

NOVA SCOTIA COURT OF APPEAL

Citation: Sobeys Groups Inc. v. Norsyd Investments Inc., 2003 NSCA 87

Date: 20030910

Docket: CA 196428

Registry: Halifax

Between:

Sobeys Group Inc.

Appellant

v.

Goodman Rosen Inc., a body corporate, in its capacity as
Court-appointed Receiver for Norsyd Investments Inc.,
Shoppers Realty Inc., a body corporate,
Shoppers Drug Mart Inc., a body corporate, and
M.C. LeBlanc Drugs Limited, a body corporate

Respondents

JUDGE: OLAND, J.A.

APPEAL HEARD: June 2, 2003

JUDGMENT DELIVERED: September 10, 2003

SUBJECT: Interpretation of Commercial Lease

SUMMARY: The appellant opened a pharmacy within premises it leased in a mall. An article in its lease provided that the appellant could use its premises for the retail sale of food products and for “general retail merchandising, as carried on by the rest of the majority of its stores”. The Chambers judge found that the professional services offered by a pharmacy were outside of the meaning of “general retail merchandising” and that pharmacies are not yet found in the majority of the stores. He granted a permanent injunction against the operation of a pharmacy in those premises for the remaining term of the lease.

ISSUES: Whether the Chambers judge erred in interpreting the article in the lease and

in granting a permanent injunction.

RESULT:

Appeal dismissed. The plain and ordinary meaning of its words support the Chambers judge's determination that the article is a negative covenant rather than a positive obligation. In reaching his conclusions, the Chambers judge did not err by misconstruing the contractual intent of the article, by misapplying or misinterpreting principles of contractual interpretation, or in analysing the evidence before him. Nor, in the circumstances of this case, did he err in granting a permanent injunction or in failing to refuse an injunction on equitable grounds.

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 9 pages.