

NOVA SCOTIA COURT OF APPEAL

Cite as: Kittel v. R & H Construction Ltd., 1997 NSCA 76
Chipman, Hart and Jones, JJ.A.

BETWEEN:

HEINRICH KITTEL and CHRISTINA KITTEL

Appellants

Allen C. Fownes
for the Appellants

- and -

R & H CONSTRUCTION LIMITED

Respondent

J.D.F. Theakston, Q.C.
for the Respondent

Appeal Heard:
March 20, 1997

Judgment Delivered:
March 20, 1997

THE COURT:

Leave to appeal is denied with costs as per oral reasons for judgment of Chipman, J.A.; Hart and Jones, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

CHIPMAN, J.A.:

This is an application for leave and, if granted, an appeal from an interlocutory

order of a judge of the Supreme Court in Chambers permitting entry upon the appellants' property by the respondent's president and solicitor. The dispute between the parties in this litigation relates to work done on the appellants' property by the respondent.

Civil Procedure Rule 24.01 reads:

24.01 (1) The court may order any party to permit entry upon any designated real or personal property in his possession or control for the purpose of,

(a) inspecting, measuring, surveying or photographing the property or any designated object or operation thereon;

(b) taking any sample, or making any observation or conducting any experiment that may seem necessary for obtaining any relevant information or evidence;

(c) doing anything else that the court may specify,

(2) The order shall specify the time, place and manner of making the entry and performing the work, and may prescribe such other terms and conditions as are just.

An order made under this Rule is appropriate whenever inspection of property would be of assistance to a party in preparing a case for trial and, generally, in facilitating the resolution of disputes. The Rule does not restrict the persons who may make the entry upon the property. While generally appropriate persons may include an expert, the decision in this respect is within the discretion of the judge in Chambers. Where, as here, the discretion is not improperly exercised, we cannot interfere.

Leave to appeal is denied. The respondent will recover costs of the application from the appellants in the amount of \$400.00.

Chipman, J.A.

Concurred in :

Hart, J.A.

Jones, J.A.