

CASE NO.**VOL. NO.****PAGE**

RITA M. RODGERS et al

2475813 NOVA SCOTIA LIMITED

- and -

(Appellant)

(Respondent)

(Respondents by Cross-Appeal)

(Appellant by Cross-Appeal)

AND BETWEEN:

INTAB ALI et al

BRUCE BRETT, 2475813 NOVA
SCOTIA LIMITED, CHARLES
HENMAN, PAMELA ROBERTSON,
BETTY SINNIS and ROBERT
THOMSON

(Appellants)

Respondents

(Respondents by Cross-Appeal)

(Appellants by Cross-Appeal)

CA 163846

Halifax, N.S.

CROMWELL, J.A.

CA 163847

[Cite as: 2475813 Nova Scotia Ltd. v. Rodgers, 2001 NSCA 12]**APPEAL HEARD:**

November 20, 2000

JUDGMENT DELIVERED:

January 24, 2001

SUBJECT:**Condominiums - Sale of the Property - Fiduciary Duties****SUMMARY:**

This appeal concerns a proposed sale of the condominium property known as Granbury Place. The condominium was developed and marketed by companies controlled by Mr. Bruce Brett. Mr. Brett also acquired effective control of 80% of the votes of all unit holders. Resolutions were presented to the unit holders which would authorize sale of all of the condominium property to a company owned and controlled by Mr. Brett. His voting control assured the approval required for this transaction pursuant to s. 40 of the **Condominium Act**, R.S.N.S. 1989, c. 85. Unit holders controlling roughly 14% of the vote dissented. Cross applications were made to chambers for various forms of declaratory relief.

The chambers judge found that the **Condominium Act** permits the sale of the condominium property to be authorized by 80% of the votes of unit holders, that encumbrancers can withhold their consent if they so choose and that the resolution authorizing the sale was invalid because the directors of the condominium corporation did not provide unit holders with adequate information.

The dissenting unit holders appealed and Mr. Brett, the numbered company controlled by him and the directors of the corporation cross-appealed.

ISSUES: Did the chambers judge err in granting the declarations which she did and in refusing to grant other declarations?

RESULT: Appeal allowed in part.

The Court adopted the interpretation of the **Condominium Act**, the corporation's declaration and by-laws as set out by the chambers judge. The Court also upheld the judge's conclusion with respect to alleged conflict of interest at the time of the directors' meeting which authorized the holding of a meeting of the unit holders, her decision that encumbrancers in deciding whether to consent to the transaction may consult whomever they choose and her decision to quash the resolutions on the basis that the board failed to provide adequate information about the proposed transactions to the unit holders. The Court found, however, that in the particular circumstances of this case and the particular transaction before the Court, Mr. Brett had a fiduciary duty to individual holders and to the corporation. It follows that Mr. Brett having regard to his fiduciary position, cannot exercise his voting control in a situation such as this, where his interest and duty conflict and where he stands to benefit personally from the exercise of that power. The transaction, therefore, requires approval of all unit holders or an order of the Court.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 60 pages.</p>
