

Claim No: SCCH - 460829

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Sigut-Mercer v. Halifax County Condominium Corporation No. 156*, 2017  
NSSM 23

BETWEEN:

REBECCA SIGUT-MERCER

Claimant

- and -

HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 156

Defendant

**REASONS FOR DECISION**

**Editorial Notice:** Addresses have been removed from the electronic  
version of this judgment

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 25, 2017

Decision rendered on May 3, 2017

**APPEARANCES**

For the Claimant

self-represented

For the Defendant

Tony Hall, building manager

**BY THE COURT:**

1. This is a Claim and counterclaim arising out of problems with the Claimant's condominium unit. The unit in question is [...] in the building at [...] in Dartmouth. It is a two-level unit that includes the ground floor of the structure. There is no basement beneath the floor slab. There are several levels of units above the Claimant's unit.
2. The Claimant works as a flight attendant. She lives alone in the unit, which she bought in 2014. The buildings that are part of this condo complex date back to the late 1980's.
3. In May 2015, the Claimant decided to upgrade the flooring in the unit, which was carpeted on the lower level. She bought and had delivered a sufficient quantity of laminate flooring, and arranged to have her uncle attend to install it for her. She assumed that all that would be required was to have the carpeting ripped out, and have the concrete floor cleaned up a bit to accept the laminate. On or about June 13, 2015, when the carpet was ripped up and the concrete floor exposed, it became evident that there was a structural problem. Parts of the concrete floor were cracked and crumbling. Removal of the carpet also exposed some round structures that appear to be footing-like structures, almost certainly the tops of sonotubes.
4. There is no doubt about the fact that the concrete floor has sunk, or moved downward, by amounts that vary between 1.5 inches and 3/4 inch, causing cracking in some places. The carpeting had obscured all of this. There is also no doubt that the revealed settlement exceeds normal settlement for a concrete floor that is poured on grade.

5. The Claimant was rightly concerned about what she saw, and brought it to the attention of representatives of the Defendant. The Defendant initially made light of the problem, but under some pressure from the Claimant, agreed to have it inspected by an engineer. That inspection was scheduled for June 24, 2015. By then the Plaintiff had been living with an exposed concrete floor for ten days. She had been scheduled to work a two-day shift starting June 24, but took time off because she felt she needed to be there for this inspection. Part of her claim is for these two lost days of income.
6. The engineer who was hired by the Defendant was Michel Comeau of the firm Campbell Comeau Engineering. He did not produce a written report at that time, although he eventually did so. He gave the verbal opinion then that the concrete slab was, indeed, subsiding, but did not seem alarmed and suggested that the problem could be remedied by using a levelling compound.
7. The Claimant was nervous about this conclusion and recommendation, and soon thereafter she decided to hire her own engineer, Francis Doucet. Mr. Doucet testified at the trial. He has impressive credentials as a professional civil and structural engineer. He inspected the floor and came to the conclusion that the problem might be more serious than the Defendant and its engineer were suggesting. He believed that there ought to be further testing to determine the source of the problem, which might have been traceable to migration of granular fill under the concrete slab, i.e. undermining of the concrete. He believed that the conclusion of the Defendant's engineer, to the effect that this was normal settlement, was premature. He was quite leery of using levelling compound as any type of

durable repair.

8. In the end, Mr. Doucet's conclusions were ignored. The Defendant took the advice of its own engineer and hired a company that specializes in levelling floors with a concrete-like material.
9. As part of this job, the Claimant had to move all of her belongings from the first floor to the upper floor. She also had to be out of her unit for about 8 days, while the floor dried and off-gassed. Eventually, the floor was dry enough that she could put down her laminate flooring, although she has a concern that it may get ruined if there is any further subsidence of the floor.
10. The Claimant seeks compensation of a number of different types, for the inconvenience and direct expenses associated with this problem.
11. The Defendant, meanwhile, has counterclaimed for the cost of its engineer's report, which it says would not have been necessary but for the Claimant's unreasonable attitude and unwillingness to go along with the engineer's original, verbal opinion. In the counterclaim the Defendant also pleads that the Plaintiff's engineer made "inaccurate statements."
12. As a preliminary comment, let me say that I find nothing unreasonable in the Claimant's concerns about her unit. I believe that she was acting entirely reasonably in wanting her own engineering opinion. I find that the Defendant was not diligent in addressing her concerns. I also find that the characterization of Mr. Doucet's findings as "inaccurate" is not established. The Defendant did not see fit to call its own engineer as a witness, while Mr. Doucet gave thoughtful and insightful evidence in court. I believe his

concerns are legitimate and the Defendant ought to have given them greater credence.

13. Condominiums are peculiar creatures of the law, with somewhat artificial boundaries between what the unit owner controls and the common elements which the Condominium Corporation controls. Each has a duty to the other to maintain their property in such a way that does not negatively impact on the other. Here, the concrete slab is clearly part of the common elements. It was the Defendant's responsibility to maintain and repair. And it remains the Defendant's risk if further subsidence occurs.
14. Without a proper concrete slab, the Plaintiff's unit is uninhabitable. The Defendant had an urgent duty to repair it in a responsible fashion. The Plaintiff's legal right rests on the Defendant's duty.
15. The Defendant argues that it should not be responsible for any of the disruption to the Claimant's enjoyment of her unit, as the Claimant (it says) could have put a claim through her tenant insurance. Without knowing precisely what that insurance would cover, and how an insurance company might have approached such a claim, I cannot say whether this is true. However, even if another entity could be financially responsible, that does not answer the question whether the Defendant is also liable. I find that the Defendant's actions in failing to take responsibility - completely and in a timely fashion - breached a separate legal duty to the Claimant. I also believe this amounted to actionable negligence on the part of the Defendant.

16. There is also no doubt in my mind that the Claimant was subjected to considerable inconvenience, and some expense. However, not all of her claims are justified.

- a. The Claimant seeks \$750.00 for three days and nights that she stayed with a friend. The Defendant had already put her up in a hotel for 2 days, and had paid (without much questioning) three further days at \$250.00 per day. The Claimant appears to believe that the value of these nights with a friend should be similar to that of a mid-priced hotel. I do not accept that proposition. I believe that a reasonable amount would be \$100.00 for the accommodation plus \$50.00 for food. I therefore allow \$450.00.
- b. The Claimant seeks \$27.58 for food for two of the other days that she was out of the unit. This is allowed.
- c. The Claimant seeks \$100.00 for the cost of her engineer. This is a bargain considering the expertise shown, and is allowed.
- d. The Claimant seeks compensation (\$394.42) for two days of work missed due to having to be present for the inspection. This is reasonable, given the Claimant's evidence (which I accept) to the effect that the Defendant was inflexible in scheduling this inspection.
- e. The Claimant seeks the cost of furniture storage (\$157.55) plus the cost of professional movers (\$500.25). I disallow these items because the Claimant did not actually incur these expenses. She stored her belongings within her own unit, and did not need professional help in moving them. In effect, she mitigated her loss, which she had a legal duty to do.
- f. The Claimant seeks the full cost of her laminate flooring, \$1,648.00, on the basis that it will likely need to be replaced in the future because of the poorly repaired concrete slab. I do not believe she

has provided evidence that proves, on a balance of probabilities, that she will not get full use of her flooring. This claim is far too speculative and remote.

- g. The Claimant seeks \$250.00 which was the cost of professional cleaning, after the work was done. I believe that this was reasonable, as the work on the slab caused dust to permeate the entire unit and it needed to be cleaned.

17. In the result, I allow damages in the amount of \$1,222.00.

18. The Claimant seeks, and is allowed, \$99.70 to issue the claim, \$115.00 for service of the claim, and \$85.00 for mileage paid on the subpoena to Mr. Doucet, whose evidence was very helpful to the court, for total costs of \$299.70.

19. As indicated above, I find the counterclaim to be misconceived. The Defendant had a legal duty to take the Claimant's concerns seriously, and if that meant getting a written engineer's report, so be it. I believe that report has real value. If there are further problems in the future, it is important that the Defendant's engineer be firmly on the record as to what was found and what was done. Future condominium boards and unit owners may get real benefit from this report.

**Eric K. Slone, Adjudicator**