

## CLAIM AGAINST HOME INSPECTOR SUCCEEDS

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Many prospective purchasers of residential properties retain a home inspector to inspect a property prior to concluding the purchase. A typical contract between the would-be homebuyer and the inspector defines the scope of the latter's work as conducting a visual inspection only. In many cases, also, it limits the maximum financial liability of the inspector to the amount of the inspection fee. Such was the case in a recent decision involving a home inspector retained in Ontario.

In the 2007 Ontario Superior Court of Justice case, *Celebre v. 1082909 Ontario Ltd.* (appealed from an earlier Toronto Small Claims Court decision), the plaintiffs were contemplating a purchase of a home in Nobleton, Ontario, and engaged the defendant to perform a house inspection. The inspector first reviewed the exterior of the home and noted that water management around the perimeter of the home was poor and that grading of the property sloped towards the house foundation. He recommended that these deficiencies be corrected to ensure that water would not enter the home through the foundation walls.

The inspector then examined the interior of the house and it was at this point that he presented his written contract to the plaintiffs. He pointed out the clause which limited his liability to the extent of his inspection fee — in this case, \$500. The plaintiff signed the agreement and the inspection continued.

The inspector then performed a visual examination of the basement walls which were covered with drywall. He did not observe anything unusual in the condition of the walls. Although he had a moisture meter with him he did not use it to check the condition of the wood framing concealed behind the gypsum wallboard. His report stated that “normal moisture levels” were observed in the basement.

The clients received the report and completed the purchase of the home but soon discovered that the exterior foundation walls were allowing water to enter into the basement wall cavity. Much of the wood framing concealed behind the basement walls had deteriorated and was in need of replacement. The purchasers commenced a legal action against the home inspector claiming the cost of repairing these latent defects.

At trial, the Small Claims Court concluded that, once the inspector saw evidence on the outside of the home which suggested water was collecting against the foundation walls, he should have undertaken more than a visual inspection of the interior basement walls, even though there was no appearance of water stains on the drywall. The use of a moisture meter would likely have revealed the condition of the wood framing behind the wall; his failure to make use of this equipment was negligent. In the circumstances the lower court awarded damages against the inspector equal to the cost of repairing the damaged wood framing.

On appeal, the Superior Court agreed that the home inspector ought to have conducted a more thorough inspection once he found reason to believe that water might have been entering the basement. It also rejected the inspector's argument that damages should be limited to the \$500 fee he charged for the inspection. The Court did not consider it appropriate for the inspector to present the written contract to the purchasers in the middle of performing the inspection. This action placed the purchasers in an unfair position since the inspection was underway; there was little time to reject the agreement's terms, secure another inspector to perform the work, and still make an offer on the home. In these circumstances, the Court said that the inspector was not entitled to rely on the limitation of liability clause found in the contract. The inspector should have drawn these clauses to the clients' attention before commencing the engagement to ensure they fully understood the agreement's terms.

This decision serves as a warning to home inspectors on at least two fronts. First, in order for limitation of liability clauses to be enforceable, they must be brought to a client's attention before a contract is signed. Second, limiting the scope of the inspection to identifying non-latent defects may not be enforceable in circumstances where there is sufficient evidence that would identify the potential existence of a latent defect.