

SUPREME COURT OF NOVA SCOTIA

Citation: *Forsyth v. Halifax Regional Municipality*, 2018 NSSC 225

Date: 20180919

Docket: Hfx No. 444096

Registry: Halifax

Between:

Daniel Forsyth

Plaintiff

v.

Halifax Regional Municipality

Defendant

**DECISION ON MOTION
Discovery Evidence of Desmond Munden**

Judge: The Honourable Justice Jamie Campbell

Heard: September 17, 2018, in Halifax, Nova Scotia

Counsel: Peter Rumscheidt, for the Plaintiff
Roxanne MacLaurin, for the Defendant

By the Court:

[1] Daniel Forsyth, the plaintiff in this matter, has made a motion under *Nova Scotia Civil Procedure* Rule 12. That rule allows for a determination of law to be made before the trial. A judge can separate a question of law from the other issues in the proceeding. The parties agree that Rule 12 can be applied here.

[2] Mr. Forsyth is seeking a determination of whether discovery evidence given by Desmond Munden on October 27, 2016 was given as a designated manager of HRM. Under Rule 18.20(2), if Mr. Munden gave evidence as a designated manager any admissions that he made during his discovery evidence can be used at trial. If he gave evidence only as an employee of HRM, then his evidence is considered under Rule 18.20(3). That is significant because answers outside his scope of authority cannot be considered as admissions by HRM.

[3] Naming a person as a designated manager is not the same as naming a manager who has some subject area knowledge about the matters involved in the litigation and whose answers about those things bind the corporate party. It is an acknowledgement that the person has a broad authority to make statements and admissions that relate to matters beyond his or her own area of management, expertise or personal knowledge. The designated manager is a spokesperson for the corporate party that puts him or her forward in that capacity. He or she does not have to have personal knowledge of the matter because he or she is essentially speaking as the party itself, in this case HRM.

[4] The first step with Rule 12 is to identify the pure legal question to be determined. Here that question is whether Rule 18.20(2) or Rule 18.20(3) applies to the discovery evidence given by Desmond Munden.

[5] The second step is to identify the facts that are required to be determined. Here those facts are about whether Mr. Munden was a designated manager of the defendant HRM. The facts that relate to that determination are:

1. HRM did not provide formal notification that Desmond Munden was a designated manager;
2. The plaintiff did not make a specific request to discover a designated manager;
3. The plaintiff made a request for a representative who “can address the general policies of HRM regarding sidewalk maintenance and signage

as well as the background or history with respect to the removal of any signage on the street in question”;

4. HRM did not communicate to the plaintiff in advance of the discovery that Mr. Munden was the designated manager or that his answers would act as admissions by HRM;
5. When the discovery began counsel for the plaintiff said that he wanted to put on the record that Mr. Munden was at the discovery “as a representative for the defendant.” Counsel appearing at the discovery for HRM agreed and said, “His answers bind HRM.”;
6. At discovery, Mr. Munden did not testify that he was a designated manager;
7. Mr. Munden was not asked any questions in the course of the discovery regarding the scope of his authority to bind HRM; and,
8. When he gave evidence at the discovery Mr. Munden was the Works Supervisor with Traffic Management Transportation and Public Works.

[6] There is no dispute about those facts. The dispute is about how those facts relate to the law and specifically whether Desmond Munden gave discovery evidence as a designated manager.

[7] The plaintiff argues that the inference can be made that Mr. Munden was put forward with the intent that his answers would bind HRM beyond the scope of his authority. HRM had not designated a manager under Rule 14, so that the plaintiff did not have access to anyone else fulfilling that role.

[8] The plaintiff says that the exchange between counsel at the discovery in which counsel for HRM agreed that Mr. Munden’s answers would bind HRM, amounted to the designation of Mr. Munden under Rule 14.14. The use of the word “bind” appears to have given rise to some misunderstanding. A witness who is an employee, but not a designated manager, can bind the employer who is party. Admissions that they make within the scope of their authority are binding on their employer. A designated manager under Rule 14.14 is a person with authority make admissions on matters about which he or she may have no direct or personal knowledge. The designated manager speaks broadly on behalf of the party. The binding nature of the answers given in discovery do not define a designated manager. It is whether answers that bind the corporate defendant must be with respect to matters that are within the scope of the witness’ authority. Saying that a

witness' evidence is binding upon the corporate party is not inconsistent with that person giving evidence as an employee or manager who is not a designated manager.

[9] The facts surrounding the discovery are not consistent with Desmond Munden being put forward as a designated manager with the authority to speak more broadly on behalf of HRM.

[10] HRM did not provide formal notice that Desmond Munden was a designated manager for purposes of the discovery. There was no request for a designated manager. The request was for a witness who could address specific issues. Mr. Munden's position, as a Works Supervisor, is not a position of a person who would ordinarily speak broadly for the municipality in the way that a Chief Administrative Officer might do. Mr. Munden was put forward as an employee responsible for service requests relating to the repair of road signage within HRM. He was the person who could best address the policies of HRM regarding road signage and the history with respect to the removal of signage on the street in question.

[11] Mr. Munden was not asked if he had authority to bind HRM with his opinions or personal views or if he was authorized to speak about anything outside his job description.

[12] In this case, there was no reference at all to the appointment of a designated manager. The reference to Mr. Munden's evidence binding HRM was not a stand in for notification of his status as a designated manager. Mr. Munden was not a designated manager for the purpose of the discovery.

[13] The plaintiff had asked for several specific rulings with respect to the extent to which Desmond Munden's statements in discovery would bind HRM. It was agreed at the hearing of the motion that the issue of how statements can be used in the course of the trial and whether they are admissions that are within the scope of Mr. Munden's authority are issues that require the context of the evidence that will be heard at a trial.

[14] HRM has been successful on the motion. Costs are awarded in the amount of \$750 payable in any event of the cause.