

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Gold Star Realty v. Grant, 2008 NSSC 180

Date: 20080610
Docket: S. H. 285865A
Registry: Halifax

Between:

V & G Realty Limited, operating as
“Gold Star Realty”, National Properties Limited,
Arthur E. Vogt and David Vogt

Appellants

v.

Victoria Maxwell Grant

Respondent

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Judge: The Honourable Justice Allan P. Boudreau

Heard: April 1, 2008 in Halifax, Nova Scotia

Written Decision: June 10, 2008

Subject: Small Claims Court - Jurisdiction - Procedure -
Implied Undertaking Rule

Issues:

1. Was the Adjudicator correct in concluding that the IUR did not apply to the Small Claims Court because that Court lacked certain powers accorded to Superior Courts?
2. If the IUR applies to the Small Claims Court, should the documents obtained as a result of the subpoena to Mr. Vogt have been admitted as evidence in the proceedings before that Court?

Summary: This appeal involves the applicability of the “Implied

Undertaking Rule” (the IUR) in the Small Claims Court of Nova Scotia (the Small Claims Court). The Adjudicator in this case decided that the IUR did not apply to the Small Claims Court, primarily because that court did not have the inherent jurisdiction of Superior Courts in the Province. He judged that those powers of Superior Courts were necessary in order to apply or enforce the IUR. This appeal therefore must decide whether the Small Claims Court can apply the IUR in its proceedings.

Result:

Found the Implied Undertaking Rule applies to the Small Claims Court. Found that it was appropriate to provide relief from the Rule in the circumstances of this case.

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