

NOVA SCOTIA COURT OF APPEAL

Citation: 2420188 Nova Scotia Ltd. v. Hiltz, 2011 NSCA 74

Date: 20110823

Docket: CA 340604

Registry: Halifax

Between:

2420188 Nova Scotia Limited and Peter G. Alex

Appellants

v.

Michelle L. Hiltz and Jeffrey Earl Hiltz

Respondents

Judge:

The Honourable Justice Joel E. Fichaud

Appeal Heard:

May 18, 2011 in Halifax, Nova Scotia

Subject:

Summary judgment on evidence - *Nova Scotia CPR*
13.04

Summary:

Mr. and Mrs. Hiltz purchased land from the corporate appellant. Mr. and Mrs. Hiltz sued Mr. Alex, principal of the corporate appellant, for breach of an alleged personal warranty to maintain a road. Mr. Alex sought summary judgment. The motions judge in the Supreme Court of Nova Scotia dismissed the motion. Mr. Alex appealed to the Court of Appeal. The pleadings were not in issue on the appeal.

Issue:

Did the motions judge err by dismissing Mr. Alex's motion for summary judgment on the evidence?

Result:

The Court of Appeal dismissed the appeal. The majority held that there was a dispute of material fact respecting whether Mr. Alex made a representation, and this meant that Mr. Alex had not satisfied the first step of the two step test for summary judgment on the evidence.

Beveridge, J.A. dissented. The appellant presented evidence that there was no contract between him and the respondents. The respondents not only did not dispute that evidence, but agreed their contract was with the corporate appellant. In the circumstances, the issue of whether a representation was made was not a material fact requiring a trial.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 24 pages.