

NOVA SCOTIA COURT OF APPEAL

Citation: *Maxwell Properties Ltd. v. Mosaik Property Management Ltd.*,
2017 NSCA 76

Date: 20170608
Docket: CA 461951
Registry: Halifax

Between:

Maxwell Properties Limited

Respondent by Cross-Appeal

v.

Mosaik Property Management Limited, George Giannoulis,
Stavros (“Steve”) Giannoulis and J L Silver Construction Incorporated

Appellants by Cross-Appeal

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: June 8, 2017, in Halifax, Nova Scotia

Written Release: September 20, 2017

Subject: Torts. Trespass. Interlocutory injunction. Fresh evidence.

Summary: Mosaik’s hanging staging encroached on Maxwell’s airspace. Maxwell obtained an interlocutory injunction, which the judge suspended for three months to allow Mosaik to complete its external cladding work. Maxwell appealed the suspension of the injunction and Mosaik cross-appealed. Maxwell later dropped its appeal. Mosaik argued that the judge erred in treating the overhanging staging as a trespass, rather than a nuisance. Mosaik also submitted that the judge erred in his application of the interlocutory injunction test by finding an arguable issue, irreparable harm and that the balance of convenience favoured Maxwell. Maxwell also sought to introduce fresh evidence of ongoing difficulties following the granting of the injunction.

- Issues:**
- (1) Should fresh evidence be admitted?
 - (2) Was the overhanging staging a nuisance or trespass?
 - (3) Was there a serious issue to be tried?
 - (4) Was there irreparable harm?
 - (5) Did the balance of convenience favour granting the injunction?

Result: Fresh evidence motion dismissed. Leave to cross-appeal granted and cross-appeal allowed. Judge did not err in categorizing Mosaik's hanging staging as a trespass, rather than a nuisance. It was unsound to transform the cause of action from trespass to nuisance to better accommodate a desired outcome because nuisance required proof of damage and trespass did not. Nevertheless, the three-part *American Cyanamid* interlocutory injunction test did not favour granting an injunction. There was an issue for trial regarding trespass and whether there had been any agreement respecting it. The judge erred by considering that difficulty in calculating damages constituted irreparable harm. He found any interference of Maxwell's use and enjoyment of its property was "virtually non-existent". He did not weigh the benefit and burden to the respective parties when considering balance of convenience. That balance favoured Mosaik.

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 18 pages.