

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Sinclair v. Fierro*, 2014 NSCA 5**

**Date:** 20140117  
**Docket:** CA 413763  
**Registry:** Halifax

**Between:**

James R. Sinclair

Appellant

v.

Steven James Fierro

Respondent

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**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** December 2, 2013, in Halifax, Nova Scotia

**Subject:** Summary judgment on the evidence under Rule 13.04 – promissory notes – *Bills of Exchange Act*, R.S.C. 1985, c. B-4

**Summary:** Mr. Fierro made several advances totalling \$900,000 to finance media projects sponsored by Mr. Sinclair or by Mr. Sinclair’s companies. In return, Mr. Fierro received a promissory note for \$900,000. The Note was not satisfied. Mr. Fierro sued on the Note and moved for summary judgment against Mr. Sinclair personally. Mr. Sinclair contended that the Note obligated his company, Visual Spirit Inc., not Mr. Sinclair. The motions judge granted summary judgment on the evidence to Mr. Fierro. Mr. Sinclair appealed.

**Issues:** Did the motions judge err in his application of the summary judgment test?

**Result:**

The Court of Appeal allowed the appeal and overturned the summary judgment. The Note, on its face, and interpreted in accordance with the requirements of the *Bills of Exchange Act*, was ambiguous whether the “maker” of the Note was Mr. Sinclair, or Visual Spirit Inc., or both. To resolve the ambiguity, resort to extrinsic evidence of the parties’ agreement was appropriate. There was no formal written agreement. The terms of the parties’ agreement derived from conversations, emails and correspondence over a period of years. The extrinsic evidence of these matters from Messrs. Fierro and Sinclair contained a factual dispute whether or not the parties agreed that Mr. Sinclair would be personally responsible for \$900,000 as a maker of the Note. The material dispute of fact meant that the summary judgment was inappropriate, under the first branch of the summary judgment test, and the matter should proceed to trial.

*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 22 pages.*