

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** G & S Haulage Ltd. v. Park Place Centre Ltd., 2011 NSCA 29

**Date:** 20110324

**Docket:** CA 328260

**Registry:** Halifax

**Between:**

G & S Haulage Limited

Appellant

v.

Park Place Centre Limited and Ultramar Ltd.

Respondent

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** November 22, 2010

**Subject:** Negligence

**Summary:** G&S Haulage, an oil delivery company, was ordered to pay damages caused by oil escaping from tanks located inside premises owned and operated by Park Place Centre. The trial judge found G&S Haulage negligent but also found Park Place contributorily negligent and apportioned liability. Both the appellant and respondent alleged error by the trial judge. The appellant argued the trial judge erred in finding negligence and not attributing more fault to the respondent for other alleged deficiencies in its tank system. The respondent Park Place cross-appeals the finding of any contributory negligence on the basis that there was an absence of evidence of the applicable standard of care and inappropriate reliance on the *National Building Code*.

**Issue:** Did the trial judge commit any reviewable error in his findings of negligence and contributory negligence?

**Result:** The alleged errors by the appellant constitute a request that the Court of Appeal retry the case. Absent palpable and overriding error the Court is not at liberty to take a different view of the credibility of witnesses or inferences to be drawn from the evidence. A review of the trial record and the reasons by the trial judge reveal no such error. It was open to the trial judge to find contributory negligence based on the evidence adduced at trial. The trial judge did not err in how he interpreted and used the evidence of the *NBC* requirements: nor was there a requirement in the circumstances for specific evidence on the standard of care.

*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 33 pages.*