

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *Weaver v. Bryson*, 2021 NSCA 14

**Date:** 20210201  
**Docket:** CA 500060  
**Registry:** Halifax

**Between:**

Edward Weaver

Appellant

v.

David Bryson, Phyllis Bryson and Three Brooks  
Development Corporation Limited

Respondents

**Judges:** Van den Eynden, Scanlan and Beaton, J.J.A.

**Appeal Heard:** February 1, 2021, in Halifax, Nova Scotia

**Held:** Appeal dismissed with costs, per reasons for judgment of the Court

**Counsel:** Tim Hill, Q.C., and Meaghan Kells, for the appellant  
Scott R. Campbell and Lauren Harper, for the respondents

**Reasons for judgment:**

[1] The appellant (Mr. Weaver) asks that we set aside an order which dismissed his motion for summary judgment. The order is interlocutory; leave is required. We are satisfied the threshold has been met and grant leave.

[2] Mr. Weaver, together with the respondents Mr. Bryson and Mrs. Bryson, were involved in the real estate development business. They were shareholders in the corporate respondent (Three Brooks Development Corporation Limited). Their business relationship broke down and the litigation in the court below arises from an action filed by the Brysons and Three Brooks. Primarily, they claim Mr. Weaver acted in an oppressive manner against them and breached his fiduciary obligations.

[3] As the parties were trying to work through their dispute and untangle their business and financial interests, they entered into an agreement. The terms included the transfer of various properties and Mr. Weaver's resignation from Three Brooks. In tandem with the agreement, the parties executed a mutual release for any future claims. The respondents claim they executed the agreement and release under duress. They say they were unlawfully pressured, manipulated, and coerced by Mr. Weaver. Their claim for relief in the court below includes setting aside the release as well as some land transactions pursuant to their agreement with Mr. Weaver.

[4] Mr. Weaver denies the claims against him. He says there was no duress; only legitimate commercial pressure between experienced business parties trying to resolve a dispute. Mr. Weaver relies on the release as a defence to the action. He says there are no material facts in dispute between the parties and the release confirms the respondents' waiver of any and all further claims against him. He filed a motion for summary judgment on the evidence (pursuant to CPR 13.04) requesting the action be dismissed.

[5] The Honourable Justice John Bodurtha heard Mr. Weaver's motion. He had the benefit of detailed affidavit evidence and submissions. The judge delivered an unreported oral decision and found there were genuine issues of material fact in dispute and dismissed the motion. That finding was fatal to Mr. Weaver's motion because a material fact is one that would affect the result (*SystemCare Cleaning and Restoration Limited v. Kaehler*, 2019 NSCA 29, at para. 35).

[6] On appeal, Mr. Weaver complains the motion judge erred in finding there were genuine issues of material fact in dispute and thereby dismissing his motion. To succeed on appeal, Mr. Weaver must satisfy us that the motion judge applied wrong principles of law, or, insofar as the judge was exercising discretion, a patent injustice would result (*Coady v. Burton Canada Co.*, 2013 NSCA 95, at para.19).

[7] The motion judge's oral decision is thorough and well reasoned. He correctly set out the principles that must govern his summary judgment analysis. He referred to this Court's decision in *Coady v. Burton* and *Shannex Inc. v. Dora Construction Limited*, 2016 NSCA 89). The judge's decision reflects adherence to the application of the framework for analysis most recently discussed by this Court in *Tri County Regional School Board v. 3021386 Nova Scotia Limited*, 2021 NSCA 4, and in *Halifax Regional Municipality v. Annapolis Group Inc.*, 2021 NSCA 3. The applicable principles are not controversial.

[8] The motion judge was mindful that the alleged duress is a fact-based determination, requiring the consideration of these factors: (1) was there any protest; (2) was there an alternate course of action; (3) was there independent legal advice; and, (4) after conclusion of the contract, were there steps taken to avoid it? Each factor requires weight to be attributed to the evidence and a comprehensive assessment to be done. These types of assessments are often informed by the credibility of the various witnesses.

[9] In his decision the motion judge carefully reviewed the evidence before him. He identified several material facts in dispute regarding the determination of whether duress could be established. He concluded that he was not in a position to weigh or evaluate the evidence or make credibility findings on a summary judgment motion – these are matters reserved for the trial judge.

[10] We have carefully reviewed the record and considered the submissions. With respect, we are not persuaded the motion judge erred. His conclusion that there were genuine issues of material fact in dispute is well supported on this evidentiary record.

[11] We are of the unanimous view the appeal should be dismissed. Mr. Weaver shall forthwith pay costs to the respondents in the amount of \$1500, inclusive of disbursements.

Van den Eynden, J.A.

Scanlan, J.A.

Beaton, J.A.