

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Halifax (Regional Municipality) v. Seagate Construction Inc.*,  
2024 NSCA 38

**Date:** 20240325

**Docket:** CA 525667

**Registry:** Halifax

**Between:**

Halifax Regional Municipality

Appellant

v.

Seagate Construction Inc.

Respondent

**Judges:** Farrar, Scanlan and Derrick J.J.A.

**Appeal Heard:** March 25, 2024, in Halifax, Nova Scotia

**Written Release** March 26, 2024

**Held:** Appeal dismissed with costs of \$8,500.00, per Order for  
Judgment of the Court

**Counsel:** Randolph Kinghorne and Colin Taylor, for the appellant  
Jamie MacNeil, for the respondent

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**Between:**

Halifax Regional Municipality

Appellant

v.

Seagate Construction Inc.

Respondent

**ORDER FOR JUDGMENT**

**Before Farrar, Scanlan and Derrick JJ.A.**

**UPON** hearing Randolph Kinghorne and Colin Taylor on behalf of the appellant and Jamie MacNeil on behalf of the respondent;

**AND UPON** the Court delivering the following oral decision at the end of the hearing:

We are unanimously of the view the appeal should be dismissed. In doing so, we should not be taken as agreeing with the trial judge where, at ¶128 [*Seagate v. Halifax Regional Municipality*, 2023 NSSC 176], he says the non-payment of the change order was a fundamental breach of contract between the Halifax Regional Municipality and Seagate Construction Inc. Although the non-payment was a breach of contract, it was not a fundamental breach as that term is known in law.

**IT IS HEREBY ORDERED** that the appeal be and is hereby dismissed with costs of \$8,500.00, inclusive of disbursements, to the respondent.

**ISSUED** at Halifax, Nova Scotia, this 26th day of March, 2024.

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Deputy Registrar