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SPIS form could spell rocky legal ride for buyers

An Ontario court decision released last month serves as a potent reminder of the dangers of using a Seller Property Information Statement (SPIS) when selling real estate.

In December 2003, Paul and Judith Riley signed an agreement to buy a home in Tavistock from John and Kimberley Langfield.

Prior to signing the offer, the sellers completed and delivered to the buyers an SPIS on a standard real estate board form.

The form, in wide use throughout parts of Ontario, asks questions about the condition of the home. It states that the answers are being provided for information purposes only and are not warranties. It also warns that sellers are responsible for the accuracy of all answers.

In the Tavistock transaction, the sellers stated in the SPIS that there were no defects in any included appliances or equipment, that the fireplace was in working order, and that the sellers were not aware of any problems with the swimming pool or any moisture or water problems in the basement.

After the closing in April 2004, the purchasers discovered a "flood" in the basement and some of their possessions were destroyed or damaged by the water. They also found that the swimming pool filter and pump were not working.

That summer, a public health inspector visiting a house under construction next door discovered a pipe coming from the Riley property containing raw sewage. He also discovered an abandoned well.

The inspector ordered the Rileys to install a new septic system and fill in the abandoned well. Fortunately, the Rileys' title insurance policy paid for those costs.

When the extent of their other losses became clear, the Rileys sued the Langfields for damages of $97,500, claiming misrepresentation and breach of contract. The trial took place in February in Kitchener before Justice Donald J. Gordon.

After hearing all the evidence, the judge dismissed the claim for damages to the basement and awarded the Rileys $2,100 for the costs of repairing the pool and the gas line to the fireplace. Legal costs for the lawyers on both sides for the five-day trial could easily have reached $100,000.

The most interesting part of the judge's decision is his criticism of the realtors for each of the parties, for their lack of "any due-diligence inquiry" and especially their failure to take action with respect to the possibility of water problems.

"Realtors are expected to provide advice and direction to their clients," the judge wrote. "They are paid to act as professionals. They are not simply tour guides walking through a residence. The cavalier attitude of both realtors with respect to the SPIS is troubling. The purpose of the SPIS is not to protect realtors from liability. They have a due-diligence obligation."

Lawrence Bremner practises real estate law at Gowlings in Hamilton and is an authority on the use of the SPIS form in Ontario. He is also a director of the Real Estate Council of Ontario, the governing body of Ontario real estate agents.

Bremner emailed me last week to say that the SPIS forms "are used in most of Ontario, in part, to protect agents but they fail miserably in that regard.

"They are litigious," Bremner wrote, "as they ask simple questions that require complex answers and ask questions that many lay people don't understand and they ask sellers to disclose more than they are required to do.

"The simple fact is that if the seller gets sued, then the agent and the broker will be joined in the action" for their role in using the forms.

I've said it before, if your agent insists on an SPIS, get another agent or hire a good litigation lawyer. Based on the flood of new cases involving the use of the SPIS, chances are increasingly good that you'll wind up in court.

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Riley v. Langfield, 2008 CanLII 23957 (ON S.C.)

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COURT FILE NO.: C-579-05

DATE: 20080513

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
PAUL EDWIN RILEY and JUDITH ANN MATILDA RILEY	)))	D. Snider, for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
	)	
JOHN RUSSELL LANGFIELD and KIMBERLY ANN LANGFIELD	))))	V. Nabrotzky for the Defendant, John Russell Langfield No one appearing for the Defendant, Kimberly Ann Langfield
	)	
Defendants	))	
	)	
	)	**HEARD:** February 19, 20, 21, 22, 29, 2008

THE HONOURABLE MR. JUSTICE D.J. GORDON

REASONS FOR DECISION

[1] Paul Riley and Judith Riley (the Rileys) purchased rural residential property at R.R. 1, Tavistock, Ontario, from John Langfield and Kimberly Langfield (the Langfields). Several weeks after closing of the transaction, the Rileys discovered water in the basement of the residence. They also determined that several chattels and fixtures included in the purchase were not in working condition.

[2] In this action, the purchasers seek to recover damages from the vendors. The claim is said to be founded in contract and tort, particularly with reference to fraudulent and negligent misrepresentation. Caveat emptor and the use of a Seller Property Information Sheet (SPIS) are important considerations.

Factual Background

[3] The property is located in a rural setting. The residence is approximately 90 years old, a number of additions being made to the original structure over the years. The lot has frontage of about 100 feet and depth of 232 feet. A private septic system and well service the residence. A concrete swimming pool was installed some 20 years ago.

[4] The Langfields acquired the property in 1997. In late 2003, they decided to sell and placed an advertisement in the local newspaper. Ms. Riley responded by telephone call and in conversation with Mr. Langfield determined the price to be too high. The Rileys then lived in New Hamburg, having purchased their residence some years prior.

[5] On 16 December 2003, the Langfields listed their property for sale with Ryan Rhodes, a real estate representative with Re/Max in Stratford. As hereafter discussed, a Seller Property Information Statement was completed and signed by the Langfields on listing.

[6] The Rileys were contacted by their real estate representative, Ralph Korchensky, from Peak Real Estate in Kitchener, and advised of the recent listing. The asking price was less than what Ms. Riley had been told on her previous inquiry.

[7] On some unknown date in late December 2003, the Rileys and Mr. Korchensky attended at the property. Mr. Langfield was present. All four individuals walked through the residence and part of the back yard. This viewing took one hour.

[8] The Rileys, through their realtor, presented an offer to purchase on 31 December 2003. After some negotiation, a final agreement was signed by the parties that day. The purchase price was $184,900.00.

[9] Ms. Riley and her daughter attended at the property at some point later and toured the residence. Little detail of this visit was provided.

[10] Closing of the transaction occurred on 1 April 2004. The Rileys took possession.

[11] In late April 2004, small amounts of water were observed in the basement. A heavy rainstorm occurred on the 24 May 2004 weekend. A flood was described by the Rileys in the basement. Subsequent flooding was said to occur during rainstorms. A number of personal and other items of the Rileys were destroyed or damaged by water.

[12] Some weeks after taking possession, the Rileys determined one of the two fireplaces and the dishwasher were not working properly.

[13] On opening the swimming pool in the Spring of 2004, the Rileys discovered the filter was cracked and the pump ceased to work. They later observed cracks in the concrete walls of the pool.

[14] In the Summer of 2004, the Rileys moved the hot tub closer to the residence. In so doing, they came across an abandoned well. At or about this time, Manuel de Freitas, a public health inspector with Oxford County, attended at an abutting property in connection with a building permit. Inspection revealed a pipe coming from the Riley property which contained raw sewage. As a result of further inspection, Mr. de Freitas directed the Rileys to decommission the abandoned well and install a self-contained septic system in accordance with applicable legislation and regulations.

[15] The expense regarding the new septic system and filling in the abandoned well, together with related landscaping, were said to have been paid pursuant to the Rileys title insurance policy.

[16] The Rileys now seek damages from the Langfields for $97,500.00.

Agreement of Purchase and Sale

[17] The agreement of purchase and sale is in standard pre-printed form. The following provisions are relevant to this lawsuit:

> The Seller represents and warrants that the swimming pool, hot tub and equipment are now, and on the completion date shall be, in good working order. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.
> The Seller agrees to supply to the Buyer, prior to the last date set for examining title, a Certificate of Potability from the local health authority having jurisdiction over the area, with a rating indicating that there is no significant evidence of bacterial contamination.
> It is agreed that all drapery tracks, existing broadloom, mirrors, shelves, lighting fixtures, and cabinets fastened by means of nail, screw-nails or other similar fastening devices now on the real property are to be included in the Purchase Price.
> The Buyer acknowledges receipt, sent by facsimile, of Seller Property Information Statement and existing survey dated May 1991.
> **CHATTELS INCLUDED**: Central vac and all attachments, 2 propane fireplaces, hot tub, water softener, dishwasher, swimming pool accessories, trailer.
> **INSPECTION**: Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
> **AGREEMENT IN WRITING**: If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.

[18] The agreement was not conditional upon the purchasers obtaining a satisfactory building inspection report, a common provision with respect to re-sale homes. Ms. Riley was aware such an inspection could have been obtained and understood it was their responsibility to inspect. Mr. Korchensky was not asked to explain the absence of an inspection report condition.

Additional Warranties

[19] On closing of the transaction, the Langfields delivered to the Rileys the following additional documents:

(a) Undertaking , said to be in consideration of and notwithstanding closing, included a provision To leave on the premises all chattels and fixtures specified in the Agreement of Purchase and Sale, in good working order ; and
(b) Warranties and Bill of Sale which said that no damage has occurred to the property, including the buildings situate on the subject property as well as the chattels and fixtures included in the purchase price, since the same were inspected by the purchasers and that the warranties contained in the Agreement of Purchase and Sale, as well as those contained herein, shall survive closing .

[20] The short form bill of sale transferred title to the chattels and fixtures included in the purchase price but did not provide any further detail or description of the items.

Seller Property Information Statement

[21] The Langfields listed the property for sale with Mr. Rhodes on 16 December 2003. For some unknown reason, neither counsel asked Mr. Rhodes about the listing agreement and it was not tendered in evidence.

[22] The SPIS was prepared at the same time as the listing agreement, the purpose of the document, according to Mr. Rhodes, being to inform the buyers of any problems. Mr. Rhodes performed a cursory inspection of the resident prior to the listing.

[23] Upon receiving the SPIS, Mr. Korchensky faxed it to Ms. Riley. The date of this event was not provided, although, presumably Mr. Korchensky would have recorded such in his file. In any event, Ms. Riley acknowledged reviewing the SPIS before signing the offer to purchase.

[24] The SPIS is not a mandatory document. Neither realtor was asked as to frequency it is used in local real estate transactions.

[25] The SPIS contained the following items of interest in this lawsuit:

> **ANSWERS MUST BE COMPLETE AND ACCURATE** This statement is designed in part to protect Sellers by establishing that correct information concerning the property is being provided to buyers. All of the information contained herein is provided by the Sellers to the broker/sales representative. Any person who is in receipt of and utilizes this Statement acknowledges and agrees that **the information is being provided for information purposes only and is not a warranty** as to the matters recited hereinafter. The broker/sales representative shall not be held responsible for the accuracy of any information contained herein.
> **BUYERS MUST STILL MAKE THEIR OWN ENQUIRIES** Buyers must still make their own enquiries notwithstanding the information contained on this statement. Each question and answer must be considered and where necessary, keeping in mind that the Sellers knowledge of the property may be in incomplete, additional information can be requested from the Sellers or from an independent source such as the municipality. Buyers can hire an independent inspector to examine the property to determine whether defects exist and to provide an estimate of the cost of repairing problems that have been identified.
> GENERAL:
> 14. Are there any defects in any appliances or equipment included with the property? - NO
> STRUCTURAL:
> 5. Is the woodstove(s)/chimney(s)/fireplace(s) in working order? YES
> 7. Are you aware of any moisture and/or water problems in the basement or crawl space? YES
> 14. Are you aware of any problems with the swimming pool, hot tub or whirlpool bath? NO
> 16. Is there a home inspection report available? Date of report. NO
> THE SELLERS STATE THAT THE ABOVE INFORMATION IS TRUE, BASED ON THEIR CURRENT ACTUAL KNOWLEDGE AS OF THE DATE BELOW, ANY IMPORTANT CHANGES TO THIS INFORMATION KNOWN TO THE SELLERS WILL BE DISCLOSED BY THE SELLERS PRIOR TO CLOSING. THE SELLERS HEREBY AUTHORIZE THAT A COPY OF THIS SELLER PROPERTY INFORMATION STATEMENT BE DELIVERED BY THEIR AGENT OR REPRESENTATIVE TO PROSPECTIVE BUYERS OR THEIR AGENTS OR REPRESENTATIVES. THE SELLERS HEREBY ACKNOWLEDGE RECEIPT OF A TRUE COPY OF THIS STATEMENT.

NOTE: SELLERS ARE RESPONSIBLE FOR THE ACCURACY OF ALL ANSWERS.

Basement

(i) Prior Events

[26] A statement from Cephas Roth, a prior owner of the property, was presented in evidence by counsel for the Rileys. The statement was said to be tendered as proof of the contents as a result of notice served on the Langfields pursuant to the *Evidence Act*. Mr. Roth has been to the property on several occasions, since the Rileys took possession, for the purpose of providing quotations for certain renovations or repairs. No explanation was provided as to why Mr. Roth was not called as a witness. The statement is as follows:

> September 20, 2005
> To: Paul & Judy Riley
> My mother & father who were the original owners of the house you are living in lived in it from 1947 to 1971. My father had a drain installed from the west end of the property (Municipal drain location) to the house. In the house there are 2 different levels of basement floor. The lower basement had to be pumped up approximately 12 by a sump pump, then gravity out to the drain. The upper level of basement gravity flowed out to the drain.
> In 1974, Paulette & I bought the house and we can tell you that we only had water in our basement once. That is only because our sump pump switch didn t start the pump. I am not sure why there is so much of problem with water now unless something has happened to the existing drain and for this reason no outside or inside water can get away.
> Cephas Roth
> Cephas Roth

[27] Mr. Langfield made reference as to one similar water event resultant from the sump pump not coming on; otherwise, he said there were no water problems. This event was communicated to the Rileys when they viewed the property and observed a water stain in the recreation room wall paneling.

[28] Mr. Langfield also spoke of water in the back room, sometimes identified as the shop. The water, he said, would approach the recreation room causing wetness in the carpet at the doorway. This wetness was removed by use of a fan. Mr. Langfield indicated disclosure of these events was also provided to the Rileys at the time of the viewing. To correct the problem, which he understood to result from water entering under an exterior wall, Mr. Langfield dug up the shop room floor at the wall and installed a sump pump and a trench.

[29] The basement was used extensively by the Langfields. Mr. Langfield spoke of his two sons using the shop room for crafts and other activities. The recreation room was occupied much of the time, in part due to the television. Mr. Langfield installed the propane fireplace in the recreation room but, otherwise, the room was in the same condition as it was in 1997 on their purchase. Photographs tendered confirm the use of the recreation room in the past.

[30] No witnesses were called on behalf of either of the parties regarding the condition of the residence and the property or as to prior events, if any.

(ii) Initial Viewing or Inspection

[31] As previously mentioned, the initial and only viewing or inspection of the property lasted one hour. Twenty minutes was spent in the basement. There is an evidentiary dispute regarding this event, particularly with respect to comments of Mr. Langfield.

[32] Mr. Korchensky fell on the lower step of the stairs. While assisting him, Ms. Riley reported observing the water stain in the wall and, in response to her inquiry, was informed by Mr. Langfield of the one occasion when the sump pump did not come on as previously mentioned. Mr. Langfield indicated the water stain was on the inside wall of the laundry room.

[33] Ms. Riley also observed moisture around the water pump in the fruit cellar and water stains on the floor. Mr. Langfield informed the Rileys of sweat from the water passing through the pipes and water pump.

[34] A sump pump was located in the laundry room. Ms. Riley understood its purpose was to pump water to the outside of the residence.

[35] Ms. Riley could not recall seeing the sump pump and trench in the shop. The room, she said, was full of boxes. Mr. Langfield indicated the sump pump and trench were visible.

[36] The group proceeded to the back yard, leaving the residence from the doorway at the back of the shop. According to Mr. Langfield, he advised the Rileys as to using extension pipes for the sump pumps and downspouts to move water away from the residence.

[37] Mr. Riley had little recollection of the viewing of the residence. He reported Mr. Langfield to say moisture gathered in the fruit cellar occasionally but would dry up by using a fan. He also remembered being told by Mr. Langfield the corner of the recreation room by the shop would sometimes get wet. Mr. Riley did not see the sump pump in the shop but did recall Mr. Langfield reporting of water issues under the deck at the rear of the house.

[38] Mr. Korchensky had triple by-pass surgery at some point since December 2003. A side effect, he said, was problems with memory. Mr. Korchensky had little recollection of the viewing of the residence. He said he is always concerned with water in basements and could not remember observing anything wrong in the Langfield residence. Mr. Korchensky referred to a conversation as to moisture while in the fruit cellar but had no memory of a discussion regarding a water stain on the recreation room or laundry room wall. He could not recall if there was a sump pump. Although it is expected Mr. Korchensky would have made some record of the viewing, neither counsel asked him to refer to his file.

[39] The most significant evidentiary dispute is with respect to a statement made by Mr. Langfield when the parties were viewing the basement. Ms. Riley reported Mr. Langfield to say the basement was dry as a bone when discussing the water stain in the wall. Mr. Langfield acknowledged use of the phrase dry as a bone but said it was a reference to the floor joists which he informed the Rileys came from an old church and were dry and very hard. Mr. Riley made no reference to such a statement. It is to be noted, Mr. Riley was present in the courtroom when Ms. Riley testified. Mr. Korchensky, as previously mentioned, has little recollection of the viewing and did not refer to Mr. Langfield using the phrase dry as a bone .

(iii) **The Agreement**

[40] Ms. Riley could not recall when she received the SPIS but did read the document before submitting the offer to purchase. Mr. Riley could only say he likely saw the SPIS. Mr. Korchensky indicated discussing the SPIS with the Rileys.

[41] The Rileys acknowledged being made aware of water or moisture in the basement. They also acknowledged the reference in the SPIS and the agreement of purchase and sale regarding their responisibility to inspect. They knew they could have obtained a professional inspection of the residence.

[42] With reference to the water disclosure in the SPIS, Ms. Riley understood the comment to be about the fruit cellar. Mr. Riley made a similar comment although he had little recollection of the document. Mr. Korchensky, interestingly, indicated such a disclosure of water is always a concern yet he felt the issue was covered in the conversation with Mr. Langfield while in the basement. He said he took Mr. Langfield at his word .

[43] Mr. Korchensky did not comment about a professional home inspection. In fairness, neither counsel asked if such was recommended or discussed. Mr. Korchensky did report that the offer to purchase was prepared by his spouse, also a licensed realtor. She was not called as a witness.

(iv) After Closing

[44] Closing of the transaction occurred 1 April 2004. The Rileys took possession of the property.

[45] In late April 2004, water was observed in the shop and in the laundry room. The carpet in the recreation room was wet. Ms. Riley saw Mr. Langfield at a neighbouring residence. She approached him and asked about water in the basement, his reply, she said, was that s what house insurance is for .

[46] Flooding, a term used by the Rileys to indicate significant water entering the basement, first occurred on the 24 May 2004 weekend during a heavy rainstorm. Water was coming up the floor drain in the shop. Mr. Riley thought water was coming through or under the exterior walls in the shop.

[47] The Rileys spent that weekend dealing with water in the basement. Mr. Riley tried pushing water towards the sump pump using a broom. He acquired a wet vacuum cleaner. Carpet in the recreation room was rolled back and furniture was moved upstairs. Personal items, including clothing, and some furniture were disposed of due to water damage.

[48] The Rileys reported a number of flooding events since the Spring of 2004, such occurring during heavy rainstorms. These events are not in dispute.

[49] Flooding problems, according to Mr. Langfield, did not occur when his family resided at this property. When initially informed of the problem, he told the Rileys such was likely the result of a broken field tile.

(v) Corrective Measures

[50] Ms. Riley obtained a number of quotations from contractors, commencing in June 2004, regarding repair of the basement. Presumably, such contractors would have provided recommendations regarding work required and, perhaps, the source of the water. Opinion evidence, however, was not tendered.

[51] Mr. Riley has been doing the work himself as, he said, they could not afford to hire contractors. The project has proceeded in phases. Mr. Riley acknowledged using a trial and error approach. A summary of his work is as follows:

- digging out rear exterior walkway and replacing drain pipe
- digging out under rear deck
- installing barrier wall at rear of residence
- removing deck
- pouring concrete slab under deck
- installing tile drain from residence to municipal drain
- excavate crawl space under dining room and install weeping tile
- remove concrete floor and wall paneling in shop and recreation room and pour new floor

[52] The interior work was completed in the Fall of 2007. Mr. Riley reports that water still enters the basement on the recreation room, the shop and former crawl space exterior walls. Exterior work is still required.

[53] Mr. Riley indicated pouring approximately 11 metres of concrete. He initially stated such cost an average of $250 per metre and that he obtained a discount as he works for a concrete firm. In cross-examination, Mr. Riley acknowledged using left over concrete from delivers to customers at no cost.

[54] Mr. Riley has spent considerable time on this basement project. He estimated 7,650 hours of his time since the Spring of 2004. The project, it appears, is far from complete.

[55] Jeffrey Brown, owner of Dry Basements Ltd., has provided several quotations to the Rileys. He was initially contacted in October 2004. Mr. Brown was called as a witness.

[56] When Mr. Brown attended at the Riley residence, he recalled having been there before. He produced a written quotation to Mr. Langfield, dated 15 April 2000, which described certain work in the back area of the basement. Mr. Brown reported Mr. Langfield to say water entered under the rear basement door. The quote to Mr. Langfield was for $2,525. Mr. Langfield thought this quote was not appropriate and later did the work himself in the shop as previously described.

[57] On 5 October 2004, Mr. Brown provided two quotes to Ms. Riley. The first quote was $3,242 which was current pricing for the work contemplated in 2000, as above.

[58] During his inspection, Mr. Brown observed water at the recreation room exterior wall and that the wood framing appeared to be black from mould. Mr. Brown recommended excavating the entire basement and installing a drainage system. Excavation also was proposed in the exterior area around the residence. This quote was $12,235 which was updated on 27 August at $16,207 to reflect current pricing.

[59] The Rileys obtained quotations from other contractors, apparently for this lawsuit. One quote involves replacement of the rear deck which Mr. Riley said he will likely do himself.

[60] It is not clear as to whether work performed by Mr. Riley followed a proper procedure or if it will correct the water problem. At the very least, it appears further exterior work is required.

Swimming Pool

(i) Prior Use

[61] The concrete swimming pool was installed by a prior owner approximately twenty years prior to this transaction.

[62] Mr. Langfield reported the swimming pool to have been used extensively by his family. He opened and closed the pool each year and maintained it as required, including, he said, painting the walls with special pool paint some years previously. Mr. Langfield removed the diving board and slide in 1995. Both of his sons had suffered catastrophic injuries in an accident. Mr. Langfield felt these items posed a danger.

[63] Pool accessories were stored in the trailer during winter months. Mr. Langfield said they were all in working order prior to closing the pool in the Fall of 2003. The solar heating system consisted of black hose placed on the trailer roof and attached to the pool water system.

(ii) Initial Inspection and Offer

[64] As the initial viewing of the property occurred in December 2003, the pool cover was on and accessories were in the trailer. The pool was not inspected and the Rileys did not go into the trailer. The Rileys had never owned a swimming pool. Mr. Langfield offered to assist in opening the pool in the Spring of 2004.

[65] The agreement of purchase and sale contained a warranty as previously described. Included in the purchase were the swimming pool accessories but such were not set out by way of a detailed list.

(iii) Pool Opening

[66] In late April 2004, Mr. Riley pulled back the pool cover. He did not like the colour of the water and decided to pump it out and bring in fresh water. Chemicals were added.

[67] Mr. Langfield came to help with opening the pool. After connecting the water system, the filter was discovered to be cracked. Mr. Langfield said such likely resulted from water freezing during the winter. Some days later, he purchased a replacement filter and returned to the property. Mr. Langfield was asked to leave. The Rileys had already purchased a filter. They also acquired a pump as the original pump would not operate. After connecting these items and turning on the water system, Mr. Riley discovered the skimmer line was split. It was subsequently repaired.

[68] During the 2004 pool season, the Rileys reported the swimming pool to lose water. They were unable to keep the water clean and observed paint chips coming off the concrete walls. They shut the pool down after a few weeks.

[69] The swimming pool was inspected by Bill Madill, from C-Clear Pool Services Ltd., in or about May 2004. In his report, dated 7 June 2004, Mr. Madill indicated the filter had not been winterized properly and, as a result, was split from top to bottom. He also said neither of the two pumps was operational and a leak was discovered in the skimmer line. No mention was made of the concrete walls. Mr. Madill was not called as a witness.

(iv) Pool Repair

[70] In July 2005, the Rileys drained the swimming pool. A contractor, Bosco Pool & Spa, was hired to sandblast, repair and paint the concrete walls. The cost, including a solar blanket, was $5,194. A representative from Bosco was not called to testify.

Other Items

(i) Dishwasher

[71] The dishwasher was an included fixture in the purchase. Ms. Riley first attempted to use the dishwasher approximately one month after taking possession of the property. She said it was not working properly.

[72] On 19 July 2004, a representative of Pletsch Electric of Tavistock Ltd. attended at the residence and installed a pump to spray arm connector . The cost of the service call was $70.67. No further information was provided.

(ii) Fireplace

[73] There are two propane fireplaces in the residence. The recreation room fireplace was said to be in working condition. Ms. Riley advised the living room fireplace would not stay on. She reported Mr. Langfield to have said during the initial viewing that he had difficulty getting it to work but his spouse had a knack in turning the fireplace on.

[74] Ms. Riley was of the view the gas line was pinched or bent. Hensall District Co-operative was hired to service and clean the fireplaces, move the propane tank to a new location and install a new gas line. The installer was not called to testify as to the state of the gas line and, as noted, the other fireplace was in working order.

Damage Claim

[75] In their amended statement of claim, the Rileys originally sought a damage award of $145,650 for fraudulent and/or negligent misrepresentation and breach of contract. They also claimed punitive damages of $50,000.

[76] That portion of the claim involving the septic system, abandoned well and related matters was withdrawn at trial, such being paid for by the title insurance company.

[77] Ms. Riley also reported submitting a claim to the title insurance company and to their house insurance company regarding the loss of chattels and personal effects in the basement. These claims, she said, were denied. No disclosure was provided as to either claim.

[78] Rescission with damages was also requested in the statement of claim. Rescission was abandoned at trial.

[79] The punitive damage claim was not pursued at trial. Aggravated damages, although not claimed, were requested by counsel for the Rileys. Such an award is inappropriate when not set out in the statement of claim.

[80] Much of the damage claim is based upon quotations from contractors. The work to date has been performed by Mr. Riley. The claim is thus said to be compensation for his efforts.

[81] The following is a summary of the damage claim as presented at trial:

(a) Basement
- concrete removal and replace drains $ 2,000.00
- install retaining wall $ 2,000.00
- basement excavation and related work $17,000.00
- interior flooring, walls, doors $20,000.00

(b) Exterior
- tiling from residence to municipal drain $ 7,000.00

(c) Swimming Pool
- chemicals and install ball valve $ 387.00
- pump, filter and plumbing $ 1,315.00
- chemicals $ 61.00
- clean and repair concrete walls $ 5,194.00
- water $ 668.00

(d) Landscaping $ 4,700.00
(e) Deck $ 7,000.00
(f) Furniture and personal belongings $10,000.00
(g) Dishwasher repair $ 70.00
(h) Fireplace gas line repair $ 130.00
(i) General damages $20,000.00
TOTAL (rounded) $97,500.00

Law

[82] The classic description of the common law concerning caveat emptor was provided by Professor Laskin, as he then was, in Defects of Title and Quality: Caveat Emptor and the Vendor s Duty of Disclosure in *LSUC Special Lectures 1960: Contracts For the Sale of Land* (Toronto: DeBoo, 1960). At p.403, he said:

> Does the vendor have any duty of disclosure in matters of quality and fitness which do not constitute defects of title? Here we deal with the classical notion of *caveat emptor* as applied to the physical amenities and condition of the property unrelated to any outstanding claims of third parties or public authorities such as would impinge on the title. Absent fraud, mistake or misrepresentation, a purchaser takes existing property as he finds it, whether it be dilapidated, but-infested or otherwise uninhabitable or deficient in expected amenities, unless he protects himself by contract terms.

[83] Professor McCamus, in Caveat Emptor: The Position at Common Law in *LSUC Special Lectures 2002: Real Property Law: Conquering the Complexities* (Toronto: Irwin Law, 2002), with reference to the above passage, at p. 99, reported the general principle of caveat emptor persists as the governing principle, against which such developments are to be measured . At p. 100, he went on to describe a reluctance for change saying in the real estate context, the doctrine of caveat emptor draws strength from the common law s traditional unwillingness to imply conditions and warranties relating to quality and fitness into contracts for the purchase and sale of land .

[84] Caveat emptor has long been the starting principle. Exceptions to the rule, as noted above, include fraud, error in substantialibus or covenants or warranties in the agreement: see *Redican v. Nesbitt*, 1923 CanLII 10 (S.C.C.), [1924] S.C.R. 135 (S.C.C.); *Fraser-Reid v. Droumtsekas*, 1979 CanLII 55 (S.C.C.), [1980] 1 S.C.R. 720 (S.C.C.); *McGrath v. MacLean* (1979), 95 D.L.R. (3d) 144 (Ont. C.A.); and *Alevizos v. Nirula* 2003 MBCA 148 (CanLII), (2003), 234 D.L.R. (4th) 352 (Man. C.A.).

[85] Fraud is the most serious allegation in a civil law context. As in any other case, the burden of proof is on a balance of probabilities. In *Continental Insurance Co. v. Dalton Cartage Co.*, 1982 CanLII 13 (S.C.C.), [1982] 1 S.C.R. 164 (S.C.C.), Laskin C.J.C., at p. 170, commented on the trier of fact being justified in scrutinizing evidence with greater care, if there are serious allegations to be established by the proof that is offered .

[86] The Rileys allege they were induced into the agreement by the fraudulent misrepresentations by Mr. Langfield. To succeed, the Rileys must establish:

(a) the representations were made by Mr. Langfield;
(b) the representations were false;
(c) Mr. Langfield knew the representations were false or such were recklessly made without caring;
(d) the representations did, in fact, induce the Rileys to enter into the agreement to their prejudice.

[87] Intention to deceive, or reckless disregard are critical factors. If the criteria are established, a plaintiff may seek rescission of the agreement and/or damages: see *Derry v. Peek* (1889), 14 App. Cas. 337 (H.L.); *Redican v. Nesbitt*, supra; *Parnu v. G. & S.*, 1970 CanLII 25 (S.C.C.), [1971] S.C.R. 306 (S.C.C.); *Toronto-Dominion Bank v. Leigh Instruments Ltd.* 1998 CanLII 14806 (ON S.C.), (1998), 40 B.L.R. (2d) 1 (Ont. Gen. Div.), aff.d 1999 CanLII 3778 (ON C.A.), (1999), 45 O.R. (3d) 417 (Ont. C.A.); S.M. Waddams, *The Law of Contracts*, 5th ed. (Toronto: Canada Law Book, 2005), paras. 416-417; and A.W. LaForest, *Anger & Honsperger: Law of Real Property* (Aurora: Canada Law Book, 2008), para. 23:40.30(a).

[88] Fraud may also be established by conduct of the vendor, such as active concealment of a latent defect in the building with the intent to deceive the purchasers: see *Abel v. McDonald* (1964), 45 D.L.R. (2d) 198 (Ont. C.A.); and *688530 Ontario Ltd. v. Piron*, [1994] O.J. No. 2844 (Ont. Gen. Div.), aff.d [1999] O.J. No. 1720 (Ont. C.A.).

[89] Active concealment of a patent defect may elevate such to a latent defect which renders the activity fraudulent: see *Alevizos v. Nirula*, supra; and *Belzil v. Bain* (2001), 45 R.P.R. (3d) 233 (Alta. Q.B.).

[90] A latent defect is some fault in the structure or property that is not readily apparent during routine inspection. A patent defect is observable or discoverable by the exercise of due diligence: see *Tony s Broadloom and Floor Covering Limited v. NMC Canada Inc. et al*., 1996 CanLII 680 (ON C.A.), (1997), 31 O.R. (3d) 481 @ 487.

[91] A patent defect discernable by ordinary vigilance by a purchaser is not a defect in the land for which blame can be attached to the vendor: see *688350 Ontario Ltd. v. Piron*, supra, at paras. 152-5.

[92] A plaintiff cannot rely on its own lack of due diligence to fix liability on the defendant: see *Holtby s Design Service v. Campbell Chevrolet Oldsmobile*, [2002] O.J. No. 2889, aff.d [2004] O.J. No. 183 (Ont. C.A.) at paras. 53-4.

[93] Professor McCamus, in *Caveat Emptor: The Position at Common Law*, supra, cautions as to distinctions between patent and latent defects. At page 111, he offered these comments:

> As a matter of general principle, then, the vendor is not under a duty to disclose either latent or patent defects of quality. It is no doubt for this reason that in his discussion of defects in quality Professor Laskin makes no reference to the distinction between latent and patent defects. To be sure, however, there are *obiter dicta* in a number of trial decisions suggesting that the vendor is subject to a duty to disclose latent defects of which it is aware. These statements may be harbingers of a brave new world of vendor disclosure duties. For the moment, however, they do not appear to represent good law.

[94] Silence and half-truths can amount to fraudulent misrepresentations: see *Peek v. Gurney* (1873), L.R. 6 (H.L.); and *Alevizos v. Nirula*, supra.

[95] The Rileys also allege negligent misrepresentations. To succeed, they must establish:

> (a) there was a duty of care based upon a special relationship between the parties;
> (b) the representations were untrue, inaccurate or misleading;
> (c) Mr. Langfield acted negligently in making the representations;
> (d) the Rileys relied, in a reasonable manner, on the negligent misrepresentation; and
> (e) the reliance was detrimental to the Rileys with resultant damages.

See: *Queen v. Cognos Inc.*, 1993 CanLII 146 (S.C.C.), [1993] 1 S.C.R. 87 (S.C.C.)

[96] Negligent misrepresentation may not entitle the purchaser to damages unless the representation is a term of the agreement: see G.H.L. Fridman, *The Law of Contract in Canada* (Scarborough: Carswell, 2006), at pp. 507-9.

[97] The entire agreement clause in an agreement may exclude liability for negligent misrepresentation: see *Belzil v. Bain*, supra, at paras. 39-40.

[98] The SPIS is a relatively new concept in real estate transactions. The document is not mandatory. In *Alevizos v. Nirula*, supra, Scott C.J., in para. 36, the following general statements regarding the SPIS (referred to as a property condition statement or PCS in Manitoba):

> 1. Declarations made in a PCS are representations as opposed to terms of the contract. See Fridman s *Law of Contract, ibid.* (at p. 474):
> A representation has been defined as a statement or assertion made by one party to the other before or at the time of the contract of some matter or circumstances relating to it . Such statements may indeed be, or become terms of the contract, in which event they will have effect as such. However, if a representation is not and never becomes a term, its legal character and consequences are different.
> Terms are contractual and the failure to fulfil the promise contained in a term gives rise to an action for breach of contract. Representations are non-contractual. If they are not true the appropriate remedy is not an action for breach of contract, but the avoidance or rescission of a contract entered into in consequence of the representation, and, possibly, a tort action for damages.
> Damages are the remedy sought in this action.
> 2. Such statements do not constitute a warranty, rather the purpose of a PCS is to put purchasers on notice, to make purchasers aware of a problem if there is one. See *Zaenker v. Kirk* (1999), 30 R.P.R. (3d) (B.C. S.C.) its main purpose is to put purchasers on notice with respect to known problems (at para. 19), *Anderson v. Kibzey* [1996] B.C.J. No. 3008 (B.C. S.C.) at para. 13, the purpose of the disclosure statement is to raise questions and concerns rather than give detailed answers to the disclosures made , and *Ward v. Smith* 2001 BCSC 1366 (CanLII), (2001), 45 R.P.R. (3d) 154, 2001 BCSC 1366 (B.C. S.C.).
> 3. Since the purpose of the PCS is to give the purchasers a heads up with respect to potential problems, liability will ordinarily be disallowed when the problem in question is obvious. See *Davis v. Stinka*, [1995] B.C.J. No. 1256 (B.C. S.C.). This is because purchasers in such circumstances should not have been misled by the disclosure statement. To put it another way, in such circumstances it cannot be said that the misrepresentation actually caused the person to act upon it. See Fridman s *Law of Contract, ibid*. at p. 309.
> 4. If the vendor answers the PCS honestly and does not deliberately intend to mislead, then liability will not follow even if the representation turns out to be inaccurate. *Taschereau v. Fuller* 2002 MBQB 183 (CanLII), (2002), 165 Man. R. (2d) 202, 2002 MBQB 183 (Man. Q.B.).
> 5. Based on the experience of those provinces that have employed the PCS, it seems to present a ripe ground for litigation. Doubtless this is due to no small measure to the problems inherent in an informal fill in the blank form which can have such serious legal consequences when problems subsequently develop in a real estate transaction. The wisdom of maintaining in use a form fraught with such inherent difficulties, exacerbated by the conflicting statements within the form concerning its purpose and effect, should be addressed by lawyers and real estate agents alike.

[99] At para. 38, Scott J. went on to say:

> Once the vendors undertook to complete the PCS, they were obliged indeed they were under a duty in the circumstances to do so honestly and completely.

[100] Kraft J.A., concurring in the decision of Scott C.J., added this comment at para. 47:

> This judgment should, in my view, be taken as a warning about the routine use of the PCS. The purchase and sale of a home is for many people the most significant business transaction they will ever enter into. Representations as to the condition of the property are inevitably going to be requested and given. I do not believe that these concerns are ever going to be safely dealt with by filling in the blanks on a short form carried in the real estate agent s briefcase with his or her other supplies.

[101] In *Kaufmann v. Gibson*, [2007] O.J. No. 2711 (Ont. S.C.J.), the schedule to the agreement of purchase and sale contained the following condition:

> The Buyer acknowledges that the Buyer has received a completed **Seller Property Information Statement** from the Seller, attached hereto as Schedule B and forming part of this Agreement of Purchase and Sale and has had an opportunity to read the information provided by the Seller on the **Seller Property Information Statement** prior to submitting this offer.

[102] Killeen J., at paras. 115-6, made reference to this condition as follows:

> 115 It is important to emphasize that, unlike the situation in *Alevizos* case, the defendant purchasers in this case took the trouble to incorporate the SPIS document directly into the terms and conditions of the agreement.
> 116 In my view, this greatly strengthens the position of the defendants because they were relying on the SPIS, not as an outside document containing representations, but, rather, as a specific contractual commitment within the four corners of the agreement itself.

[103] The wording in the agreement in the case at bar is less clear, saying only the Buyer acknowledges receipt, sent by facsimile, of Seller Property Information Statement . Although the paragraph could have been better drafted, it does incorporate the SPIS into the agreement by reference, at the very least.

[104] Part of the Rileys claim concerns a warranty that certain items were in good working order as at the date of closing.

[105] A warranty contained in a contract is a term that does not go to the root of the agreement but, rather, expresses a lesser obligation. A breach will result in a claim for damages but not rescission: see *Fraser-Reid v. Droumtsekas*, supra, at p. 731.

[106] The warranties were also expressed to survive closing . This is a clear expression of the intention of the parties and, hence, the concept of merger does not apply: see *Fraser-Reid v. Droumtsekas*, supra, at p. 734.

[107] The warranties are specifically restricted to the closing date. As such, the usual evidentiary burden is on the Rileys to establish the items were not in good working order on 1 April 2004: see *Riddall v. McFarlane*, [1997] O.R. No. 4626 (Ont. Gen. Div.), at para. 15.

[108] On closing, the Langfields delivered a supplementary warranty to the Rileys regarding all chattels and fixtures. In result, the above principles apply to this warranty as with the one in the actual agreement.

Analysis

(i) Evidentiary Shortfall

[109] There is a considerable evidentiary shortfall.

[110] Given the conflicting positions and factual dispute, particularly as to statements or representations of Mr. Langfield, it would have been helpful to hear from prior owners or visitors to the residence. Counsel for the plaintiffs was critical of the defendants in not calling such witnesses and suggested it was incumbent on them to present the best evidence to corroborate their position. Yet no such witnesses were called on behalf of the plaintiffs. Mr. Roth, for example, owned the property previously and had been to the property since acquired by the plaintiffs. His statement, in my view, was supportive of the defendants position but would have provided a history of the property that might assist in understanding when and why water problems occurred.

[111] The plaintiffs bear the onus of proof. A due diligence investigation prior to commencing the lawsuit must have included inquiry of past owners and neighbours. In this regard, with allegations of fraud, the evidence must be scrutinized with greater care as Laskin C.J.C. said in *Continental Insurance*, supra. Absence of evidence is also a necessary consideration.

[112] No opinion evidence was tendered regarding the source of the water and corrective measures required. The flooding described by the plaintiffs was significant yet it appears such has only occurred since they took possession of the property. Mr. Riley has spent many hours working in the basement but acknowledged proceeding on a trial and error basis. This case, in my view, required opinion evidence. By comparison, two of the authorities relied on by counsel for the plaintiffs contain an extensive review of the opinion evidence: see *McQueen v. Kelly* (1999), 25 R.P.R. (3d) 248 (Ont. S.C.J.) and *Thiel v. Milmine*, [1995] O.J. No. 3074 (Ont. Gen Div.).

[113] The evidentiary shortfall leaves a trier of fact in a difficult position. Credibility alone is not determinative on the evidence presented.

(ii) Basement

[114] What appears to be a conflict in the evidence of the parties is, to a great extent, reference to different time periods. As mentioned above, the statement of Mr. Roth, tendered on behalf of the plaintiffs, is consistent with the testimony of Mr. Langfield. As the basis of the claim is fraudulent or negligent misrepresentation, the plaintiffs must establish statements attributed to Mr. Langfield were false, inaccurate or misleading. In essence, a pre-existing problem is a necessary finding. This is particularly the case when there is disclosure in the SPIS and observations of the plaintiffs as to some water issues. There can be no dispute, water has been present in the basement in the past. Indeed, such is hardly unexpected in an older, rural residence. The claim, however, is for something much greater and is said to be flooding.

[115] I am satisfied Mr. Langfield made the comment dry as a bone with reference to the basement. Such a statement cannot be considered mere trade puffery as described in *Fraser-Reid v. Droumtsekas*, supra. However, the statement must be considered within the context in which it was made. In this regard, observations of the Rileys, disclosure in the SPIS and other comments of Mr. Langfield are relevant.

[116] The starting point is the Rileys inspection of the property, of which only twenty minutes was spent in the basement. It is difficult to understand how or why a purchaser would contemplate an investment of $184,900.00 after only one visit to the property. More perplexing is that their realtor allowed or, perhaps, encouraged the Rileys to submit an offer to purchase without a further viewing of the property. The SPIS was ignored. A professional home inspection was not requested.

[117] During this limited viewing, the Rileys observed several water problems, including water stains on the recreation room wall and the fruit cellar floor. There was a sump pump in the laundry room. The Rileys knew its purpose was to pump water to the outside of the residence. The sump pump and trenching in the shop was not seen. Mr. Riley was informed of water issues at the rear of the house under the deck which was adjacent to the shop.

[118] At the very least, this limited viewing should have resulted in further inquiry and a more detailed inspection. In this regard, both realtors acknowledged an examination for water or moisture is common practice in older homes.

[119] The SPIS disclosed moisture and/or water problems in the basement . I agree with the criticism of such a form as stated by Scott C.J. and Kroft J.A. in *Alevizos v. Nirula*, supra. Nevertheless, such disclosure is, in essence, a warning to a purchaser that should not be ignored. The SPIS was provided to the Rileys prior to submitting the offer to purchase. The SPIS along with the Rileys observations should have resulted in further steps being taken. Yet no due diligence was undertaken by the Rileys or their realtor. The Rileys knew it was their obligation to follow up on the SPIS disclosure and that they had the right of further inspection.

[120] As previously mentioned, it is clear that water has been present in the basement but the evidence does not establish such was as extensive in the past. If there was a defect, I am satisfied it was patent. It was observable. I do not accept the suggestion of concealment as advanced on behalf of the plaintiffs. The sump pump and trench in the shop may not have been seen, hardly unexpected on such a brief viewing. With minimal effort, such would have been observed.

[121] The evidence of Mr. Brown is helpful but not complete as he was not asked to investigate and provide an opinion. It is unknown if, in fact, he could have assisted in this regard. The work performed by Mr. Langfield in the shop may have corrected the problem referred to by Mr. Brown in his prior attendance at the residence in 2000. Mr. Brown was not asked to comment on the trenching and sump pump in the shop. Mr. Brown observed water behind the recreation room wall but there was no evidence as to the source of the water or the time period for its presence. The evidence of Mr. Brown only addressed proposed work in terms of the damage claim.

[122] The evidence tendered falls well short of establishing either fraudulent or negligent misrepresentation. The absence of evidence compounds the situation and prevents the evidentiary findings required by the plaintiffs. In the totality of the evidence, therefore, caveat emptor applies. The plaintiffs cannot recover damages with respect to the basement.

(iii) Swimming Pool and Accessories

[123] This claim is based on warranty. Mr. Langfield accepts liability with respect to the filter and attempted, albeit too slowly, to rectify the situation.

[124] Water freezing in the filter indicates the swimming pool was not closed properly in the Fall of 2003. Accordingly, I am satisfied Mr. Langfield is also liable for the repair required for the skimmer lines, such also cracking from the presence of water. As well, I accept the evidence the pumps were not in working condition on closing.

[125] The Rileys incurred an expense of $1,300 for the filter, pump and installation. The skimmer line repair expense is unclear. A quote was obtained from C-Clear Pool Services on 2 August 2004 for $1,975 but such included other items, namely a diving board and solar blanket. I assess the skimmer line claim at $700. The claim for chemicals is denied, the evidence not establishing a need beyond routine maintenance. Damages, therefore, are awarded for this component of the claim in the amount of $2,000.

[126] Ms. Riley initially complained about the solar heating system, the reference being it was only a length of black pipe. This claim was not pursued at trial. This was a passive solar heating system. The purchasers cannot complain when no inspection or inquiry was made and a detailed description of items was not in the agreement. Similarly, claims for a solar blanket, diving board and other accessories were not pursued and would not have succeeded.

[127] The balance of this claim pertains to the swimming pool and, in particular, the condition of the concrete walls. The evidence was less than clear. No opinion evidence was presented.

[128] This is an older pool and some wear and tear is expected. To succeed on this claim, the plaintiffs must establish the swimming pool was not in good working order on 1 April 2004. They have failed to do so. In this regard, the report of C-Clear Pool Services, dated 7 July 2004, is fatal to the claim. Mr. Madill, in this report, said I inspected the pool . No reference was made to the concrete walls or the alleged deficiencies.

(iv) Other Items

[129] The basis of the fireplace claim is said to be a problem in the gas line. No evidence was presented to support that allegation and, indeed, such hardly seems logical if the fireplace in the basement was in working condition. I am satisfied, however, the living room fireplace was not operating properly as it required cleaning. Mr. Langfield corroborates the Rileys complaint by saying he could not turn it on but his spouse had the knack to do so. The plaintiffs are entitled to a recovery of this expense which I assess at $100.

[130] The dishwasher was not used until a month after the Rileys took possession of the property. There was no evidence as to the condition of this item as at 1 April 2004 or what the problem was that required repair. This claim, therefore, was not established.

(v) Realtors

[131] I pause at this point to consider the involvement of the two real estate representatives in this transaction. They are not defendants and, hence, no evidence was tendered as to the standard of care they were required to perform.

[132] The realtors are said to be professional. They received a commission in some unknown amount on closing of the transaction. There can be no doubt they owed a duty of care.

Mr. Korchensky and Mr. Rhodes made reference to the importance of checking for water problems, particularly in older homes. Nevertheless, on the evidence presented it appears neither realtor conducted any due diligence inquiry.

[133] Mr. Rhodes said he conducted a cursory inspection of the property when preparing the listing agreement. He met with the Langfields to complete the SPIS. Despite the stated disclosure in this document, Mr. Rhodes made no further inquiry.

[134] Mr. Korchensky saw the water or moisture disclosure in the SPIS. Despite his stated concern with this reference, he was content to rely on Mr. Langfield s limited comments. Mr. Korchensky, it appears, did not recommend a second viewing nor did he suggest a professional home inspection.

[135] Realtors are expected to provide advice and direction to their clients. They are paid to act as professionals. They are not simply tour guides walking through a residence. The cavalier attitude of both realtors with respect to the SPIS is troubling. The purpose of the SPIS is not to protect realtors from liability. They have a due diligence obligation.

(vi) Damages

[136] As set out above, damages are assessed against the defendants in the amount of $2,100.

[137] Had I arrived at a different conclusion on liability, I would have assessed additional damages of $60,000 as follows:

(a) basement $40,000.00
(b) swimming pool $ 5,000.00
(c) deck $ 5,000.00
(d) general damages $10,000.00

[138] I am not satisfied a sufficient discount has been applied for betterment. There was no expense for the concrete. No valuations were presented. Without opinion evidence, it is unknown what work is actually required.

Summary

[139] In result, judgment is awarded to the plaintiffs for $2,100.

[140] If the parties cannot agree on the issue of costs, written submissions are required. Counsel for the party seeking a cost award shall serve submissions within 30 days. Counsel for the responding party shall serve submissions with 15 days thereafter. All submissions are to be delivered to my chambers in Kitchener on or before the last day permitted for the response.

_____

D.J. Gordon J.

Released: May 13, 2008

COURT FILE NO.: C-579-05

DATE: 20080513

ONTARIO

SUPERIOR COURT OF JUSTICE

(Proceeding Commenced at Kitchener, Ontario)

B E T W E EN:

PAUL EDWIN RILEY and

JUDITH ANN MATILIDA RILEY

Plaintiffs

and

JOHN RUSSEL LANGFIELD and

KIMBERLY ANN LANGFIELD

Defendants

REASONS FOR DECISION

The Honourable Mr. Justice D.J. Gordon

Released: May 13, 2008

DJG/lr