

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Gillis v. New Glasgow (Town), 2008 NSSC 46

**Date:** 20080212  
**Docket:** SP 260696  
**Registry:** Pictou

**Between:**

Allan M. Gillis and AMG Development Incorporated

Plaintiffs

v.

Town of New Glasgow, a Municipal Corporation, Office at New Glasgow,  
County of Pictou, Province of Nova Scotia

Defendant  
(Plaintiff by Counterclaim)

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** Summary Judgment Application November 19, 2007, in Halifax, Nova Scotia

**Final Written Submissions:** December 17, 2007

**Written Decision:** February 14, 2008  
*{Oral decision rendered February 12, 2008, Halifax, N. S.}*

**Subject:** Summary Judgment; Estoppel/Waiver/Variation

**Summary:** In response to Defendant Town's request, Plaintiffs submitted proposal for a condominium development, including offer to purchase property, accompanied by deposit cheque. Purchase offer contained terms which Defendant was unwilling to accept. Plaintiffs' development proposal was successful and parties entered Development Agreement during 2004 without appending purchase offer. Plaintiffs pre-marketed condos, but construction did not begin by April 2005 as originally expected. Negotiation concerning purchase of property resumed in early 2005 and during July-August 2005 deed, repurchase option agreement, and an Amended Development Agreement was executed. Plaintiffs did not commence construction and eventually sold property to third party.

Plaintiffs alleged that project failed because Defendant's conduct during negotiations and dealings constituted breach of contract and negligence.

Defendant counterclaimed seeking payment of deposit due in connection with purchase of the property and damages for Plaintiffs' breach of development and conveyance agreements.

**Issue:** Is Defendant entitled to summary judgment on claim and counterclaim?

**Result:** (1) Defendant is entitled to summary judgment dismissing Plaintiffs' claim. Amended Development Agreement and Property Purchase Agreement were negotiated between March and July 2005, and those agreements varied any prior contract between the parties, including any implied term that conveyance would take place by April 2005. By dealing with the Defendant to the point where final agreements were concluded in July-August 2005, Plaintiffs allowed discussions to continue with the Defendant under the misapprehension there would be no litigation arising out of any prior agreement. Both parties proceeded as if a final agreement were intended, and Plaintiffs misled Defendant to believe that the parties were *ad idem* as negotiations concluded and final agreements were reached. Plaintiffs accepted Amended Development Agreement and conveyance of property in August of 2005 without expressing any reservations, and are estopped from claiming breach of any earlier contract, which they agreed to vary upon entering new arrangements.

Estoppel principle also applies to negligence aspect of the claim, as all allegations related to matters which occurred before parties concluded Amended Development Agreement and property conveyance agreement.

(2) Counterclaim - Defendant entitled to judgment for amount of deposit cheque which Plaintiffs provided with original purchase offer. Defendant did not transact deposit cheque before closing, at which Plaintiffs paid agreed purchase price, less credit for deposit. Plaintiffs subsequently incorrectly advised the Bank the cheque was lost and had deposit amount refunded to them, without informing the Defendant.

Defendant did not establish that there were no arguable issues with respect to balance of counterclaim for breach of development and conveyance agreements; summary judgment on counterclaim therefore limited to deposit amount.

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