

SUPREME COURT OF NOVA SCOTIA

Citation: *M.U. Rhino Renovations v. Dora Construction Ltd.*, 2016 NSSC 90

Date: 20160412

Docket: Tru No. 437971

Registry: Truro

Between:

Myron Upham, dba M.U. Rhino Renovations

Plaintiff

v.

Dora Construction Limited, a body corporate, and Shannex Inc., a body corporate

Defendants

v.

Myron Upham, dba as M.U. Rhino Renovations

Third Party

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Judge: The Honourable Justice Peter P. Rosinski

Heard: March 21, 2016, in Halifax, Nova Scotia

Summary: Dora built, and warrantied their work on a seniors care facility for Shannex. Shortly after construction was completed, issues arose in one area of the facility, which Dora was unable to respond to as quickly as Shannex wanted. Shannex hired Rhino to correct these deficiencies on an emergency basis, which it did, submitting a \$49,000 bill. While working to correct those deficiencies, Rhino recognized other alleged deficiencies throughout other areas of the facility. Representatives of Rhino, Dora, and Shannex met to discuss those other alleged deficiencies. As a result, Rhino's

representative believed that it had approval to remedy, under the warranty, those other alleged deficiencies. Rhino submitted a bill to Dora for approximately \$303,000, which Dora refused to pay. Shannex also refused to pay the bill. Rhino filed the builders' lien against the property, which lien was removed after its negotiations with Shannex. Those negotiations lead to a release and indemnification of Shannex from claim by Rhino that was drafted in broad terms. Rhino sued both Dora and Shannex. Shannex brought a motion for summary judgment on evidence against Rhino's claim (breach of contract and unjust enrichment/*quantum meruit*), and argued the release and indemnification agreement were a complete answer to Rhino's claims.

Issues: (1) Under the new *Civil Procedure Rule* 13.04 [amended February 26, 2016] should summary judgment be granted?

Result: Summary judgment could have been granted in relation to Rhino's claims of breach of contract, and that there was an innocent misrepresentation by Shannex, which lead Rhino to sign the release/indemnification agreement in question, such that the release should be rescinded. However the principles respecting quantum meruit prevailed and a trial was required. Motion dismissed.

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