

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Saturley v. Lund , 2005 NSSC 309

Date: 20051109
Docket: S.H. No. 232774
Registry: Halifax

Between:

Mary Lyn Saturley and Frederick Saturley

Plaintiffs

v.

Raymond H. Lund and Janice Bayer

Defendants

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Judge: The Honourable Justice Donald M. Hall

Heard: August 30, 2005, in Halifax, N.S.

Subject: Summary judgment - frustration of contract

Issue: Had the defendants raised an arguable issue in their defence.

Summary: Defendants had agreed to purchase property of the plaintiffs expecting to use part of the proceeds from the sale of their home to complete the purchase. This was not a term of the agreement of purchase and sale. Due to an unforeseen event the defendants' property became unsaleable and defendants did not have other funds with which to complete the sale. Plaintiffs sued for specific performance or damages for breach of contract. Defendants contended that they were discharged under the doctrine of frustration of contract due to the property becoming unsaleable.

Result: Summary judgment granted. The defendants failed to establish as an arguable issue that the unsaleable condition of their home would alter the fundamental nature of the contract.

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