

Date: 19980127

Docket: C.A. 142910

NOVA SCOTIA COURT OF APPEAL
Cite as: Armoyan Group Ltd. v. Dartmouth (City), 1998 NSCA 55
Clarke, C.J.N.S.; Hallett and Cromwell, J.J.A.

BETWEEN:

ARMOYAN GROUP LIMITED)	Aidan J. Meade
)	for the Appellant
Appellant)	
)	
- and -)	
)	Philip Chapman
)	for the Respondent
THE CITY OF DARTMOUTH, LAWRENCE)	
CORRIGAN and RUSSELL FOUGERE)	
)	
Respondents)	Appeal Heard:
)	January 27, 1998
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)	Judgment Delivered:
)	January 27, 1998
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THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Clarke, C.J.N.S. and Hallett, J.A. concurring.

CROMWELL, J.A.: (Orally)

The appellant appeals from Justice Davison's dismissal of its application for interim payment under **Rule 33.01(A)**. That **Rule** gives the Court discretion to order the defendant to make an interim payment if the Court is satisfied that the defendant has admitted liability or if the plaintiff has obtained judgment against the defendant for damages to be assessed.

There is no such judgment in this case. The plaintiff, therefore, relies on two resolutions of the defendant City of Dartmouth which it submits constitute admissions of liability within the meaning of **Rule 33.01(A)(1)(a)**. Justice Davison held that in order to exercise his discretion under that **Rule**:

There must be an admission of some liability by the defendant.

With this we agree. He went on to find:

That evidence of such admission is not before me.

The appellant argues that Justice Davison erred in deciding that such admissions had not been made. We agree with counsel for the appellant that admissions of liability under **Rule 33.01(A)(1)(a)** are

not limited to admissions in pleadings or in open court. Without attempting an exhaustive definition, an admission of liability may be found:

... whenever there is a clear admission of facts in the face of which it would be impossible for the party making it to succeed: **Bank of Nova Scotia v. Dombrowski** (1977), 23 N.S.R. (2d) 532 (N.S.S.C.A.D.) at p. 537-38.

The appellant relies on two resolutions of Dartmouth City Council as admissions of liability. Given that these issues may be more fully explored at trial, we do not wish to express unnecessarily definitive views concerning the evidence adduced on this interlocutory application. Suffice it to say that, on the evidence before him, we do not think that Justice Davison erred in law in finding that these resolutions did not constitute admissions of liability to ground the exercise of his jurisdiction under **Rule 33.01(A)(1)(a)**. Of course, the significance and legal effect of those resolutions remains to be determined at trial. It was open to the Chambers judge to conclude on the evidence before him that these resolutions, in the circumstances in which they were made, authorized expenditure upon certain conditions which conditions were not accepted by the appellant. While it is clear that the City expressed willingness to cost

share with the appellant, we cannot say that the Chambers judge erred on the evidence before him in concluding that this willingness does not constitute an admission of liability for the plaintiff's damages as required by **Rule 33.01(A)**.

Accordingly, the appeal is dismissed with costs which we fix at \$1,000.00 inclusive of disbursements.

Cromwell, J.A.

Concurred in:

Clarke, C.J.N.S.

Hallett, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

ARMOYAN GROUP LIMITED

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Appellant

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- and -

)

REASONS FOR

)

JUDGMENT BY:

THE CITY OF DARTMOUTH,

)

LAWRENCE CORRIGAN and

)

CROMWELL, J.A.

RUSSELL FOUGERE

)

(Orally)

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Respondents

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