

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Musgrave v. Poirier, 2005 NSSC 339

**Date:** 20051209

**Docket:** SH 254780

**Registry:** Halifax

**Between:**

Cecil Musgrave and Barbara Musgrave

Appellants

Respondent by Cross-appeal

v.

Jeannette Boudreau and Daniel Poirier

Respondents

Appellants by Cross-appeal

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**Judge:** The Honourable Justice Walter R.E. Goodfellow

**Heard:** December 6, 2005 in Halifax, Nova Scotia

**Written Decision:** December 9, 2005

**Subject:** Small Claims Appeal

**Summary:** In 1992 Vendor (Musgraves) received notice from then Halifax City that a common retaining wall at the rear of their property was in breach of legislation in that it was unsafe and unsightly. Musgraves received an engineer's report from the City outlining the dangers that existed. Musgraves never received any recission of the direction to repair and took the position a relative (engineer) and neighbours convinced them it was not a problem. In 2001 they sold the property to Ms. Poirier and failed to disclose the direction to repair from the City of Halifax and nothing was done to remedy the situation in the intervening years. Shortly after the sale HRM directed that the unsafe condition be rectified and failing such, HRM proceeded to do so at a cost to Poirier of \$15,853.70. Small Claims adjudicator found Musgraves aware of the defect and failure to disclose amounted to misrepresentation and breach of contract. Appeal by Savages and cross-appealed by Poirier on the basis that the reduction in the award for "betterment" was not justified.

**Result:** Not for Appellate court to retry matter. Small Claim adjudicator had an opportunity to observe the witnesses. Musgraves represented by counsel different from that on appeal and more than adequate factual basis for a finding of awareness of Musgraves, deliberate failure to disclose and result of misrepresentation. - Appeal dismissed.

Cross-appeal abandoned after the court referred counsel to Bagnell's Launderers and Cleaners Ltd. v. Eastern Automobile Co. et al (1992), 111 N.S.R. (2d) 51.

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