

COURT OF APPEAL FOR ONTARIO

CITATION: Collett v. Reliance Home Comfort Limited Partnership (Reliance Home Comfort), 2012 ONCA 822
DATE: 20121127
DOCKET: C55215

Rosenberg, Gillese and Lang JJ.A.

BETWEEN

Geoffrey Collett and Sandra Collett

Plaintiffs (Respondents)

and

Reliance Home Comfort Limited Partnership also known as Reliance Home Comfort

Defendant (Appellant)

Tim Buckley and Heather K. Pessione, for the appellant

Mark A. Mason and Hillel David, for the respondent

Heard: October 23, 2012

On appeal from the order of Justice Gladys Pardu of the Divisional Court, dated December 7, 2011.

Gillese J.A.:

[1] This appeal, like the companion case of *Szilvasy v. Reliance Home Comfort Limited Partnership (Reliance Home Comfort)*, 2012 ONCA 821 (*Szilvasy*), involves the application of s. 9(2) of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A (the *CPA*) to the rental of a hot water heater.

OVERVIEW

[2] Geoffrey Collett and Sandra Collett (the Colletts or the respondents) purchased their home in Oakville, Ontario in 1996. The hot water heater in the house had been installed in June 1988. The original homeowner rented the water heater from a predecessor company of Reliance Home Comfort Limited Partnership (Reliance or the appellant).

[3] The Colletts took over rental of the water heater and paid Reliance's monthly bills.

[4] In early May of 2007, Mr. Collett discovered a leak from the water heater, which had caused damage to carpet and baseboards. Reliance replaced the water heater at no cost to the Colletts.

[5] The Colletts brought a subrogated claim in Small Claims Court for the property damages arising from the leak. They succeeded at trial and were awarded damages in the amount of \$3,994.15, plus disbursements, costs and interest.

[6] Reliance's appeal to the Divisional Court was dismissed.

[7] With leave, it appeals to this court.

[8] The factual differences between this case and *Szilvasy* do not affect the outcome. For the reasons given in *Szilvasy*, in my view, this appeal must fail.

DISPOSITION

[9] Accordingly, I would dismiss the appeal. I would make a single cost award in respect of the two appeals by ordering Reliance to pay costs in the agreed on sum of \$16,000, all inclusive, to the respondents in both appeals.

Released: November 27, 2012 ("E.E.G.")

"E.E. Gillese J.A."

"I agree M. Rosenberg J.A."

"I agree S.E. Lang J.A."