

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Agate Developments Ltd. v. United Gulf Developments Ltd., 2008 NSSC 144

Date: 20080521

Docket: S.H. No 279612

Registry: Halifax

Between:

Agate Developments Limited

Applicant/Plaintiff
(Defendant by Counterclaim)

- and -

United Gulf Developments Limited

Respondent/Defendant
(Plaintiff by Counterclaim)

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Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: April 14th, 2008 in Halifax, Nova Scotia

Oral Decision: April 25th, 2008

Written Decision: May 21st, 2008

Subject: Summary Judgment/Set-off

Summary: Application for partial summary judgment in relation to a vendor take back mortgage. The Respondent filed a Counterclaim to the main action and advanced a defence of set-off.

Issues: Is this an appropriate case to grant partial summary judgment? What is the effect of the defence of set-off on the summary judgment application?

Result: The Court granted partial summary judgment. The Court was not satisfied that the claim for set-off went to the very root of the claim being advanced by the Applicant in such a way that it would be manifestly unjust to allow the Applicant to enforce part of its claim without taking the Counterclaim into account. The causes of action, which may be connected, were not found to be so closely related that the Applicant should be denied its right to partial summary judgment until the claim for set-off is determined.

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