

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Manga Hotels (Halifax) Inc. v. Armour Developments Ltd.*,  
2017 NSCA 77

**Date:** 20170920

**Docket:** CA 458020

**Registry:** Halifax

**Between:**

Manga Hotels (Halifax) Inc., a body corporate

Appellant

v.

Armour Developments Limited, a body corporate

Respondent

**Judges:** Bryson, Saunders, Hamilton, JJ.A.

**Appeal Heard:** September 20, 2017, in Halifax, Nova Scotia

**Written Release:** September 25, 2017

**Held:** Appeal dismissed per reasons of the Court.

**Counsel:** Barry J. Mason, Q.C., for the appellant  
John Shanks, Virginia Jones and Ibrahim Badawi, for the  
respondent

**By the Court (orally):**

[1] The question raised in this appeal is whether the trial judge, Lynch, J., erred in finding the respondent, Armour Developments Limited, has an easement or right of egress by foot from one of the two fire doors in its building over the appellant's adjacent vacant lot to Bedford Row, a public street in Halifax. Her decision is reported at 2016 NSSC 274.

[2] The appellant, Manga Hotel (Halifax) Inc., argues the judge erred because there was insufficient evidence to support her finding of sufficient actual use over twenty years. It says there is a twelve year gap in the evidence of use. It points out there was only evidence of one instance of personal observation of the vacant lot being used during a false alarm. It argues the judge erred by basing her decision that the vacant lot was actually used over twenty years solely or improperly on the "view" she took of the properties with the consent of the parties.

[3] There is only one standard of proof in civil cases: the balance of probabilities; *F.H. v. McDougall*, 2008 SCC 53. And clearly this is the burden applied in this case.

[4] The actual use of the property by the parties is a question of fact, reversible only for palpable and overriding error.

[5] There was evidence before the judge that (1) the vacant lot was regularly used by the occupants of Armour's building during yearly fire drills and false alarms; (2) there was a sign, clearly visible from the vacant lot, indicating this was a fire exit from Armour's building; (3) Armour checked the vacant lot on a regular basis to ensure the path from the fire door to Bedford Row was free from blockage or obstruction; (4) the owner of the vacant lot always removed any occasional blockage or obstruction from the area when Armour requested it to do so and (5) Gordon Parsons, an employee of Armour for over twenty years, personally saw approximately 79 occupants of Armour's building exit the fire door and cross the vacant lot in June 2016 during a false alarm. In addition, the judge visited the site, allowing her to assess and give weight to this evidence and draw the appropriate inference.

[6] Contrary to Manga's assertion, the judge did not rest her decision solely on the view she took of the properties. Neither do we think she improperly exercised

her opportunity to take a view. Rather, she analyzed a significant amount of the evidence before her in paragraphs 32 to 42 of her reasons and stated in paragraph 33 that she was satisfied by the evidence of Mr. Parsons and the view she took of the area that this exit door would have been used during fire drills.

[7] The judge made no palpable and overriding error in finding Armour had actually used the vacant lot for egress from this fire door to Bedford Row for at least twenty years, relying on the evidence before her, assessed in light of the view she took.

[8] Nothing in these reasons should be taken as indicating that Manga can never develop its vacant lot in any way. As long as any such development permits safe egress for the occupants of Armour's building from the fire door to Bedford Row, as determined by the authorities having jurisdiction over such matters, development may be possible.

[9] We dismiss the appeal with costs in the amount of \$5,000, including disbursements, payable by Manga Hotels (Halifax) Inc. to Armour Developments Ltd. forthwith.

Bryson, J.A.

Saunders, J.A.

Hamilton, J.A.