

NOVA SCOTIA COURT OF APPEAL

Citation: *Healy v. Halifax (Regional Municipality)*, 2016 NSCA 47

Date: 20160602

Docket: CA 442776

Registry: Halifax

Between:

Robert Healy and Anna Healy, Robert F. Healy Insurance Agency Incorporated, Douglas Tamlyn and Deborah Tamlyn, Tamlyn Construction Limited and Aspen Resources Limited, Donald Saunderson and Eileen Saunderson, Martin Wexler and Cheryl Wexler, Herman Hugenholtz and Beverley Ruth Hugenholtz, Peter Hall, Richard Bendor-Samuel and Stephanie Ouderkirk, Brian Perry and Kelly Skelhorn, Lindsay Hugenholtz, Eric Slone and Catherine Slone, Beverley Sweetman, James Spurr and Valerie Spurr, Robert Daniel Selkirk and Sonja McVeigh, Lara Ryan and Brett Ryan

Appellants

v.

Halifax Regional Municipality, Halifax Regional Fire and Emergency Service, and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia

Respondents

Judge: The Honourable Justice Cindy Bourgeois

Appeal Heard: March 31, 2016, in Halifax, Nova Scotia

Subject: Civil Procedure Rule 37.04 – extraction of common issue for common trial; considerations

Summary:

In April 2009, a forest fire in the Spryfield/Ferguson's Cove area of the Halifax Regional Municipality resulted in significant property losses. A number of homes were completely destroyed and others which were spared destruction sustained varying degrees of damage.

A number of homeowners commenced legal action. In 16 separate actions, the plaintiffs (appellants herein) made identical allegations of negligence and gross negligence against the defendants Halifax Regional Municipality, the Halifax Regional Fire and Emergency Service and the Attorney General of Nova Scotia. By way of motion filed June 22, 2015, the plaintiffs sought, relying on Civil Procedure Rule 37.04, two remedies – an order extracting the issue of liability from all actions, to be determined in a common trial; and a direction that the common liability trial be immediately set down for hearing.

The motion was dismissed. The appellants challenge that outcome, arguing that the chambers judge mischaracterized the nature of the matters before him, and as such failed to consider the proper application of Rule 37.04 under which the motion was brought.

The appellants asked this Court to grant both requests made in the motion below.

Issues:

- (1) Should leave to appeal be granted?
- (2) Did the chambers judge err in dismissing the motion?

Result:

Leave to appeal granted. The chambers judge did err in law in dismissing the motion as it related to the request for a common trial. The chambers judge misunderstood the procedural status of the matters before him – being of the erroneous belief that a common trial on liability had been agreed. It was not. The chambers judge accordingly failed to consider the first aspect of the motion – whether the issue of liability in all 16 actions should be heard together. Further, the chambers judge failed to consider the application of Rule 37.04 at all, and inappropriately framed the matter as one

solely of severance.

Appeal allowed. A common trial on liability was ordered. The appellants' request that this Court direct the immediate setting down of the common liability trial was declined, it being a decision best left to the case management judge.

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 16 pages.