

SUPREME COURT OF NOVA SCOTIA

Citation: *Annapolis County (Municipality) v. R. G. Graves Groceries Ltd.*, 2016 NSSC 142

Date: 20160610

Docket: ANN No. 421027

Registry: Annapolis Royal

Between:

The Municipality of the County of Annapolis, a body corporate
under the provisions of the *Municipality Government Act*

Plaintiff

v.

R. G. Graves Groceries Limited, a body corporate,
Gerald Hackenschmidt, William Hamilton and Peter Newton

Defendants

and

Marilyn Wilkins, Brian "Fuzzy" Connell, Wayne Fowler,
Paul MacDonald, Tom Vitiello, Patrick McWade, Reg C. Ritchie,
Frank Chipman, Martha Roberts, and Ron Trimper

Third Parties

LIBRARY HEADING

Judge: The Honourable Justice Michael J. Wood

Heard: February 2, 2016, in Annapolis Royal, Nova Scotia

Final Written Submissions: April 4, 2016

Written Decision: June 10, 2016

Subject: Civil Procedure – Summary Judgment on Pleadings
Municipal Law – Liability of Councillors

Summary: Municipality sued Newton, a former warden and councillor,

for allegedly agreeing to amend lease with third party without proper authority. Newton joined as third parties other councillors, whom he alleged participated in the discussions concerning the lease. Third parties applied for summary judgment striking out claim against them.

Issues: Should the third party claim be struck out?

Result: Issue of potential liability of a councillor to a municipality was common to both the claim against Newton and the third party statement of claim. Based upon research of counsel there was scant authority for such liability. Jurisprudence suggested a claim could be made for conversion of municipal property against any councillor who approved the transaction. Not clear whether principle might be extended to give rise to claim in present circumstances.

Court exercised discretion not to define parameters of potential cause of action in the circumstances of this motion. Additional factual context required. Not satisfied that pleading was unsustainable or did not disclose cause of action. Motion for summary judgment dismissed.

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