

NOVA SCOTIA COURT OF APPEAL

Citation: The Regional Municipality of Halifax v. David, 2004 NSCA 138

Date: 20041118

Docket: CA 211937

Registry: Halifax

Between:

The Regional Municipality of Halifax, Halifax Regional Water Commission,
Carl Yates and Reginald Rankin

Appellant

v.

Marty David; Paul F. Williams; Maurice Allison Jr.; M.C. Allison; Florence D. Smith; Dawn Marsman; Valmar Anderson; Sabrina Wellington; Victor A. Wellington; Cecilia Williams; Donald E. Anderson; Wendell David; Randall David; Myles Simms; Carolyn Allison; Spencer Anderson; Bertina Oliver; Clifford Oliver; Ruth Anderson; Dennis Oliver; Carl Marsman; Geneva Marsman; Ismaïd Kadir; Wayne Williams; Daniel Jackson; Charles Jackson; Alfaretta Williams; Raymond David; Neil H. Anderson; Wesley H. Anderson; Alfreda Anderson; Viola Marsman; Rhona Simms; Lynn David; Lilena Jones; Walter Jones; Ruby Oliver; Norma Marsman; Curtis Marsman; Doreen Mantley; Lillian Carvery; Goldie David; Leeman David; Jacqueline Cromwell; Maxwell Mantley; Douglas Oliver; Vera Gibson; Nelson Anderson; Marion Anderson; Esther Peterson; Clyde Oliver; Alden Oliver; Manual David; Russell David; Christopher F. Jones; Margaret Brushett; Tracy Kelsie; Brian David; Aubrey Whiley; Joyce Symonds; Yvonne Redmond; Carl Redmond; Clark Symonds; Audrey Symonds; Janell Simms; Daniel H. White; Lee A. Eisenhauer-White; Frankie Allison; Alcora Norton; Daniel J. Norton; Diane Whiley; Wayne Radkey; Clarence Anderson; Buzzell Anderson; Barbara Borden; Kevin Emmerson; Mary Allison; Michelle Simms; Earle Oliver; Earlene Oliver; Melinda Simms; Holly David; Matuelder David; Ann David; Cornel Marsman; Shonna Smith; Milton B. Allison.

Respondent

Judge: The Honourable Justice Gerald B. Freeman

Appeal Heard: September 15-16, 2004

Subject: Torts; Negligent Misrepresentation; Municipalities; Damages; Costs.

Summary: After lengthy negotiations with the Regional Municipality of Halifax (HRM) and the Halifax Regional Water Commission, the suburban community of Upper Hammonds Plains in May, 1999, approved a proposal for municipal water services with frontage charges to residents set at \$15.00 per foot on the condition that if actual costs

were less than projections, the savings would go to the property owners as reduced frontage charges. The condition reflected the community's reliance on assurances by the manager of the water commission that savings from the tendering process would ensure lower frontage charges. Financing included a promised Provincial contribution of \$500,000 exclusively for the Upper Hammonds Plains project, to be released only when the community approved of the project. This gave the community a strong negotiating position. The successful tender was \$630,000 less than projections. The savings was used not for the benefit of Upper Hammonds Plains in accord with the condition of acceptance, but to provide water service in another area. The Province released its contribution for this purpose, leaving the community in a weakened bargaining position. The plaintiffs, about half the residents of the community, brought action. The trial judge found the manager's statement did not reflect a practice or policy of HRM and was therefore a negligent misrepresentation. The community had reasonably relied upon it to its detriment and thereby suffered damages. The trial judge found the manager liable for negligent misrepresentation, the water commission vicariously liable, and HRM liable in agency. He based damages on the plaintiffs' proportionate share of the \$630,000 savings, less certain deductions. He found five of the plaintiffs who lived in Anderson Court, a part of the community which excluded itself from the water project when the rest of the community conditionally approved it, were entitled to share with the other plaintiffs. He calculated costs under the tariffs at \$15,546.00 but doubled this to award costs of \$31,092.00 pursuant to **Civil Procedure Rule 41A** because he found that an offer to settle had never been revoked. The appellants appealed, asserting twelve grounds and a number of sub-grounds of appeal.

Issues: The principal issues are:

- (a) Whether the trial judge erred in finding that reliance on negligent misrepresentations caused community members to suffer damages;
- (b) Whether the property owners of Anderson Court, a portion of Upper Hammonds Plains which excepted itself from inclusion in the water system until issues had been resolved, were entitled to succeed as plaintiffs.

- (c) Whether the trial judge erred in calculating damages.
- (d) Whether the trial judge erred in awarding double the costs calculated from the tariffs.

Result: The trial judge did not err in finding the respondents had suffered damages as a result of the negligent misrepresentation, nor in the damages he awarded. Neither did he err (Saunders J.A. dissenting) in awarding double costs. The five plaintiffs who resided in Anderson Court, however, could not succeed because they had not changed their position to their detriment in reliance on the misrepresentation, and the damage award must be adjusted accordingly. In all other respects the appeal is dismissed with costs which are fixed at \$12,500 plus disbursements.

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 54 pages.