

Case No.

Vol. No.

THE HALIFAX REGIONAL MUNICIPALITY

PLAINTIFF

- and -

**3006128 NOVA SCOTIA LIMITED, a body
corporate, ROLLS AUTO GLASS
INCORPORATED, a body corporate, DAVID
MacDONALD and WHITE STAR HOLDINGS
LIMITED, a body corporate**

DEFENDANTS

**Justice Walter R. E. Goodfellow Halifax, Nova Scotia File No. S.H. 158447
[Cite as: Halifax (Regional Municipality) v. 3006128 Nova Scotia Ltd., 2001 NSSC 8]**

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DATE HEARD: November 14th, 2000 (Chambers)

DECISION: January 17th, 2001

SUBJECT: STAY - INJUNCTION - SUMMARY JUDGMENT

SUMMARY: HRM commenced an action September 20th alleging it is owner in fee simple of 2173 Barrington Street, that David MacDonald in his fiduciary capacity duped HRM employee into accepting a one year plus lease which HRM maintains was beyond authority of the individual. Several cross-claims and counter-claims. HRM subsequently commenced expropriation proceedings.

APPLICATIONS -

- (I) An application by 3006128 N.S. Limited filed August 15th, 2000 to stay the expropriation proceedings. This Application is supported by an Affidavit of Leslie Rafael.**
- (II) Rolls Auto Glass Inc. joins in the Application and also seeks a stay of the expropriation proceedings. This Application is supported by the Affidavit and Supplementary Affidavit of Randolph Rolls.**

Concluded HRM and Rolls failed to meet three-identities test - *Rocois Construction Inc. v. Dominion Ready Mix Inc. et al* (1990), 112 N.R. 241, (S.C.C.) and wider jurisdiction conferred by *Judicature Act*.

- (III) Both 3006128 N.S. Limited and Rolls Auto Glass Inc. seek an injunction restraining HRM from proceeding with the expropriation of their respective alleged interests.

Interest of parties capable of full satisfaction by award of damages/compensation.

- (IV) Rolls objects to and applies to strike portions of the Affidavits filed by HRM pursuant to CPR 14.25 and 38.11.

Court reluctant to set too rigid limitation. Affidavit of expert appropriate to express observations. Affidavit of a solicitor expressing a legal opinion struck. In any event, objections to Affidavits, if allowed, would not change conclusions on substantive applications. The Court repeated concern for solicitors filing Affidavits. *Ronald C. Veniot v. Barbara W. Dohaney*, December 13th, 2000, S.H. No. 162934.

- (V) An Application by HRM for Summary Judgment.

HRM fails to meet threshold of very strong entitlement and Defendants meet threshold of providing fairly arguable defences.

All applications dismissed.

NO PRECEDENT VALUE. COURT OF APPEAL HAS ADDRESSED AND PRONOUNCED UPON THESE ISSUES.

(Decision - 34 pages)

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.