

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Kaehler v. SystemCare Cleaning & Restoration Ltd.*, 2018 NSSC 219

**Date:** 2018-09-13

**Docket:** *Annapolis Royal*, No. SD#411067

**Registry:** Digby

**Between:**

Dale Kaehler and Josee Desjardins

*Plaintiffs*

v.

SystemCare Cleaning & Restoration Limited

*Defendant*

-and-

3100835 Nova Scotia Limited

*Third Party*

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**Judge:**

The Honourable Justice Pierre L. Muisse

**Heard:**

June 19, 2018, in Annapolis Royal, Nova Scotia

**Summary:**

The Plaintiffs commenced an action against the Defendant seeking damages for work negligently performed, overcharging and misappropriation of property, by its “agent”, Craig Hubley. The Defendant, SystemCare Cleaning & Restoration Limited (“SystemCare”), contested the claim on the basis that: Mr. Hubley was an employee of 3100835 Nova Scotia Limited (“the Numbered Company”); the Numbered Company is an independently owned and operated SystemCare franchisee; and, Mr. Hubley had no authority to contract on behalf of SystemCare. The Defendant brought this motion for summary judgment on the evidence, advancing the ground that the Plaintiffs “have

sued the wrong company”. It argued that, the inference to be drawn on the undisputed evidence made it such that the factual elements of agency by estoppel had not been made out.

**Issue:** Can the Court draw the suggested inference and grant summary judgment?

**Result:** Motion for summary judgment dismissed. On the whole of the undisputed evidence, there were other reasonable inferences that could be drawn and which covered the required factual elements of agency by estoppel. Choosing amongst competing inferences is the function of the trial judge.