BLOG

Representations and Warranties in Agreements of Purchase and Sale: Good Working Order

Agreement of Purchase and Sale | Commercial Real Estate

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Real estate lawyers often debate the scope of representations and warranties in purchase agreements, but their value is limited to the extent a purchaser will sue for their breach. In this blog, I discuss a recent Ontario Superior Court of Justice decision dismissing a purchaser's claims that the sellers knew systems were not "in good working order" on closing, primarily because the warranties were knowledge-qualified.

The Court also confirmed that compliance with the Ontario Building Code ("OBC") is not, by itself, determinative of good working order. The practical question is whether the system is adequate for normal household usage at closing, and whether the seller knew of the defect.

Background

In *Hooey v. Hurst et al.*[1], a first-time homebuyer sued after discovering problems with a 1956 home that the sellers, the Hursts, had owned since 1997.

The agreement included a warranty that, to the sellers' knowledge and belief, the mechanical, electrical, heating, ventilation, plumbing and other equipment would be in good working order on closing. The warranty survived closing but applied only to the state of the property at completion.

The purchaser's home inspection flagged drainage, prior moisture infiltration, plumbing, wiring and fuel-system concerns, recommended further investigation, and cautioned that an older home could not be expected to meet current Code standards. The purchaser retained no specialists and waived the agreement's requirement for a fuel-oil distributor's report confirming the furnace and oil tank were safe.

Two days after closing, the purchaser discovered an oil leak from the furnace pump. A building inspector identified numerous issues and an order to comply was issued. Relying on photographs, municipal findings and trade estimates, she claimed breach of warranty, negligent misrepresentation and negligent renovations.

What Does "Good Working Order" Mean?

The Court held that the primary determination is how a system functions in ordinary household use at the relevant time. The warranty is not a guarantee that every component of an older home complies with the OBC, and deficiencies found after closing do not necessarily show a system was inadequate when the transaction closed.

The purchaser could not say when many of her photographs were taken, and no expert evidence linked them to the systems' condition at closing. The trade reports proposed repairs but did not establish that the systems were inadequate for normal household usage.

OBC Compliance Is Not the Test

The Court explained that the OBC is not a retroactive maintenance standard; it regulates construction, renovation and changes of use. A building that complied with the requirements applicable when it was built or lawfully renovated does not become non-compliant merely because a later edition is more stringent.

A municipal order to comply or a contractor's estimate describing Code deficiencies may be relevant evidence, but does not automatically prove breach of a good-working-order warranty. The questions remain whether the system was adequate for normal household usage at closing and whether the sellers knew of the defect.

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This does not suggest that Code violations are unimportant or that unsafe conditions can be ignored.

Why the Heating-System Claim Failed

Since the leak was found within a week of closing, the Court inferred that the heating system was not in good working order around closing. The claim nevertheless failed because the warranty was knowledge-qualified: the purchaser also had to prove the sellers knew of the defect.

The evidence on knowledge was decisive. Shortly before closing, the sellers' technician inspected the system, which passed. He recommended replacing the oil pump if the new owner continued using oil, but noted no leak.

In short, proof of a defect does not necessarily establish breach of a warranty limited by the seller's knowledge and belief.

The Other Claims Also Failed

The Court accepted that the heating-system representation was inaccurate, but not that the sellers were negligent in making it, given the recent inspection. The purchaser's failure to pursue the recommended investigations and her waiver of the fuel-distributor report also undermined reasonable reliance.

The negligent-renovation claim failed because the purchaser did not prove who did most of the disputed work, when, or that it created dangerous defects. Professionals had done the kitchen, the basement was finished before 1997, and nothing showed the sellers installed the HVAC system.

The damages evidence was also problematic: the restoration quotation included improvements beyond correcting deficiencies, and the purchaser could not show how much of her alternate-accommodation time was attributable to the sellers rather than the oil spill or upgrades.

Practical Implications for Purchasers and Sellers

The decision offers several practical lessons:

- **The wording of the warranty matters.** A knowledge-qualified warranty requires proof of both a defect and the seller's knowledge of it.
- **"Good working order" is a functional standard.** The question is adequacy for normal household usage at closing, not whether a later inspection finds deficiencies or Code issues.
- **OBC non-compliance is not automatically a contractual breach.** The applicable Code version, the system's age, the nature of the deficiency and evidence of actual operation all matter.
- **Follow up on inspection recommendations.** A purchaser who ignores identified concerns or waives a required report may struggle to establish reasonable reliance in a later misrepresentation claim.

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[1] *Hooey v. Hurst et al*, 2026 ONSC 5843.

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