pump was installed.
>
> Regards,
>
> Candace
>
> (*Exhibit 2*, Tab 8)

[67] But Ms. Godsoe had already communicated with Ms. Dion about the grinder pump much earlier, before IMP had installed the grinder pump at 65 Boscobel. The following exchange occurred between April 11 – 13, 2016:

Hi Candace,

We have our open house on Sunday, and then a showing Monday morning at 10am. Let me know if this will be ok? I know you have cleaners go through to wash the floors after the open house, so I wanted you to know about the showing first thing Monday.

Thanks

Sandra

Ok for showing on Monday morning. I will notify cleaner.

Good luck!

Candace Dion

Another excellent day at Boscobel. This time around we had approximately 30+ people through and of course everyone loves the home but not everyone has the budget.

One thing I noticed was that on the downstairs side entrance there was a small puddle of water…likely wind driving rain between the two glass doors. I cleaned it up but wanted to draw that to your attention.

Thanks

Brooke

Thanks Brooke.

We will investigate the water.

Regards,

Candace

The showing went well, the buyers have a few questions:

can you send the plot plan and the subdivision plan, the two adjoining lots and prices/ are they sold?

what is the issue with the roof shingles- do you know the make/installation date of them?

can you send the utility costs for the past year or two / since the renovations/ we know it has been vacant

what type of plumbing lines / type of plastic/ trade names of supply lines

it is on sewer and water-right?

what is the yearly road/ community charges?

Thanks

Brooke

Hi Brooke:

The 2 water lots are currently still available however there is a party interested in lot 22.

We believe the roof shingles are approx. 20 years old and are Composite Royal roofing shingles.

As mentioned in my previous email, we have no information on the plumbing specifications.

The utility costs for the past 2 years are as follows:

Water - $650

Power - $11,270 (inclusive of HST) ? the house is all electric heat.

The house is on water and septic. When we developed the sub-division, we had the sewer lines brought to the property line on Boscobel Road. Should the buyer want to connect to sewer, he will have to install a grinder pump. Also if you look at the plan there is an easement that runs up between lots 15 & 16 to Hearthwood Crescent. This is an easement in favour of lots 20, 21R, 22 & 23 for the sewer lines.

Currently the only costs associated with the road is snow plowing. The snow plowing contract last year was $115 (including HST) for each lot contributing to the maintenance of Boscobel Road. In addition, there is an annual fee that IMP has to-date been paying and not charging back to the lot owners. However, commencing 2016, this will be charged back to the Home Owner's Association. I have requested the amount from our finance dept. however it is less than $100/annum. I will confirm once finance provides me with the amount.

If anything further is required, kindly advise.

Thanks,

Candace

[emphasis added]

I'm just double checking everything. Please confirm there is no HST for 65 Boscobel.

You are correct. There is no HST.

Regards,

Candace

Hi Candace,

Is there a plot plan on file for 65 Boscobel?

The last questions are:

1. Are they allowed to build another garage next to the current garage?
2. Just across the street to the right, there[’]s a little pad to park at, who owns that?
3. Why when all the new homes in the subdivision were given municipal services and the street was dug up, did you not put 65 Boscobel on [Municipal] at the same time?

They are very interested, so hopefully we get an offer soon.

Thanks

Brooke

Hi Brooke:

We do not have a plot plan for 65 Boscobel. It was included in the subdivision plan. They can build a garage as long as it meets the setback requirements and we approve the plans. The setback requirements can be confirmed with the City as they will have to apply for a permit;

The pad is for fire trucks to turn. No parking is allowed. There was a sign showing no parking however a new sign is being prepared as there was graffiti on the old sign so we had it removed;

When we did the subdivision all municipal services were brought only to the property line of each lot. Boscobel Road already had water so nothing further was required for water. Boscobel Road does not have to be dug up again to bring the sewer to 65 Boscobel as the lines are already there. We had them installed at the time we did the subdivision. It only needs to be brought from the property line to the house so I am not sure what you mean in line 3 below?

I trust this answers your questions.

Regards,

Candace

[emphasis added]

Hi Brooke:

I just want to clarify as you refer to new homes being built. We developed a land subdivision with 24 lots. The only house existing on our lands was 65 Boscobel. No new homes were built at the time of developing in the subdivision. Subsequent to the subdivision, we built 1 house at which time we had services brought from the lot line to the house. We are now building a 2nd house, and again services are being brought from the property line to the new house as part of the house construction.

Regards,

Candace

Thank you so much for all this clarification. I really appreciate the quick response, and I will keep you informed as soon as I [hear] back from this buyer.

Brooke Godsoe

(*Exhibit 9*, pp. 641-649)

[68] Then, on April 19 – 20, 2016:

Hi Brooke:

Is an offer coming?

Regards,

Candace

Hi Candace,

Hopefully this is the last question:

Can you please send us a diagram of the location for this easement, so we can get a sense of how it could impact the house. Also- any sense yet about the septic location/ if it is on or partially off the house lot?

Thanks

Brooke

Hi Brooke:

We are getting someone to look at the septic system as we do not know. Originally, based on the information we were given we through it drained into the harbour however, this may not be the case. Unfortunately, we need time for this.

Regards,

Candace

… The builder also stated that the septic is on the neighbouring lot, and then I'm to assume that the buyer has no choice but to install and use a lift pump system, as the septic is not legally usable (who pays for removal), so the house has to be connected to city sewer.

Brooke Godsoe

(Exhibit 11)

[69] And, on September 6 – 7, 2016:

Hi Candace,

We are nearing the end of our listing. But [we're] getting action despite the market trends, and you know Sandra will have this sold for you, [it's] just taking time, which you [I'm] sure understand.

[I've] attached the extension, and [I've] extended for 4 months. Please let me know if you have any questions.

Thanks

Brooke

Hi Brooke:

We will extend however we also want to increase the Listing Price slightly to $2,320,000. We are going to hook up to City sewer and decommission the septic tank which [is] costing approx. $50k.

Can you kindly provide [a] new extension/amendment.

Thanks,

Candace

Hi Candace,

Attached is the new amendment. Sandra really feels increasing in price will just deter potential buyers though. At that price range most buyers are expecting the municipal services to be hooked up either way.

We will keep [pushing] forward though, and hopefully get [an] offer soon!

(Exhibit 12)

[70] After the sewage backup on May 26, 2021, Ms. Bryant and Ms. Dion had another pertinent conversation:

> Hi Sandra:
>
> Can you kindly confirm whether or not you advised the purchaser that we had installed a grinder pump? They are indicating that they were unaware of this which [it] should have been disclosed to them at the time of sale.
>
> Thanks, Candace
>
> Hi Candace,
>
> The only thing that I understood was that the property was all connected to the city water and sewer. I was not aware of the type of system, or any additional maintenance needed, just that you had it connected prior to sale.
>
> Thanks
>
> Sandra
>
> Hi Sandra
>
> You were aware of the grinder pump as I advised you we had to install one to hook up to municipal services. I clearly remember our conversations on this as we converted from septic as per your request to make house [the] more saleable and I had told you the cost of the pump.
>
> Do you not remember this Conversations?
>
> Hi Candace,
>
> I knew it was hooked up to city sewer/water, I was only aware of a pump when I sold the lots next door, I realized then that the new owners would have to pump up to city services, I had no idea a pump was needed at 65 Boscobel. You never told me that it was necessary to pass onto a new buyer that there was any maintenance or ongoing costs related to 65 Boscobel being hooked up to city sewer. As a matter of fact, you clearly [stated] to me that city sewer gave more value to the property after it was hooked up.
>
> And yes, Of course hooking up to city services would be attractive to any buyer, so of course I would agree to have it installed, but never [did] I tell you to hook up to city sewer.
>
> Sandra
>
> (*Exhibit 2*, Tab 7, pp. 45-46)

[71] Ms. Bryant insisted that she was never told by anyone to pass on to the Plaintiffs any information in relation to the pump, and was in any event, unaware of what a grinder pump was, and the role the system played in getting the effluent up to the edge of the lot and into the municipal system for disposal. As she put it "I didn't even know what a grinder pump was – I couldn't even tell you what it looked like today." However, she added that had Ms. Dion told her to mention anything about the pump and/or the system, she said she would have done so. Reciprocally, she did not recommend to IMP that they should make the fact of the existence of the grinder pump and the sewage system known to the purchaser. "I didn't realize it was necessary," she testified. As far as she was concerned, the property was on municipal sewage. The listing cut which she showed to the Plaintiffs and prepared (*Exhibit 2*, Tab 2) was based upon information provided to her by Ms. Dion, and her own familiarity with the property. It clearly said the property was on municipal sewer, and, as far as she was concerned, it was.

[72] Ms. Bryant said there was no property disclosure statement prepared because nobody at IMP lived in the property. In any event, the Plaintiffs agreed to waive it. While she had no specific recollection of much of the back-and-forth which led to the IMP counteroffer (*Exhibit 1*, Tab 1, p. 54) or the eventual amendment to the APS which had resulted in the decrease of the purchase price to $1,715,000 (*Exhibit 1*, Tab 1 p. 55), she did say that "often that is because of inspections." When Ms. Bryant's attention was directed to the Amendment to the Agreement of Purchase and Sale and, specifically, the phrase "the buyer acknowledges and agrees that the property, including all chattels and appliances are being accepted on an 'as is where is basis'," she said, in effect, that was inserted just after the purchasers had received a discount in the purchase price due, in part, to the perceived need to replace and/or repair some of the chattels in the house.

[73] Finally, Ms. Bryant confirmed that the purchasers had no direct communication, to her knowledge, with Ms. Dion or IMP personnel. All such communication between the parties flowed through her or the people at Bryant Realty.

[74] Ms. Bryant was argumentative and combative throughout her entire testimony.

*(iv) Duane Webber*

[75] Duane Webber of Sansom was the Plaintiffs' final witness. The company is a distributor of products for commercial/residential wastewater equipment. Mr.

Webber had been territory manager of the company in New Brunswick until 2014, which was the year he took over the corporate branch in Truro. From that venue, Sansom services all of Nova Scotia, although their billings are still done out of their office in Fredericton, New Brunswick. Specifically, the company has acted as a distributor of the E/One grinder pump for the last 20 plus years.

[76] He testified that the function of a grinder pump is to grind domestic sewage into finer particles to pump into a municipal system or treatment system. It operates on a 1 horsepower (hp) electrical system.

[77] The grinder pump is housed in the exterior pump chamber, and sits halfway down in the station, which has a 70-gallon capacity. That pump operates when the sewage level reaches the capacity of the reservoir. The pump then activates and pumps it out and to the property line where it is taken into the lines which lead to the municipal system.

[78] Mr. Webber testified that he, personally, did not attend 65 Boscobel or install the Plaintiffs' replacement grinder pump there, or inspect it, but company personnel did. He also confirmed that very little maintenance is required with respect to it. Owners are instructed to call them if there is a problem, and it will be rectified. His attention was drawn to the brochure describing the general features of the E/One Extreme DH071 (*Exhibit 1*, Tab 2, p. 103). He confirmed that this was the system which Sansom sold (new) to the Plaintiffs in the aftermath of their sewage backup. This brochure, which provides detailed schematics of the functioning of the system, would have been provided to the Plaintiffs at the time of purchase. The cost of the new equipment was $15,064.54 (*Exhibit 2*, Tab 9).

[79] The Plaintiffs' evidence concluded with Mr. Webber's testimony. The Defendant called two witnesses. The first was Helene Duffy.

## C. Defendant's Evidence

### *(i) Helene Duffy*

[80] Ms. Duffy's testimony was brief. She began with IMP as an administrative assistant in 2016, and was promoted to a property administrator position in 2019. At that time she became more involved in the projects and the contracts that were necessitated by them. Although she had no involvement in the sale of 65 Boscobel, she did have some peripheral involvement with the property after the sewage backup.

[81] In late May 2021, Ms. Duffy was asked by Candace Dion to obtain any information she could from Atlantica with respect to the model of the grinder pump which IMP had arranged to be installed in the premises in 2017. To that end, she received some information from Brendan Gillan of Atlantica on May 21, 2021 as an attachment to an email of that date (*Exhibit 6*).

[82] The attached information consisted of some specifications with respect to the original grinder pump (*Exhibit 1*, Tab 2, p. 103), and some permits which had been issued so as to enable the necessary installation (NS Power, *Exhibit 1*, Tab 1, p. 34, Halifax Water *Exhibit 1*, Tab 1, p. 35). Also included were some of the documents that had been submitted by or on IMP's behalf so as to obtain the associated permits that were required. The handwriting on the first page of the grinder pump specifications was identified by Ms. Duffy as being her own. It consisted of the words "Atlantica Mechanical (special projects) Supplier".

[83] Ms. Duffy also testified that the information with respect to the grinder pump (*Exhibit 1*, Tab 1, p. 123 *et seq*.) which is similar, but not identical, to that which is found in *Exhibit 1*, Tab 2, p. 103, was not forwarded to her by Atlantica. She did not know where that came from. (It has just been noted that Duane Webber testified that Sansom supplied it to the Plaintiffs when the new grinder pump, albeit same make and model, was installed.)

*(ii) Candace Dion*

[84] Ms. Dion retired in June 2024, but before that had worked with IMP for close to 19 years. She began as a General Manager and worked in that capacity for five years, became a Senior Director, and fulfilled that role for 10 years. Her remaining years with IMP were spent in "developments and leasing" which involved working in IMP's corporate real estate and property management department.

[85] She testified that IMP acquired the 14-acre parent parcel, which eventually became the Boscobel subdivision, in 2012. After the purchase, the company developed and subdivided the land. When IMP acquired it, this parcel already had one home on it, which, following subdivision, ended up being the home on Lot 23, 65 Boscobel. The other structure on the parent parcel, the garage, was torn down.

[86] IMP spent over $300,000 on renovations to the house. In the course of developing the subdivision, the company also had to put in a public road, which became Hearthwood. Boscobel Road itself is a private road.

[87] Boscobel subdivision contains 24 lots. IMP originally brought in municipal water and sewage services to the property lines of each lot, except 65 Boscobel, which only received sewage, because it was already on water. The municipal sewage hookup, as Ms. Dion testified, is on Hearthwood, which is a cul-de-sac. Other waterfront lots adjacent to Lot 23 are Lots 22, 21R, 19 and 20, as shown on the subdivision plan (*Exhibit 1*, Tab 1, p. 2). While IMP used other agents to market some of the other properties in the subdivision, IMP only ever used Sandra Bryant and Bryant Realty for 65 Boscobel. They listed it with her in 2012 – 2013.

[88] Ms. Dion described the process by which 65 Boscobel came to be connected to municipal sewer in 2017. She had been advised by Ms. Bryant that this step was necessary in order to make the property more marketable. IMP consulted with the engineer who had developed the subdivision and the infrastructure associated with it, who advised that a grinder pump system would be needed to pump the sewage emanating from the house to the property line, and from there to the municipal system, because Lot 23 itself was downhill. Ms. Dion testified that she was also advised by the engineer to tell anyone purchasing one of the downhill lots adjacent to Lot 23 that, when they built their houses, they would incur an extra expense for the installation of a grinder pump system.

[89] IMP had decided not to put a lift pump into the Boscobel subdivision, but rather, made it the responsibility of the buyers of the (downhill) vacant lots adjacent to 65 Boscobel to install their own individual grinder pumps to service their own properties in that respect. This decision was cost driven.

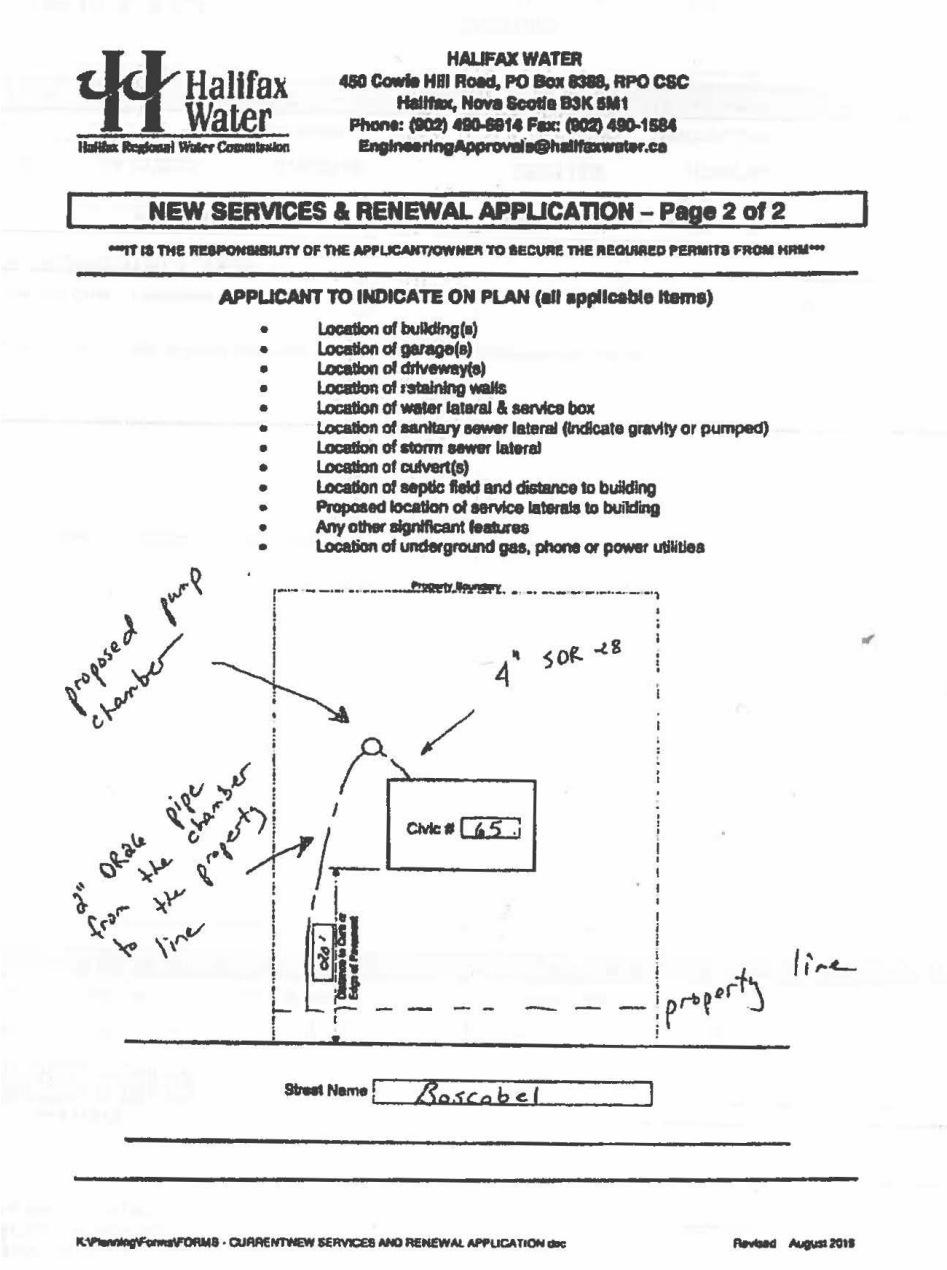
[90] Lot 23 was the sole exception. Prior to its connection to municipal sewer system by IIMP, it utilized a septic field. This field, post subdivision, encroached upon Lot 22. IMP hired Atlantica Mechanical to install the grinder pump system and decommission the (then) existing septic system. The Purchase Order, dated October 5, 2016 (*Exhibit 1*, Tab 1, p. 26) offers a general description of the work involved:

> To install new sewer line from outside foundation wall to existing municipal sewer line, supply and install new grinder pump, excavation and backfill and electrical requirements for pump installation at 65 Boscobel Road as per the attached quote dated September 23, 2016.

[91] The cost associated with this work was $25,350 plus HST (*Exhibit 1*, Tab 1, p. 26). The cost of decommissioning the existing septic system on the property was $4,480 plus HST (*Exhibit 1*, Tab 1, p. 27). The work was completed by February

2017. One of IMP's managers, David Hunt, who reported to Ms. Dion, would have overseen the actual installation as he was responsible for maintenance of IMP's properties and the projects associated with them.

[92] The contractors who conducted the actual installation work of the original grinder pump system, G&R Kelly Enterprises Ltd., sketched the necessary work when they applied to Halifax Water for the permit to do it:



Halifax Water
Halifax Regional Water Commission

HALIFAX WATER
450 Cowie Hill Road, PO Box 8388, RPO CSC
Halifax, Nova Scotia B3K 5M1
Phone: (902) 490-6814 Fax: (902) 490-1584
EngineeringApprovals@halifaxwater.ca

**NEW SERVICES & RENEWAL APPLICATION – Page 2 of 2**

***IT IS THE RESPONSIBILITY OF THE APPLICANT/OWNER TO SECURE THE REQUIRED PERMITS FROM HRM***

**APPLICANT TO INDICATE ON PLAN (all applicable items)**

- Location of building(s)
- Location of garage(s)
- Location of driveway(s)
- Location of retaining walls
- Location of water lateral & service box
- Location of sanitary sewer lateral (indicate gravity or pumped)
- Location of storm sewer lateral
- Location of culvert(s)
- Location of septic field and distance to building
- Proposed location of service laterals to building
- Any other significant features
- Location of underground gas, phone or power utilities



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(*Exhibit 1*, Tab 1, p. 31)

[93] The pump chamber referenced above, when actually installed, protruded above the ground as depicted in the following photographs:

(*Exhibit 1*, Tab 5, pp. 4-6)

[94] Because they carried insurance on their inventory of properties, IMP was required to conduct weekly inspection and maintenance checks, which could involve replacing burnout lightbulbs, tending to any leaks or repair work, flushing toilets and running water, and recording anything they saw. Although unable to locate any of the actual checklists reflecting the inspections of 65 Boscobel, Ms. Dion did advert to a boilerplate checklist form would have formed the template for any such inspections (*Exhibit 1*, Tab 1, p. 1).

[95] Although there was no strict process for reporting issues associated with any of the properties, Mr. Hunt would let Ms. Dion know if a problem was encountered. Moreover, they conducted team meetings bi-monthly, whereby she would be brought "up to speed" on all of IMP's property inventory and associated projects.

[96] By way of example, if Ms. Dion was made aware of a roof leak on a particular property, she explained that she and her team would discuss suitable contractors, seek multiple quotes for the work, and develop a timetable within which the repairs were to be conducted.

[97] Ms. Dion confirmed that all communication with the Plaintiffs would have flowed through the agent Sandra Bryant and/or one of the representatives of Bryant

Realty. She also confirmed that the deficiencies of which she was made aware led to the $35,000 price reduction and the amendment being done up (*Exhibit 1*, Tab 1, p. 55). She testified that Ms. Bryant had not passed along to her the features of the property in which the Plaintiffs were most interested (proximity to water and municipal water and sewer).

[98] She also testified that she never discussed with Ms. Bryant anything involving disclosure of the grinder pump system to the Plaintiffs or prospective buyers of 65 Boscobel. She testified that she did not think it was something that IMP had to disclose, "since it was in the house, we knew it was there, and we could see it …". Besides, the property was hooked up to municipal water and sewer as far as she was concerned. This distinguished Lot 23 from its adjacent downhill neighbouring lots, whose owners had yet to build, and who needed to be specifically told of the additional expense of getting a grinder pump so as to move their wastewater uphill to the municipal system on Boscobel/Hearthwood. This was in accordance with what the engineer (who had seen to the subdivision of the parent parcel) had recommended that she do.

[99] At Exhibit 1, Tab 2, p. 103 Ms. Dion identified the manual pertaining to the grinder pump system that she had directed Ms. Duffy to obtain from Atlantica after the Plaintiffs experienced their backup.

[100] She testified that Ms. Duffy was also successful in finding another file in David Hunt's (former) office bookcase. It contained some specification sheets with respect to the pump at 65 Boscobel (*Exhibit 1*, Tab 2, p. 123). The handwriting "65 Boscobel" on the front of this document she identified as her own.

[101] When questioned as to the specification in paragraph 7 of the Agreement of Purchase and Sale requiring IMP to provide the Plaintiffs "any/all manuals" (Exhibit 1, Tab 1, p. 42) Ms. Dion responded that IMP had provided them with all of the manuals that they had at the time, and that they had been placed in the kitchen drawer, and Ms. Bryant was advised to that effect.

[102] As to the aforementioned "user instructions" (*Exhibit 4*) Ms. Dion testified that she was not aware of them having been sent by Atlantica, nor did she recall them comprising part of the materials found in Mr. Hunt's office. Mr. Hunt was no longer working with IMP when the sale of 65 Boscobel to the Plaintiffs was consummated, and there was nothing prior to the backup experienced by the Plaintiffs to alert IMP that they needed to search his office for any reason. He would have been responsible for the installation of the grinder pump and its

maintenance, along with the rest of the property. She was not aware of how the power to the panel controlling the grinder pump came to be turned off.

[103] As far as Ms. Dion understood, there was no issue with respect to the representation that 65 Boscobel was connected to municipal sewer – it was connected. Her evidence was that she and IMP had no reason to think that the Plaintiffs had any issue with the manner in which it was thus connected, until after the sewage backup in March 2021.

## D. The Plaintiffs' characterization of the relief claimed, and their losses

[104] The Plaintiffs' Statement of Claim filed on October 21, 2021 alleges that they suffered damages because the Defendant negligently or intentionally misrepresented the sewer system at the property (para. 24). They go on to describe the alleged further tortious conduct of the Defendant, and the relief to which they say they are entitled as a result of it:

> 25. The Defendant prevented the Plaintiffs from making reasonable inquiry to understand and assess the grinder pump as part of the sewer system servicing the Property.
>
> 26. The Plaintiffs say that in the circumstances they were precluded from making decisions to protect themselves either by not proceeding with the purchase or offering less money for the purchase of the Property, due to the additional expenses relating to the maintenance, operation and replacement of the grinder pump based on the anticipated life cycle.
>
> 27. The Plaintiffs say the existence of the grinder pump will have to be disclosed in any future sale and that it will negatively impact the market value of the Property.
>
> 28. As a result of the foregoing the Plaintiffs say that they suffered the following losses:
>
> i. Special damages relating to the costs incurred in cleaning up from the sewer back up on March 27, 2021;
>
> ii. Special damages by the replacement costs for the broken grinder pump;
>
> iii. Special damages in the increased electricity costs that they have incurred or will incur in the operation of the grinder pump;
>
> iv. Special damages in the anticipated cost of replacing the grinder pump on a five year cycle;

v. General damages for the impact on the market value of the Property;

vi. Pre-judgement interest;

vii. Costs; and,

viii. Such other relief as this Honourable Court deems appropriate

(*Notice of Action and Statement of Claim*, filed October 21, 2021)



**Issues**

[105] Consequent to the relief claimed by the Plaintiffs, I agree with counsel for IMP that the first issue to be resolved deals with the doctrine of *caveat emptor,* and whether it is applicable in the circumstances. If the answer is yes, the second issue involves an assessment of whether the actions or inactions of the Defendant IMP, singularly or cumulatively, amounted to negligent or fraudulent misrepresentation(s), or otherwise constituted a breach of their contractual obligations to the Plaintiffs. Finally, if the answer to the second question is "yes", what measure of damages has been sustained by the Plaintiffs as a result of IMP's conduct?

**Analysis**

*(i) Caveat emptor*

[106] The case of *MacIsaac Estate v. Urquhart*, 2019 NSCA 25 provides a succinct and appropriate starting point:

> [52] The doctrine of *caveat emptor* provides that absent fraud, mistake or misrepresentation, a purchaser takes a property as he or she finds it, unless the purchaser protects him or herself by contractual terms …

[107] The Defendant argues that the applicability of this concept is underscored as it is expressly referred to in the amendment to the APS "the buyer acknowledges and agrees that the property, including all chattels and appliances are being accepted on an 'as is where is basis'" (*Exhibit 1*, Tab 1, p..55)

[108] Specifically, counsel contends:

> 72. In real estate transactions, the expression "as is where is" specifically references the application of *caveat emptor* to the sale. The use of "as is where is" in an agreement of purchase and sale indicates an understanding between the vendor and purchaser that the vendor is providing no

> representations or warranties, and the purchaser is taking the property with all its defects. The term "as is where is" is the "*layman's way of expressing the maxim caveat emptor*" and "*is meant to convey that the buyer is purchasing goods without any attached conditions respecting the quality, durability or fitness of those goods.*"
>
> [footnotes removed]
>
> (*Defendant's Brief*, January 17, 2025)

[109] With that said, the evidence of the Plaintiffs, as well as that of Ms. Bryant, was to the effect that this clause was inserted after the Plaintiffs had requested a reduction in the previously agreed upon purchase price as a result of some of the repairs to the realty and/or replacement of some of the chattels which were necessary to the property.

[110] Does this matter? To what extent may collateral circumstances be considered when contractual meaning is construed?

[111] Justice Rothstein dealt with this in *Sattva Capital Corporation v. Creston Moly Corporation*, 2014 SCC 53, [2014] 2 S.C.R. 633. In the course of so doing, he observed:

> [56] I now turn to the role of the surrounding circumstances in contractual interpretation and the nature of the evidence that can be considered…
>
> [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).
>
> [58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (*King*, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date on contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffman, "absolutely anything which would have affected the way

> in which the language of the document would have been understood by a reasonable man" (*Investors Compensation Scheme*, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.
>
> [59] It is necessary to say a word about consideration of the surrounding circumstances and the parol evidence rule. The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing (*King*, at para. 35; and Hall, at p. 53). To this end, the rule precludes, among other things, evidence of the subjective intentions of the parties (Hall, at pp. 64-65; and *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129, at paras. 54-59, *per* Iacobucci J.). The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party's ability to use fabricated or unreliable evidence to attack a written contract (*United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316, at pp. 341-42, *per* Sopinka J.).
>
> [60] The parol evidence rule does not apply to preclude evidence of the surrounding circumstances. Such evidence is consistent with the objectives of finality and certainty because it is used as an interpretive aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words. The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of contracting; therefore, the concern of unreliability does not arise.
>
> [61] Some authorities and commentators suggest that the parol evidence rule is an anachronism, or, at the very least, of limited application in view of the myriad of exceptions to it (see for example *Gutierrez v. Tropic International Ltd.* (2002), 63 O.R. (3d) 63 (C.A.), at paras 19-20; and Hall, at pp. 53-64). For the purposes of this appeal, it is sufficient to say that the parol evidence rule does not apply to preclude evidence of surrounding circumstances when interpreting the words of a written contact.
>
> [emphasis added]

[112] In *Halifax (Regional Municipality) v. Canadian National Railway Company*, 2014 NSCA 104, Fichaud, J.A. summarized the effects of both *Eli Lilly* and *Sattva Capital* as follows:

> [40] In short, my view is this. The text of article 2.2, read in the context of the entire written Agreement, supports the judge's interpretation. Evidence of the parties' purely subjective intentions cannot alter the parties' mutual intentions that are objectively manifested by the contractual wording of their written and signed Agreement. The surrounding circumstances comprise the objective evidence of the background facts, either known or which reasonably ought to have been known to both parties are or before the contract's signature. That evidence was

> properly admitted before Justice LeBlanc. The judge did not rely on that evidence. But the consideration of those surrounding circumstances supports the judge's interpretation of article 2.2.

[113] While the foregoing is not nearly exhaustive, it is certainly representative of the state of the law insofar as it pertains to the process of contractual interpretation. I conclude that I am to attempt to determine "the mutual and objective intentions of the parties as expressed in the words of the contract" (*Sattva Capital*, *supra*, para. 57).

[114] In so doing, I am entitled to consider the surrounding circumstances to the extent necessary to ascertain the parties' mutual and objective intentions, but must remain rooted, first and foremost, in the text or words with which the parties have chosen to express themselves. Patently, this does not confer upon me a license to rewrite the contract. "Surrounding circumstances" as noted in *Sattva Capital* at para. 58 consist "… only of objective evidence of the background facts at the time of the execution of the contract … that was or reasonably ought to have been within the knowledge of the parties at or before the date of contracting."

[115] Justice LeBlanc in *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2016 NSSC 201, summarized the exercise very succinctly when he said:

> [48] Accordingly, I am to examine the words of the August Action Plan, considered in the context of the document as a whole, giving those words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time.

[116] Justice Murphy, in *Hefler Forest Products Ltd. v. MCAP Leasing Inc.*, 2011 NSSC 505, put it this way:

> [19] The object of contractual interpretation is to give effect to the parties' objective intentions, as determined by the words used in the contract and occasionally by the factual matrix present when those words were chosen (**Eli Lilly & Co. v Novopharm Ltd**, [1998] CanLII 791 (SCC), [1998] 2 SCR 129, 161 DLR (4th) 1); **Ryan v. Sun Life Assurance Co. of Canada**, 2005 NSCA 12, 230 NSR (2d) 132).
>
> [20] Absent ambiguity in the contract, extrinsic evidence is not admissible (**Hawrish v. Bank of Montreal**, [1969] SCR 515). This does not mean that the Court must interpret the contract in a vacuum; the Court may look at the "surrounding circumstances" or "factual matrix" in its objective interpretation of the contract (**Hill v. Nova Scotia (Attorney General)**, [1997] 1 SCR 69).

[117] While the subjective intentions of the parties with respect to the meaning of the contract and/or clause in issue are generally irrelevant to the exercise of contractual interpretation, their objective intentions, as manifested in the wording of the contract, may, in the circumstances such as those described above, be properly viewed through the crucible or prism of the surrounding circumstances in which they had their genesis.

[118] For example, the phrase "as is where is" first appeared in the amendment to the APS after the Plaintiffs had requested a reduction in the purchase price of the property to which they had previously agreed. My view is that it was intended to preclude any further reduction in the purchase price should any other chattels included in the home be discovered to have defects, or if the cost of repairing the known defects prove more expensive than anticipated, and that is the extent of its significance in this contractual milieu. The inclusion of such a phrase in the parties' contract does not advance the Defendant's argument that the concept of *caveat emptor* is applicable in the circumstances.

[119] With that said, plentiful authority exists for the proposition that *caveat emptor* applies in real estate transactions. It may be vitiated by fraud, non-innocent misrepresentation, an implied warranty for habitability for newly constructed homes, and a duty to disclose latent defects.

[120] In *Nixon v. MacIver*, 2016 BCCA 8, that Court explained:

> [31] The doctrine of *caveat emptor* was colourfully summarized by Professor Laskin (as he then was) in "Defects of Title and Quality: *Caveat Emptor* and the Vendor's Duty of Disclosure" in Law Society of Upper Canada, *Contracts for the sale of land* (Toronto: De Boo, 1960) at 403:
>
> > Absent fraud, mistake or misrepresentation, a purchaser takes existing property as he finds it, whether it be dilapidated, bug-infested or otherwise uninhabitable or deficient in expected amenities, unless he protects himself by contract terms.
>
> [32] The leading decision on the maxim is *Fraser-Reid v. Droumtsekas* (1979), [1980] 1. S.C.R. 720 at 723, in which Mr. Justice Dickson (as he then was) recognized the continuing application of the doctrine of *caveat emptor* to the sale of land:
>
> > Although the common law doctrine of *caveat emptor* has long since ceased to play any significant part in the sale of goods, it has lost little of its pristine force in the sale of land. In 1931, a breach was created in the doctrine that the buyer must beware, with recognition by an English court of an implied warranty of fitness for habitation in the sale of an

> *uncompleted* house. The breach has since been opened a little wider in some of the states of the United States by extending the warranty to *completed* houses when the seller is the builder and the defect is latent. Otherwise, notwithstanding new methods of house merchandising and, in general, increased concern for consumer protection, *caveat emptor* remains a force to be reckoned with by the credulous or indolent purchaser of housing property. Lacking express warranties, he may be in difficulty because there is no implied warranty of fitness for human habitation upon the purchase of a house already completed at the time of sale. The rationale stems from the *laissez-faire* attitudes of the eighteenth and nineteenth centuries and the notion that a purchaser must fend for himself, seeking protection by express warranty or by independent examination of the premises. If he fails to do either, he is without remedy either at law or in equity, in the absence of fraud or fundamental difference between that which was bargained for and that obtained.
>
> [33] The doctrine continues to apply to real estate transactions in this province, subject to certain exceptions: fraud, non-innocent misrepresentation, an implied warranty of habitability for newly-constructed homes, and a duty to disclose latent defects.
>
> [34] A vendor has an obligation to disclose a material latent defect to prospective buyers if the defect renders a property dangerous or unfit for habitation. A latent defect is one that is not discoverable by a purchaser through reasonable inspection inquiries. See *McCluskie v. Reynolds* (1998), 65 B.C.L.R. (3d) 191 (S.C.), and *Cardwell et al v. Perthen et al*, 2006 BCSC 333 [*Cardwell SC*],aff'd 2007 BCCA 313 [*Cardwell CA*].
>
> [emphasis added]

[121] *Prima facie*, then, this is a transaction to which the doctrine of *caveat emptor* would apply.

*(ii) Was there a misrepresentation which would vitiate the applicability of the caveat emptor principle?*

[122] This issue also raises two related ones. On the basis of the authorities noted above, the concept of *caveat emptor* would have no application in the event that the pump were a latent defect. But there is a further "elephant in the room". It must first be considered whether the existence of the grinder pump is a defect at all.

[123] The Defendant argues that the pump is not a defect, and that, in fact, it is simply "a component of the property sewage system which was installed to connect the property to the municipal sewer system" (*Defendant's* Brief, para. 83). The Plaintiffs were advised, the argument continues, that the property was

connected to municipal sewage, and that was not a misrepresentation. The grinder pump is simply part of the means by which 65 Boscobel is connected to that municipal system.

[124] The Plaintiffs contended, in their Statement of Claim, that "as of March 26, 2021 the grinder pump was not operating as it had not been properly serviced since its installation" (*Statement of Claim*, para. 13). Moreover, they allege that the capacity of the pump is "under-capacity for the size of the Plaintiffs' home", and that as a result "the grinder pump will experience a shorter life cycle and will have to be replaced approximately every five years" (*Statement of Claim*, para. 14).

[125] Contentions such as these are properly within the demesne of expert opinion evidence. The Plaintiffs chose not to file a Rule 55 report from anyone qualified to advance such opinions. Their counsel nonetheless attempted to elicit evidence on the stand from Mr. Webber in support of same, which was disallowed.

[126] The Plaintiffs, through Mr. Strug (at the very least) knew that the property sloped downhill from Boscobel Road. The obvious corollary to that proposition is that the effluent generated by their home would have to travel uphill to reach its connection with municipal sewage. Mr. Strug saw the pump controller and the panel in which it was housed, as well as the BX cable and the pressure gauge. He saw them on multiple occasions prior to the purchase of the property. Ms. Robertson may have seen these items as well, although she could not recall specifically. They were, in any event, there to be seen.

[127] Both Plaintiffs saw the cap associated with the pump chamber, in which the grinder pump is housed, and which protrudes above ground, prior to the purchase. They chose to ask no questions, instead (at least in Mr. Strug's case) relying on their own mistaken assumptions as to the role these pieces had played with respect to an earlier septic system which had serviced the property. There is no way that IMP could have had any inkling that the means by which the property was connected to municipal sewage was of any concern to the Plaintiffs, whatsoever.

[128] In fact, it has not been established, even on the basis of the Plaintiffs' testimony, that, had they known, prior to the purchase, what they now know, that this knowledge would have affected their decision to buy 65 Boscobel. Mr. Strug's testimony, in its most generous interpretation, was ambivalent on the point, while Ms. Robertson's was simply to the effect that "I think I could have convinced him [Mr. Strug] to back out of the deal" had they known about the way their sewage is connected.

[129] Mr. Webber testified that there is nothing particularly onerous associated with the operation of the Plaintiffs' grinder pump system. They were simply to call his company in the event that something was not working properly. Mr. Strug himself testified that the company representative simply showed him the panel including the pump controller and instructed him "not to touch it". Ms. Robertson testified that she was provided (after the fact) with a list of items that she cannot put into the system. This, however, appears to be a fairly generic list of items that, in most cases, common sense would tell one not to put into any type of a sewage disposal system anyway.

[130] I have no evidence before me which would provide me with any detail as to the longevity of the system, including the grinder pump, which brings the effluent from 65 Boscobel to the property line and into the municipal system. I have no evidence before me that the system, or any component of it, had not been properly serviced by the time the Plaintiffs purchased the property, nor that any of the components were malfunctioning at that time.

[131] Mr. Strug (at the very least) observed all of the individual components comprising the means by which effluent from the property is transported to the property line and into the municipal service. He could have asked questions about all or any of them, and did not. Moreover, the Plaintiffs have not claimed against the Realtor, Ms. Bryant, on the basis of *respondeat superior*, agency, or upon any other basis.

[132] The "defect" about which the Plaintiffs have complained, was not a defect at all. They were told the property was connected to municipal sewage, and it is. The components of the system, which includes the grinder pump, with which they now purport to find fault, are simply the means by which this connection happens. They are "on" municipal sewage, exactly as they were told.

[133] If I am incorrect on this point, and the Plaintiffs have established that what they have complained about is a "defect", then I am satisfied, in any event, that it was a patent one. Everything was observable. Any questions as to how that system works, what its strengths and weaknesses are, and how it operates, could have been put to the agent, Ms. Bryant and/or personnel working with her, and I am satisfied, on the basis of the evidence, that IMP would have provided proper answers, in such an event. After all, it did so in the past in response to earlier inquiries made through Bryant Realty by earlier potential purchasers.

*(iii) Damages*

[134] Obviously, on the basis of the findings above, the Plaintiffs' claim must fail. However, even if I had been persuaded that the Defendant was liable, the Plaintiffs have not proven much in the way of damages. For example, as has been noted above, what has been established has been the cost of the cleanup associated with the effluent overflow into their home, and there would be some minor general damages associated with the 24-hour period following the backup, during which the remedial work was done, during which they remained in the home but were unable to access portions of it.

[135] This would generate:

A. Cleanup (including cost to pump out chamber) - $4,830.44; and

B. General damages – $500.

[136] As to the cost of the installation of the replacement grinder pump, I will repeat something I mentioned earlier. There is no evidence before me that the grinder pump was malfunctioning in any way prior to the plumber's "snake" becoming wedged into it during the investigation of the backup. The Plaintiffs were advised that they could have simply repaired the pump, instead they chose to replace it. There is no evidence before me as to what the cost of those repairs would have been had they elected to "go" that route.

**Conclusion**

[137] The claim is dismissed with costs. I would encourage the parties to attempt to come to agreement with respect to same, however, if they are unable to do so, I will accept written submissions within 30 days.

Gabriel, J.