SUPREME COURT OF NOVA SCOTIA

Citation: *Municipality of the District of East Hants v. Lively Properties Limited*, 2025 NSSC 274

Date: 20250828
Docket: Hfx No. 537199
Registry: Halifax

Between:

The Municipality of the District of East Hants

Applicant

v.

Lively Properties Limited

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Glen G. McDougall
Heard:	July 2, 2025, in Halifax, Nova Scotia
Final Written Submissions:	August 22, 2025
Written Decision:	August 28, 2025
Subject:	Ruling
Summary:	Respondents request that certain paragraphs be redacted from Mr. Arni Lively's Affidavit of Evidence. Justice McDougall allowed for redaction of paras: 18-20, 25, 29 - 30, 45 - 48, 51, 62-70, Part of 71, 73, Part of 74 and 76.

	Costs to be determined when all merits of the Applications have been heard.
Issues:	(1) Redaction of paragraphs (2) Costs
Result:	Not all impugned/objected to paragraphs were redacted. No costs given at this point.

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DECISION

Judge: The Honourable Justice Glen G. McDougall

Heard: July 2, 2025, in Halifax, Nova Scotia

Counsel: Nathan Sutherland, for the Applicant
Gavin Giles, K.C., for the Respondent

By the Court:

Ruling

[1] The Municipality of the District of East Hants (the "Municipality") seeks to enforce the buy-back provisions of a Buy-Back and Right of First Refusal Agreement (the "Buy-Back Agreement") that forms part of an Agreement of Purchase and Sale it entered into with Lively Properties Holdings Limited ("Lively Properties") on January 28, 2019.

[2] The sale of the property known as Block U, Richard John Drive, Mount Uniacke Business Park, Mount Uniacke, Hants County, Nova Scotia (PID No. 45357449) (the "Property") was conditional on Lively Properties executing the Buy-Back Agreement which it did on February 1, 2019.

[3] The Municipality filed a Notice of Application in Chambers on October 2, 2024, seeking an order for specific performance and damages for Livley Properties' alleged breach of the Buy-Back Agreement and its refusal to sell the Property back to the Municipality after being notified that the Municipality was exercising its right to do so.

[4] Counsel for Lively Properties filed a Notice of Contest (Application in Chambers) on December 6, 2024. This was followed by an Amended Notice of Contest filed on February 19, 2025, which is turn was superseded by a Second Amended Notice of Contest filed on March 12, 2025.

[5] In support of his client's position, counsel for Lively Properties filed an Affidavit of Arnie B. Lively ("Mr. Lively"), the sole Director and officer of Lively Properties. The affidavit, consisting of 82 paragraphs, was filed on the 19th day of February 2025.

[6] In the Rebuttal Brief of the Applicant filed on February 24 ,2025 by counsel for the Municipality, 29 of the 82 paragraphs were objected to, either in full or in part, based on relevance, hearsay, speculation, submission, or inadmissible opinion evidence or some combination thereof. A summary of objections to Lively's Affidavit was attached to the Rebuttal Brief and marked Appendix A. It laid out the impugned paragraphs and the nature of the objections(s) in support of why they should be ruled inadmissible.

[7] Counsel for the Municipality also attached, as Appendix B, a redacted version of the Lively Affidavit with the impugned paragraphs (or portions thereof) removed.

[8] A copy of Appendix A and Appendix B are attached for ease of reference. I will adopt the same approach in ruling whether, or not, to sustain or over-rule the various objections to admissibility raised by counsel. My analysis will begin with on overview of the *Civil Procedure Rules* and the rules of evidence and the legal principles that have evolved through case law over the years.

Applicable Civil Procedure Rules & Relevant Case Law:

[9] Civil Procedure Rule 5.22 states that the rules of evidence, including the rules about hearsay, apply to applications. It reads, as follows:

> **5.22 Rules of evidence on an application**
>
> The rules of evidence, including the rules about hearsay, apply on the hearing of an application and to affidavits filed for the hearing except a judge may, in an *ex parte* application, accept hearsay presented by affidavit prepared in accordance with Rule 39 - Affidavit.
>
> 39.02 (1) states that:
>
> **39.02 Affidavit is to provide evidence**
>
> **(1)** A party may only file an affidavit that contains evidence admissible under the rules of evidence, these Rules, or legislation.
>
> Rule 39.04 permits a judge to strike a part or all of an Affidavit. The relevant provisions of Rule 39.04 read, as follows:
>
> **39.04 Striking all or part of an affidavit**
>
> **(1)** A judge may strike an affidavit containing information that is not admissible evidence, or evidence that is not appropriate to the affidavit.
>
> **(2)** A judge must strike a part of an affidavit containing either of the following:
>
> **(a)** information that is not admissible, such as an irrelevant statement or a submission or plea;
>
> **(b)** information that may be admissible but for which the grounds of admission have not been provided in the affidavit, such as hearsay admissible on a motion but not supported by evidence of the source and belief in the truth of the information.
>
> **(3)** If the parts of the affidavit to be struck cannot readily be separated from the rest, or if striking the parts leaves the rest difficult to understand, the judge may strike the whole affidavit.

> **(4)** A judge who orders that the whole of an affidavit be struck may direct the prothonotary to remove the affidavit from the court file and maintain it, for the record, in a sealed envelope kept separate from the file.
>
> **(5)** A judge who strikes parts, or the whole, of an affidavit must consider ordering the party who filed the affidavit to indemnify another party for the expense of the motion to strike and any adjournment caused by it.

[10] Any discussions regarding the proper drafting and permissible contents of the affidavits must begin with the oft-quoted decision of the Honourable Justice John M. ("Jack") Davison (a, now deceased, former member of this Court) in the case of *Waverley (Village Commissioners) v. Nova Scotia (Minister of Municipal Affairs),* 1993 NSSC 71 ("Waverley"). *Waverley, supra*, pre-dates the implementation of the *Nova Scotia Civil Procedure Rules* on January 1, 2009, but the revamped rules did nothing to diminish the impact of Justice Davison's seminal decision. If anything, the new rules served to reinforce and enhance the value of what Justice Davison had to say. Further evidence of this can be found in the Honourable Justice Scott C. Norton's decision in *King v. Gary Shaw Alter Ego Trust,* 2020 NSSC 288 where, at paragraph 9, he wrote:

> [9] The leading decision in this province on the appropriate contents of affidavits is *Waverly (Village) v. Nova Scotia (Municipal Affairs)*, 1993 NSSC 71. Therein, Justice Davison made the following observation and set out in summary form the guidelines for admissible affidavit evidence (I note here that his reference to "application" was to a Chambers Application in the former Rules, now a Motion in Chambers in our present Rules):
>
> > 14 Too often affidavits are submitted before the court which consist of rambling narratives. Some are opinions and inadmissible as evidence to determine the issues before the court. In my respectful view the type of affidavits which are being attacked in this proceeding are all too common in proceedings before our court and it would appear the concerns I express are shared by judges in other provinces…
> >
> > 20 It would [be] helpful to segregate principles which are apparent from consideration of the foregoing authorities and I would enumerate these principles as follows:
> >
> > 1. Affidavits should be confined to facts. There is no place in affidavits for speculation or inadmissible material. An affidavit should not take on the flavour of a plea or a summation
> >
> > 2. The facts should be, for the most part, based on the personal knowledge of the affiant with the exception being an affidavit used in an application [a motion under the present Rules]. Affidavits should stipulate at the outset that the affiant has

> personal knowledge of the matters deposed to except where stated to be based on information and belief.
>
> 3. Affidavits used in applications [motions] may refer to facts based on information and belief, but the source of the information should be referred to in the affidavit. It is insufficient to say simply that "I am advised".
>
> 4. The information as to the source must be sufficient to permit the court to conclude that the information comes from a sound source and preferably the original source.
>
> 5. The affidavit must state that the affiant believes the information received from the source.

[11] Prior to hearing counsel's arguments regarding the impugned paragraphs or parts of paragraphs in the Lively Affidavit, the Court was briefed by the Municipality's legal counsel in his Rebuttal Brief as previously mentioned. Counsel for Lively Properties did not present a brief in advance of the hearing relying on oral submissions only. While acknowledging that *Waverley, supra*, is still considered the leading authority on what proper affidavit evidence should consist of, he suggested that more recent cases have emphasized the importance of proportionality on motions to strike affidavit evidence. He cited the cases of *McDonald v. Hue,* 2024 NSSC 24 and *Colbourne Chrysler Dodge Ram Limited v. MacDonald,* 2023 NSSC 309 in support of his argument that litigants have been cautioned against indiscriminately attacking affidavit evidence and "nit picking" every evidentiary issue thereby rendering proceedings inefficient and cost ineffective.

[12] With the Court's permission, counsel for the Municipality was given time to prepare and file post-hearing rebuttal submissions in response to the arguments advanced by Lively Properties' counsel. In his rebuttal submissions filed on July 17, 2025 counsel for the Municipality pointed out that " The Municipality's objections are proportionate and in keeping with Justice Keith's directive in *Colbourne Chrysler*, *supra*, that parties should "bring a reasonable degree of judgment to bear, having regard to the promise of Civil Procedure Rule 1.01 for the " just, speedy and inexpensive determination of every proceeding"." He further points out that "The Municipality's objections focus on material, rather than trivial, evidentiary issues in the Lively affidavit." Which …" go to the heart of the parties' dispute concerning the Buy-Back Agreement." Indeed, he argues that the approach taken by the Municipality is in accord with what Justice Keith stated, at paragraph 25 of *Colbourne Chrysler, supra*:

> [25] Obviously, litigants should not file affidavits containing inadmissible evidence. Moreover, a properly functioning adversarial system requires opposing parties to identify and confront inadmissible evidence. Thus, the Civil Procedure Rules properly provide a mechanism for parties to challenge inadmissible affidavit evidence.

[13] In his Rebuttal submissions, counsel for the Municipality also provided a succinct and cogent response to the remaining oral arguments advanced by Lively Properties' counsel regarding the affiant's evidence concerning "market prices" as well as his suggestion that Mr. Lively's evidence in this regard is not expert opinion evidence but rather admissible lay opinion. He also addressed opposing counsel's suggestion that his client's evidence regarding the pandemic, the "Suez Canal Crisis", and the "Texas Freeze" effects on the construction industry are admissible because the are things "generally known to mankind" which, using the words of United States Supreme Court Associate Justice Felix Frankfurter in *Watts v. Indiana,* 338 U.S. 49 (1949)

> "…there comes a point where this Court should not be ignorant as judges of what we know as men."

[14] Counsel for the Municipality correctly points out that the Municipality is not asking this Court to close its mind to facts that are "so notoriously or generally accepted as not to be the subject of debate among reasonable persons" nor to ignore that which is "capable of immediate and accurate demonstration by resort to readily accessible sources of disputable accuracy." [See *Colts Foot Publishing Ltd. v. Foster-Jacques,* 2012 NSCA 83 at para. 42, citing *R. v. Find,* 2001 SCC 32]. As proof of this, counsel for the Municipality notes that his client does not object to the effects, including shutdowns of the Covid-19 pandemic on the construction industry generally. What the Municipality objects to, based on its counsel's submissions, is "Mr. Lively's efforts to provide opinion evidence regarding the more specific impacts of COVID-19 in support of his opinion that these things made it impossible for Lively to develop the property at issue." [See page 5 of the post-hearing Rebuttal submissions of Mr. Nathan Sutherland, counsel for the Municipality, filed on July 17, 2025.]

[15] Counsel for the Municipality submits that this opinion evidence is particularly objectionable "because it is proffered in service of a submission…that goes to the heart of Lively's argument on the merits." [Page 5 of counsel's Rebuttal Submissions]

[16] He asks that they be struck. In deciding what should or should not be struck from Mr. Lively's affidavit I will take into consideration the arguments advanced by counsel for each of the parties. While doing so, I will not lose sight of the continuing importance of the *Waverley, supra* decision as well as more recent decisions of this Court that similarly rely on its direction and advice.

[17] I should add that the reference made by Lively Properties' counsel to the decision of Justice Frankfurter in *Watts v. Indiana*, although interesting, is not of any appreciable assistance in helping me decide what is now before me. The case could possibly be of some use should the Court be called upon to take judicial notice of certain facts " that are either " so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy" : *R v. Find,* [2001] 1 S.C.R 863, 2001 SCC 32, at para. 48. [As quoted by *Charron, J. in R. v. Krymowski,* [2005] 1 S.C.R. 101 (SCC)]. That is not what the Court is being asked to do in making this ruling.

Counsel's Objections:

[18] Counsel for the Municipality bases his objections either on relevance, hearsay, speculation, submission, or inadmissible opinion evidence or some combination thereof. In the context of this ruling, relevance pertains to threshold relevance. In Sopinka, Lederman & Bryant: *The Law of Evidence in Canada, Fifth Edition*, at para. 11.42, the authors wrote:

> "…Relevance is a rational method of fact-finding based on logic, common sense and experience. The term "relevance" is concerned with the relationship between the proffered evidence and the issues in the case the proponent of the evidence is advancing. As Doherty, J.A. stated in R. v. Watson (1996), 50 C.R. (4th) 245, [1996] O.J. No. 2695, at para 33 (Ont. C.A.) Relevance…requires a determination of whether as a matter of human experience and logic the existence of "Fact A" makes the existence or non-existence of "Fact B" more probable than it would be without the existence of "Fact A". If it does then Fact A is relevant to "Fact B".

[19] At para. 11.45, the authors of this authoritative text, added the following:

> A Simple test to determine if the proffered evidence is relevant is to ask "what inference is sought to be made from the proposed evidence and whether it has some tendency to advance the inquiry before the court". [See R. v. B. (L.); R. v. G. (M.A) (1997), 35 O.R. (3d) 35, [1997] O.J. No. 3042, at para. 17 (Ont. C. A.)]

[20] Counsel for the Municipality also relied on hearsay to support some of his objections to admissibility of portions of the Lively affidavit. A recent statement of the law on hearsay was provided by Karakatsanis, J. in *R. v. Bradshaw,* 2017 SCC 35 (S.C.C.), at para. 1:

> **1** Hearsay is an out-of-court statement tendered for the truth of its contents. It is presumptively inadmissible because -- in the absence of the opportunity to cross-examine the declarant at the time the statement is made -- it is often difficult for the trier of fact to assess its truth. Thus hearsay can threaten the integrity of the trial's truth-seeking process and trial fairness. However, hearsay may exceptionally be admitted into evidence under the principled exception when it meets the criteria of necessity and threshold reliability.

[21] Although presumptively inadmissible, the law surrounding hearsay is subject to various categories of exceptions and as noted by various jurists and legal scholars in the past there are exceptions to the exceptions which taken together has led to the contemporary rule which adopts a more flexible approach to hearsay based upon necessity and reliability. [See *R. v. Khan,* [1990] 2 S.C.R. 531 (S.C.C.)*; R. v. Smith,* [1992] 2 S.C.R. 915 (S.C.C.); and *R. v. Khelawon,* [2006] 2 S.C.R. 787] Generally speaking, hearsay can oftentimes be relatively easy to identify but determining its admissibility or inadmissibility can be fraught with difficulty.

[22] The three remaining bases for objection raise concerns about speculation, submissions and in admissible opinion. I do not think it is necessary to provide an expanded or detailed explanation of either speculation or submissions other than to say neither category should be included in affidavits. As stated by Davison, J. in *Waverley, supra*, and as quoted by Norton, J. in *King v. Gary Shaw Alter Ego, supra*:

> "…There is no place in affidavits for speculation or inadmissible material. An affidavit should not take on the flavour of a plea or a summation."

[23] In regard to the exclusion of opinion evidence, the generally accepted rule was noted by Major, J. for the majority in *R. v. D. (D.),* [2000] 2 S.C.R. 275, as follows:

> A basic tenet of our law is that the usual witness may not give opinion evidence, but testify only to facts within his knowledge, observation and experience. This is a commendable principle since it is the task of the fact finder, whether a jury or judge alone, to decide what secondary inferences are to be drawn from the facts proved.

[24] This, however, does not preclude the acceptance of lay opinion evidence for example. In *R. v. Graat,* [1982] 2 S.C.R. 819 (S.C.C.)*,* Dickson, J. (as he then was), at pp. 836-7, put it this way:

> I agree with Professor Cross (at p. 443) that "The exclusion of opinion evidence on the ultimate issue can easily become something of a fetish". I can see no reason in principle or in common sense why a lay witness should not be permitted to testify in the form of an opinion if, by doing so, he is able more accurately to express the facts he perceived.
>
> I accept the following passage from Cross as a good statement of the law as to the cases in which non-expert opinion is admissible.
>
> When, in the words of an American judge, "the facts from which a witness received an impression were too evanescent in their nature to be recollected, or too complicated to be separately and distinctly narrated", a witness may state his opinion or impression. He was better equipped than the jury to form it, and it is impossible for him to convey an adequate idea of the premises on which he acted to the jury:
>
> "Unless opinions, estimates and inferences which men in their daily lives reach without conscious ratiocination as a result of what they have perceived with their physical senses were treated in the law of evidence as if they were mere statements of fact, witnesses would find themselves unable to communicate to the judge an accurate impression of the events they were seeking to describe."

[25] The framework by which to determine the admissibility of expert opinion evidence was set out in *R. v. Mohan,* [1994] 2 S.C.R. 9 (S.C.C.) and further explained in SCC *White Burgess Langille Inman v. Abbottt and Haliburton Co.,* 2015 23 (S.C.C.). In *Mohan, supra*, Sopinka, J. for the court wrote the following, at p.20:

> Admission of expert evidence depends on the application of the following criteria:
> (a) relevance;
>
> (b) necessity in assisting the trier of fact;
>
> (c) the absence of any exclusionary rule; and
>
> (d) a properly qualified expert.

[26] This is the first stage of a two-stage process. At the second stage, the judge must balance the potential benefits and risks of admitting the evidence and then decide whether the potential benefits outweigh the risks.

Application of the Rules of Procedure Based on Existing Case Law:

[27] Armed with this information regarding the rules of procedure along with the assistance of relevant caselaw, I will look at each of counsel's objections and decide if they should be upheld or over-ruled (either in whole or in part). I will use the Appendix A prepared by counsel for the Municipality to guide my analysis in reaching my decisions on each of the objections:

	Para.	**Text**	**Summary of Objection**
(A)	13-17	Full Paragraphs.	*Relevance*: the affiant's business experience and practice issuing invoices and follow-up statement is not relevant to whether the affiant received the November 24, 2022, Fee Letter and/or Fee Invoice.

Comments:

[28] As part of Lively Property's defence to the Application, particularly paragraphs 3d.(a) to (e) and 38a. to 38f (inclusive) of the Second Amended Notice of Contest (Application in Chambers), the company alleges that the Municipality failed to conduct itself in a business-like manner and instead conducted itself in a manner which reasonably led Lively Properties to believe that the Municipality would not be pursuing its rights pursuant to the terms and conditions of the Buy-Back Agreement. The company further alleges that based on the careless and cavalier manner in which the Municipality conducted its business in its dealings with Lively Properties that it left the company with the impression that the buy-back of the property had been waived by the Municipality and that it should be estopped from exercising its buy-back rights which would result in an unjust enrichment should the Court rule in the Municipality's favour.

[29] The merits of the Municipality's claim and the defence advanced on behalf of Lively are yet to be determined. At this point of the proceeding, I cannot rule out the relevance of these impugned paragraphs and, as such, I am not persuaded that paras. 13 to 17 should be struck from the Arni Lively Affidavit. As such, they will remain as drafted.

	Para.	**Text**	**Summary of Objection**

(B)	18	Full Paragraph	*Speculation*: The affiant does not have firsthand knowledge regarding why his suppliers issue follow-up statements.

[30] I agree with the Municipality's objection based on speculation. Mr. Lively can speak to his own and his company's business practices (subject, of course, to relevance) but clearly, he could only speculate on what purpose other businesses might have for sending out follow-up statements. The paragraph should be struck.

	Para.	**Text**	**Summary of Objection**
(C)	19-20	Full Paragraphs	*Inadmissible opinion*: The affiant is purporting to testify to standard business practices in the field of "selling or buying anything" but has not been put forward as expert or qualified as such.

[31] In each of these paragraphs, the affiant is offering an opinion on what he suggests are normal business practices. No doubt, Mr. Lively, has probably achieved considerable business acumen based on running his own business but that does not make him an expert. Nor can what he is stating be considered admissible lay opinion. Both paragraphs should be struck.

	Para.	**Text**	**Summary of Objection**
(D)	25	Full Paragraph	*Submission*: The affiant has taken the position that Mark Dunn was in a conflict of interest. It is not a fact. It has not been admitted to by East Hants or determined by a Court.
(E)	29-30	Full Paragraphs	*Submission:* The affiant is making argument, based on inference, about what can and can not be correct. The affiant has no direct knowledge of what Graham Scott was or was not told by Kim Ramsay.

[32] All three paragraphs "take on the flavour of a plea or a summation" [*Waverley, supra*, at p.11] and should not be included in an affidavit. All three paragraphs should be struck.

	Para.	**Text**	**Summary of Objection**
(F)	45-48	Full Paragraphs	*Inadmissible opinion*: The affiant is giving evidence about market rates for certain work without and context regarding the particular vendors, purchasers, work order type, etc. The affiant does not testify to rates he has paid, but purports to opine on the prevailing market rate over an unspecified period of time. This is inadmissible opinion.

[33] The affiant has not provided any evidence to support his knowledge and understanding of market prices nor has he been qualified to offer such an opinion. As such, all of these paragraphs should be struck.

	Para.	**Text**	**Summary of Objection**
(G)	51	Full Paragraph	*Submission*: This paragraph is argument/submission.

[34] I agree with the objection. This is clearly a submission and, so, should be struck.

	Para.	**Text**	**Summary of Objection**
(H)	62-65	Full Paragraphs	*Inadmissible/hearsay*: Paragraph 63 is hearsay. Paragraphs 62-65 generally express the opinion of that attrition in the construction industry, and in Lively's work force, caused Lively's construction at the Project to be delayed. Linking COVID-19, to workforce attrition, to Project delay requires expert opinion evidence.

[35] Paragraph 63 is "textbook" hearsay and should be struck. The remaining three paragraphs offer opinions that, too, should be struck.

	Para.	**Text**	**<u>Summary of Objection</u>**
(I)	66-68	Full Paragraphs	<u>*Inadmissible opinion/hearsay*</u>: The affiant provides no basis for his knowledge about the "unprecedented upswings" in housing prices (apart from references to unspecified media reports). That is hearsay. The affiant also purports to opine on the effect of housing prices on the construction industry, including the availability of building materials etc. That is expert opinion evidence.

[36] Paragraph 67 speaks about unspecified media reports which is not only vague but is clearly hearsay. It should be struck for this reason. As to paras. 66 and 68, the affiant provides no basis for his knowledge of any unprecedented up-swings in housing purchases, housing renovations and new house construction commencing roughly at the end of the first quarter of 2021 and how they might have resulted from the Covid-19 pandemic. Nor does he support his contention that these unprecedented up-swings resulted in pressure on the building and construction trades and on the availability of building materials. This would require expert opinion evidence which the affiant has not been qualified to offer. As with para.67, they should also be struck.

	Para.	**Text**	**<u>Summary of Objection</u>**
(J)	69-70	Full Paragraph	<u>*Submission/inadmissible opinion*</u>: The foreseeability of the purported supply chain issues is legal argument/submission. The effect of supply chain issues on Lively's ability to meet its obligations under the Buy-Back Agreements in opinion, combined with legal argument.

[37] These two paragraphs are premised on the inadmissible contents of paras. 66 to 68. They attempt to offer opinion evidence and take on the flavour of submission. On both counts, they, too, are inadmissible and are struck from the affidavit.

	Para.	**Text**	**<u>Summary of Objection</u>**

(K)	71	"To compound the building trades and building materials supply chain issues referred to above…"	*Inadmissible opinion/ relevance*: It is opinion evidence to say that the blockage of the Suez Canal caused building trades and supply chain issues. Further, the Suez Canal blockage is also irrelevant, without more specific facts linking the blockage to any delay that Lively alleges it experienced.

[38] This represents one more attempt by the affiant to offer opinion evidence that he is not qualified to give. Nor does he offer any acceptable evidence to tie the "Suez Canal Crisis", so-called, to his company's ability to source supplies and other building materials. Consequently, its relevance is not simply questionable, it is non-existent. The challenged words are, therefore, struck.

	Para.	**Text**	**Summary of Objection**
(L)	73	Full Paragraph	*Hearsay*: Lively purports to attest to a fact regarding global trade passing through the Suez Canal. This is an out of court statement without any support that the Applicant has no ability to test in cross examination.

[39] The affiant offers no authority or source for this statement. It is a bald assertion without any attribution that might be capable of verification. It is hearsay and hence, inadmissible. It should be struck from the affidavit.

	Para.	**Text**	**Summary of Objection**
(M)	74	"…which negatively affected for many weeks the manufacture of the raw materials used in the manufacture of	*Inadmissible opinion/ relevance*: It is opinion evidence to say that the "Texas Freeze" negatively affected the manufacture of raw materials. The affiant has no direct knowledge of the effects of the Texas Freeze on manufacturing. It is also irrelevant: there is no factual connection between Lively's purported construction activities (construction of a

		many types of building supplies, including, without limitation, plastics, polymers, and resins."	garage on the property) with the types of building materials allegedly affected.

[40] Again, the affiant is asking the reader to accept his opinion on the impact of the "Texas Freeze or Freeze-Up" on "the manufacture of the raw materials used in manufacturing of many types of building materials, including, without limitation, plastics, polymers, and resins." The affiant does not even purport to establish any direct knowledge he might have of the effects of the "Texas Freeze or Freeze-up" on manufacturing. It offers inadmissible opinion evidence. I also share the concern with relevance raised by counsel for the Municipality.

[41] The beginning words in the first line of para.74 and the words "Freeze or Freeze-Up" in the second line are not being challenged. They can stay but the remainder of the paragraph should be struck.

	Para.	**Text**	**<u>Summary of Objection</u>**
(N)	76	Full Paragraph	*<u>Hearsay:</u>* The affiant purports to attest to things reported to the affiant "by its building materials suppliers" without indicating who those individuals were and/or stating the affiant's belief in those statements.

[42] So flagrantly hearsay, nothing really needs to be said other than the full paragraph 76 should be struck.

<u>Conclusion</u>:

[43] Following counsel's method of presenting what the redacted affidavit should consist of, I have attached a redacted version labelled "Appendix C" that incorporates my ruling.

[44] Regarding costs, this will be addressed in due course after the merits of the application have been argued and after I render my final decision.

Glen G. McDougall, J.

Appendix A – Summary of Objections to Lively Affidavit

Para.	Text	Summary of Objection
13-17	Full paragraphs.	*Relevance*: the affiant's business experience and practice issuing invoices and follow-up statements is not relevant to whether the affiant received the November 24, 2022 Fee Letter and/or Fee Invoice.
18	Full paragraph.	*Speculation*: The affiant does not have firsthand knowledge regarding why his suppliers issue follow-up statements.
19-20	Full paragraphs.	*Inadmissible opinion:* The affiant is purporting to testify to standard business practices in the field of "selling or buying anything" but has not been put forward as an expert or qualified as such.
25	Full paragraph.	*Submission:* The affiant has taken the position that Marc Dunning was in a conflict of interest. It is not a fact. It has not been admitted to by East Hants or determined by a Court.
29-30	Full paragraphs.	*Submission:* The affiant is making an argument, based on inference, about what can and cannot be correct. The affiant has no direct knowledge of what Graham Scott was or was not told by Kim Ramsay.
45-48	Full paragraphs.	*Inadmissible opinion:* The affiant is giving evidence about market rates for certain work without any context regarding the particular vendors, purchasers, work order type, etc. The affiant does not testify to rates he has paid, but purports to opine on the prevailing market rate over an unspecified period fo time. This is inadmissible opinion.
51	Full paragraph.	*Submission:* This paragraph is argument / submission.
62-65	Full paragraphs.	*Inadmissible opinion / hearsay:* Paragraph 63 is hearsay. Paragraphs 62-65 generally express the opinion that attrition in the construction industry, and in Lively's work force, caused Lively's construction at the Project to be delayed. Linking COVID-19, to

		workforce attrition, to Project delay requires expert opinion evidence.
66-68	Full paragraphs.	*Inadmissible opinion / hearsay:* The affiant provides no basis for his knowledge about the "unprecedented upswings" in housing prices (apart from references to unspecified media reports). That is hearsay. The affiant also purports to opine on the effect of housing prices on the construction industry, including the availability of building materials etc. That is expert opinion evidence.
69-70	Full paragraph.	*Submission / inadmissible opinion:* The foreseeability of the purported supply chain issues is legal argument / submission. The effect of supply chain issues on Lively's ability to meet its obligations under the Buy-Back Agreements is opinion, combined with legal argument.
71	"To compound the building trades and building materials supply chain issues referred to above..."	*Inadmissible opinion / relevance:* It is opinion evidence to say that the blockage of the Suez Canal caused building trades and supply chain issues. Further, the Suez Canal blockage is also irrelevant, without more specific facts linking the blockage to any delay that Lively alleges it experienced.
73	Full paragraph.	*Hearsay:* Lively purports to attest to a fact regarding the global trade passing through the Suez Canal. This is an out of court statement without any support that the Applicant has no ability to test in cross examination.
74	"... which negatively affected for many weeks the manufacture of the raw materials used in the manufacture of many types of building materials, including, without limitation, plastics, polymers, and resins."	*Inadmissible opinion / relevance:* It is opinion evidence to say that the "Texas Freeze" negatively affected the manufacture of raw materials. The affiant has no direct knowledge of the effects of the Texas Freeze on manufacturing. It is also irrelevant: there is no factual connection between Lively's purported construction activities (construction of a garage on the Property) with the types of building materials allegedly affected.
76	Full paragraph.	*Hearsay:* The affiant purports to attest to things reported to the affiant "by its building materials suppliers" without indicating who those individuals

		were and/or stating the affiant's belief in those statements.

East Hants Rebuttal Submissions
Appendix B

2024

Hfx No. 537199

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

The Municipality of the District of East Hants

Applicant

-and-

Lively Properties Holdings Limited

Respondent

AFFIDAVIT SWORN TO AND AFFIRMED BY ARNI B. LIVELY

I, ***Arni B. Lively***, Businessperson, of Fall River, Nova Scotia, swear, affirm, and give my evidence as follows:

1. I am the sole Director, and Officer (President) of the Respondent herein.

2. As such, I have a personal knowledge of the facts and matters deposed to herein, except in instances in which such facts and matters are specifically stated to be based upon my information, my belief, or both.

3. In the event of facts and matters specifically stated to be based upon my information, my belief, or both, I further depose herein to my source(s) of any such information, and to my reasons for believing in its accuracy and truth.

4. In preparation for this Affidavit, I reviewed the Affidavits sworn to and affirmed herein by Kim Ramsay ("the Ramsay Affidavit" or "her Affidavit"), and by Graham Scott ("the Scott Affidavit" or "his Affidavit", both on January 20th, 2025.

5. At Paragraphs 17 and 18 of her Affidavit, and at Exhibit "3" thereto, Kim Ramsay has deposed to a purported letter purportedly sent to me on November 24th, 2022.

6. No such letter was ever sent to me.

7. Also at Paragraphs 17 and 18 of her Affidavit, and also at Exhibit "3" thereto, Kim Ramsay has deposed to a purported Fee Option Invoice purportedly sent to me along with the purported letter of November 24th, 2022.

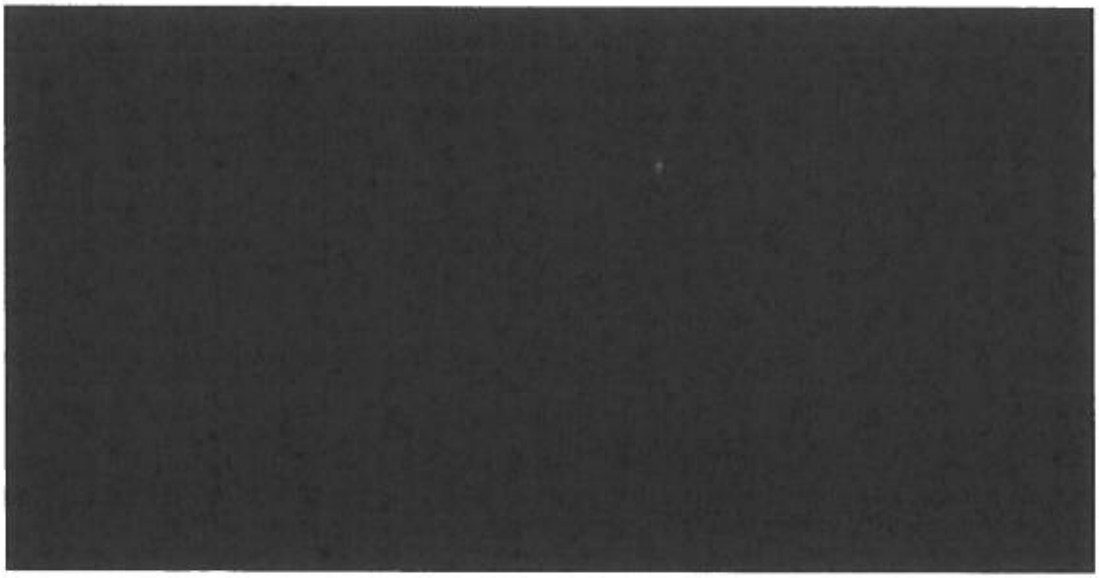
8. No such Fee Option Invoice was ever sent to me, and if any such Invoice had been in fact sent to me, it would have been paid immediately.

9. I know of no form of follow-up by Kim Ramsay, or by anyone on behalf of the Applicant, to the purported letter of November 24th, 2022, no follow-up letter, no form of reminder notice, no monthly statement, no e-mail message, no text message, and no telephone call.

10. I similarly know of no form of follow-up by Kim Ramsay, or by anyone on behalf of the Applicant, to the purported Fee Option Invoice accompanying the purported letter of November 24th, 2022, no follow-up letter, no form of reminder notice, no monthly statement, no e-mail message, no text message, and no telephone call.

11. I also have no idea why the Applicant's purported Fee Option Invoice, purportedly both dated and posted internally by the Applicant on June 20th, 2022, would not have been sent to me until more than five months later.

12. I have been in business for decades, and in fact have carried on several different types of business endeavours for decades.



[redacted]

21. I know of no collection or legal action taken by the Applicant against the Respondent with respect to the Applicant's purported Fee Option Invoice of June 20th, 2022, now said by the Applicant to have been issued to the Respondent on or about November 24th, 2022

22. It is factually correct for Kim Ramsay to have deposed at Paragraph 18 of her Affidavit that I did not respond to the purported letter of November 24th, 2022, but that was only because I never received the letter.

23. I did not know of the purported letter of November 24th, 2022, or of the purported Invoice of June 20th, 2022, until the within legal proceedings commenced.

24. Even the letter to the Respondent from Marc Dunning of May 7th, 2024, as deposed to by Graham Scott at Paragraph 48 of his Affidavit, made no mention of the purported letter of November 24th, 2022, nor of the purported Fee Option Invoice dated June 20th, 2022.

[redacted]

26. For the purposes herein, I have been forced to retain another lawyer, and another law firm.

27. At Paragraphs 42, 43, and 44 of the Scott Affidavit, Graham Scott has deposed to an August, 2022 meeting he had had with Kim Ramsay.

28. I was not privy to any such meeting, and I had no knowledge of until I reviewed the Scott Affidavit.

[redacted]

31. It is factually incorrect for Graham Scott to have deposed at Paragraph 46 of his Affidavit that I ignored Kim Ramsay's purported letter of November 24th, 2022, as I could not have ignored what I never received.

32. It is also factually incorrect for Graham Scott to have deposed at Paragraph 44 of his Affidavit that he called me "in or about October 2022" to tell me about Kim Ramsay's purported pending letter of November 24th, 2022, as no such call from Graham Ascott was ever received by me.

33. On or about February 1st, 2019, the Applicant and the Respondent entered into a Buy-Back and Right of First Refusal Agreement ("the Buy-Back Agreement").

34. The Buy-Back Agreement related to the Applicant's sale, to the Respondent, of the Property at issue in these proceedings ("the Property").

35. Both the Buy-Back Agreement and the Property are as set out and defined by the Applicant in its Notice of Application in Chambers by which these proceedings have ben commenced.

36. The transaction related to the Applicant's sale of the Property to the Respondent "closed" on or about January 28th, 2019.

37. Since that time, the Respondent has paid the Applicant's assessed against the Property.

38. I have inferred from the "evidence" deposed to by Graham Scott at Paragraph 28 of his Affidavit, that it is his opinion that the work undertaken by the Respondent on the Property is minor, or insignificant.

39. If I have inferred correctly, Graham Scott is plainly and simply incorrect.

40. The Property is a total of approximately four and two-tenths (4.2) acres in size.

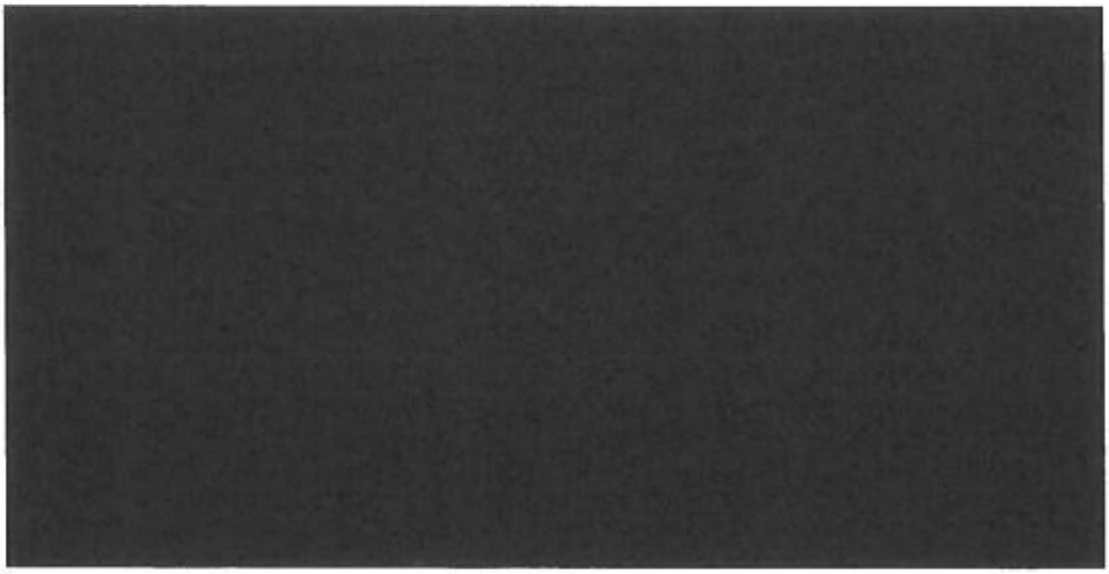
41. At the time of its sale to the Respondent, the Property comprised only approximately one and twenty-one one hundreds (1.21) of useable land, all of the rest being swamp or other form of wetland.

42. It was thus know by the Applicant at the time of its salle of the Property to the Respondent that it would have to be both filled and levelled, all at the expenses of the purchaser.

43. Without limitation, the Respondent's filling and levelling of the Property comprised to following work:

- → The entire 4.2 acres of the Property was required to be stripped and grubbed of unsuitable materials – generally organic materials such as tree trunks, tree stumps, free branches, leaves, and other forms of miscellaneous vegetation;
- → Approximately eight hundred cubic meters (800m^3) of rock on the Property was required to be mechanically broken up; and,
- → Approximately six thousand, seven hundred cubic meters (6,700 m^3) of structural fill materials were required to be imported into the Property, spread and compacted in engineered lifts (or layers) such that the Property would be suitable for the installation of strip footings, and slab-on-grade foundation construction.

44. This type of work comprises my primary business, and it has been my primary business for decades.



49. Conceded by the Respondent was that this work was undertaken internally, using materials and equipment owned and operated by some of my other business interests, and using employees who might otherwise have been on lay-off.

50. This work nevertheless added value to the Property, in that its useable area was increased in size by more than three times.

[redacted]

52. Well known is that the initial worldwide COVID-19 pandemic was declared by the World Health Organization ("WHO") in or about the middle of March of 2020.

53. As reported by Canadian governments at every level, and in the mainstream news media, since its arrival in Canada, on or about January 25th, 2020, COVID-19 infected millions of Canadians, and killed more than 51,000 Canadians.

54. Among the various combatant measures adopted in March of 2020 by both the Canadian and Nova Scotia governments as a result of the COVID-19 pandemic, were states of emergency.

55. Related to those states of emergency, were the all but complete shut-downs of most forms of commercial activity, public education, public transportation, the Courts, recreational facilities, gymnasia, most personal services outlets, many forms of public service, public entertainment, religious services, many employment activities, and freedom of association. (See, for example: *Citizens Alliance of Nova Scotia v. Nova Scotia (Health and Wellness)*, 2024 NSSC 253 (per: Keith, J., at Paragraphs 1 through 8).

56. The referenced shut downs, partial shut downs, and other restrictive measures, were of types and kinds which the Respondent had never seen or experienced before throughout any of its decades in business.

57. The COVID-19 pandemic shut downs, partial shut downs, and other restrictive measures, dramatically affected the local Nova Scotia construction industry generally, and the Respondent more specifically.

58. The availabilities of building trades and labour, and the availabilities of building materials and supplies were all sharply curtailed and reduced, and negatively affected the Respondent's ability to carry on business.

59. COVID-19 restrictions and limitations, and the effects of those restrictions and limitations on the Respondent's ability to carry on business continued, in one form or another, until, or about, March of 2022.

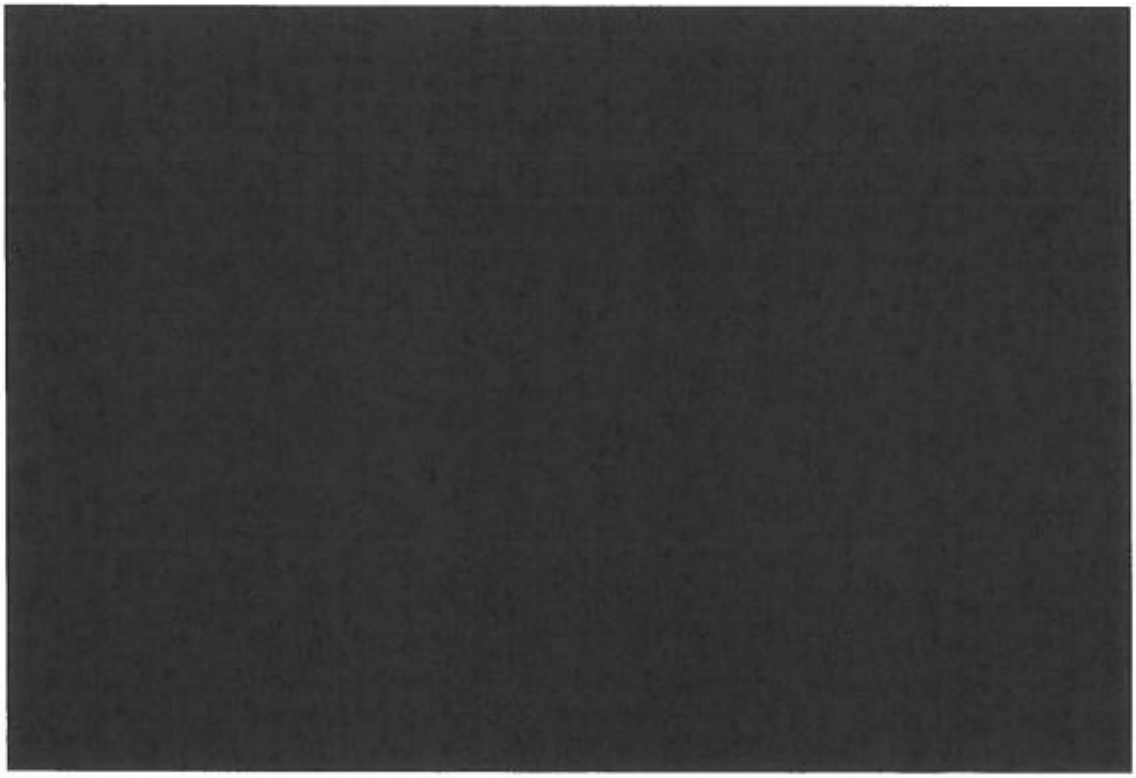
60. In addition, the Government of Canada ("Canada") adopted a variety of financial compensation measures which were designed and intended to provide financial relief to Canadians affected by the shut-downs in the workforce.

61. These financial compensation measures were well-known:

→ The Canada Emergency Response Benefit ("CERB") – available between March 15th, 2020, and September 26th, 2020;

→ Tthe Canada Recovery Benefit ("CRB") – available between September 27th, 2020, and October 23rd, 2021; and,

→ The Canada Worker Lockdown Benefit ("CWLB") – available between October 24th, 2021, and May 7th, 2022.



[redacted]

71. [redacted] the Suez Canal was blocked as a result of a navigational error by the command of the 200,000-ton container ship "Ever Given" between March 23rd and March 29th, 2021.

72. This was a well-known event, which was consistently presented and discussed in the international and in the local media.

[redacted]

74. Immediately pre-dating the 2021 Suez Canal Crisis was the February 2021 Texas Freese or Freeze-Up [redacted]

75. This too was a well-known event, which was consistently presented and discussed in the international and in the local media.

[redacted]

77. Notwithstanding all of any of these limitations, the Respondent worked diligently in its attempt to move ahead with development requirements pursuant to the provisions of the Buy-Back Agreement.

78. In addition to the excavation work to which I have deposed above, the Respondent applied for and obtained a driveway and right-of-way permit in February, 2019, and an on-site septic disposal system permit in October, 2019.

79. The Respondent's applications for these permits were made to the Applicant.

80. Additionally, the Respondent made application to the Applicant, on or around August 22nd, 2024, for a Building Permit to allow for the final construction on and improvement pf the Property.

81. Included with the Respondent's application for the Building Permit were all required documentation and drawings.

82. Despite receiving the Applicant's verbal representations and assurances that the Building Permit referred to above would be forthcoming, it was later denied.

SWORN TO AND AFFIRMED BEFORE ME, this 19th day of February, 2025

Anil Lively

Gavin Giles, K.C.,
A Barrister of the Supreme Court
of Nova Scotia

46163017

Appendix ""C"

Note: The text of the affidavit below corresponds with the fully and partially redacted paragraphs as per the amended decision of the Honorable Justice Glen McDougall dated August 28, 2025.

FEB 19 2025

Page **1** of **9**

2024

Hfx No. 537199

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

The Municipality of the District of East Hants

Applicant

-and-

Lively Properties Holdings Limited

Respondent

AFFIDAVIT SWORN TO AND AFFIRMED BY ARNI B. LIVELY

I, **Arni B. Lively**, Businessperson, of Fall River, Nova Scotia, swear, affirm, and give my evidence as follows:

1. I am the sole Director, and Officer (President) of the Respondent herein.
2. As such, I have a personal knowledge of the facts and matters deposed to herein,

   except in instances in which such facts and matters are specifically stated to be based upon my information, my belief, or both.
3. In the event of facts and matters specifically stated to be based upon my information, my belief, or both, I further depose herein to my source(s) of any such information, and to my reasons for believing in its accuracy and truth.
4. In preparation for this Affidavit, I reviewed the Affidavits sworn to and affirmed herein by Kim Ramsay ("the Ramsay Affidavit" or "her Affidavit"), and by Graham Scott ("the Scott Affidavit" or "his Affidavit", both on January 20th, 2025.
5. At Paragraphs 17 and 18 of her Affidavit, and at Exhibit "3" thereto, Kim Ramsay has deposed to a purported letter purportedly sent to me on November 24th, 2022.
6. No such letter was ever sent to me.
7. Also at Paragraphs 17 and 18 of her Affidavit, and also at Exhibit "3" thereto, Kim Ramsay has deposed to a purported Fee Option Invoice purportedly sent to me along with the purported letter of November 24th, 2022.
8. No such Fee Option Invoice was ever sent to me, and if any such Invoice had been in fact sent to me, it would have been paid immediately.
9. I know of no form of follow-up by Kim Ramsay, or by anyone on behalf of the Applicant, to the purported letter of November 24th, 2022, no follow-up letter, no form of reminder notice, no monthly statement, no e-mail message, no text message, and no telephone call.
10. I similarly know of no form of follow-up by Kim Ramsay, or by anyone on behalf of the Applicant, to the purported Fee Option Invoice accompanying the purported letter of

November 24th, 2022, no follow-up letter, no form of reminder notice, no monthly statement, no e- mail message, no text message, and no telephone call.

11. I also have no idea why the Applicant's purported Fee Option Invoice, purportedly both dated and posted internally by the Applicant on June 20th, 2022, would not have been sent to me until more than five months later.

12. I have been in business for decades, and in fact have carried on several different types of business endeavours for decades.

13. In all of my business endeavours, I have issued invoices to customers on thousands of occasions.

14. For each invoice issued to a customer which is not paid within the net period I stipulate on the Invoice, I ensure that follow-up statements are issued to that customer, usually on a monthly basis.

15. The purpose of the follow-up statements is to remind the customer what is owed, and to list all of the customer's outstanding invoices as they are as of the dates of the statements.

16. Also in all of my business endeavours, I have received invoices from my suppliers, also on thousands of occasions.

17. For each invoice issued to me from one of my suppliers, which is not paid within the net period my supplier stipulates, follow-up statements are issued to me by that supplier, usually on a monthly basis.

18. [Redacted]

19. [Redacted]

20. [Redacted]

21. I know of no collection or legal action taken by the Applicant against the Respondent with respect to the Applicant's purported Fee Option Invoice of June 20th, 2022, now said by the Applicant to have been issued to the Respondent on or about November 24th, 2022

22. It is factually correct for Kim Ramsay to have deposed at Paragraph 18 of her Affidavit that I did not respond to the purported letter of November 24th, 2022, but that was only because I never received the letter.

23. I did not know of the purported letter of November 24th, 2022, or of the purported Invoice of June 20th, 2022, until the within legal proceedings commenced.

24. Even the letter to the Respondent from Marc Dunning of May 7th, 2024, as deposed to by Graham Scott at Paragraph 48 of his Affidavit, made no mention of the purported letter o f November 24th, 2022, nor of the purported Fee Option Invoice dated June 20th, 2022.

25. [Redacted]

26. For the purposes herein, I have been forced to retain another lawyer, and another law firm.

27. At Paragraphs 42, 43, and 44 of the Scott Affidavit, Graham Scott has deposed to an August, 2022 meeting he had had with Kim Ramsay.

28. I was not privy to any such meeting, and I had no knowledge of until I reviewed the Scott Affidavit.

29. [Redacted]

30. [Redacted]

31. It is factually incorrect for Graham Scott to have deposed at Paragraph 46 of his Affidavit that I ignored Kim Ramsay's purported letter of November 24th, 2022, as I could not have ignored what I never received.

32. It is also factually incorrect for Graham Scott to have deposed at Paragraph 44 of his Affidavit that he called me "in or about October 2022" to tell me about Kim Ramsay's purported pending letter of November 24th, 2022, as no such call from Graham Ascott was ever received by me.

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34. The Buy-Back Agreement related to the Applicant's sale, to the Respondent, of the Property at issue in these proceedings ("the Property").

35. Both the Buy-Back Agreement and the Property are as set out and defined by the Applicant in its Notice of Application in Chambers by which these proceedings have ben commenced.

36. The transaction related to the Applicant's sale of the Property to the Respondent "closed" on or about January 28th, 2019.

37. Since that time, the Respondent has paid the Applicant's assessed against the Property.

38. I have inferred from the "evidence" deposed to by Graham Scott at Paragraph 28 of his Affidavit, that it is his opinion that the work undertaken by the Respondent on the Property is minor, or insignificant.

39. If I have inferred correctly, Graham Scott is plainly and simply incorrect.

40. The Property is a total of approximately four and two-tenths (4.2) acres in size.

41. At the time of its sale to the Respondent, the Property comprised only approximately one and twenty-one one hundreds (1.21) of useable land, all of the rest being swamp or other form of wetland.

42. It was thus know by the Applicant at the time of its salle of the Property to the Respondent that it would have to be both filled and levelled, all at the expenses of the purchaser.

43. Without limitation, the Respondent's filling and levelling of the Property comprised to following work:

    The entire 4.2 acres of the Property was required to be stripped and grubbed of unsuitable materials - generally organic materials such as tree trunks, tree stumps, free branches, leaves, and other forms of miscellaneous vegetation;

    Approximately eight hundred cubic meters (800m3) of rock on the Property was required to be mechanically broken up; and,

    Approximately six thousand, seven hundred cubic meters (6,700 m3) of structural fill materials were required to be imported into the Property, spread and compacted in engineered lifts (or layers) such that the Property would be suitable for the installation of strip footings, and slab-on-grade foundation construction.

44. This type of work comprises my primary business, and it has been my primary business for decades.

45. [Redacted]

46. [Redacted]

47. [Redacted]

48. [Redacted]

49. Conceded by the Respondent was that this work was undertaken internally, using materials and equipment owned and operated by some of my other business interests, and using employees who might otherwise have been on lay-off.

50. This work nevertheless added value to the Property, in that its useable area was increased in size by more than three times.

51. [Redacted]

52. Well known is that the initial worldwide COVID-19 pandemic was declared by the World Health Organization ("WHO") in or about the middle of March of 2020.

53. As reported by Canadian governments at every level, and in the mainstream news media, since its arrival in Canada, on or about January 25th, 2020, COVID-19 infected millions of Canadians, and killed more than 51,000 Canadians.

54. Among the various combatant measures adopted in March of 2020 by both the Canadian and Nova Scotia governments as a result of the COVID-19 pandemic, were states of emergency.

55. Related to those states of emergency, were the all but complete shut-downs of most forms of commercial activity, public education, public transportation, the Courts, recreational facilities, gymnasia, most personal services outlets, many forms of public service, public entertainment, religious services, many employment activities, and freedom of association. (See, for example: *Citizens Alliance of Nova Scotia v. Nova Scotia (Health and Wellness)*, 2024 NSSC 253 (per: Keith, J., at Paragraphs 1 through 8).

56. The referenced shut downs, partial shut downs, and other restrictive measures, were of types and kinds which the Respondent had never seen or experienced before throughout any of its decades in business.

57. The COVID-19 pandemic shut downs, partial shut downs, and other restrictive measures, dramatically affected the local Nova Scotia construction industry generally, and the Respondent more specifically.

58. The availabilities of building trades and labour, and the availabilities of building materials and supplies were all sharply curtailed and reduced, and negatively affected the Respondent's ability to carry on business.

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60. In addition, the Government of Canada ("Canada") adopted a variety of financial compensation measures which were designed and intended to provide financial relief to Canadians affected by the shut-downs in the workforce.

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>
> Tthe Canada Recovery Benefit ("CRB")- available between September 27th, 2020, and October 23rd 2021; and,
>
> The Canada Worker Lockdown Benefit ("CWLB") - available between October 24th, 2021, and May 7th, 2022.

62. [Redacted]

63. [Redacted]

64. [Redacted]

65. [Redacted]

66. [Redacted]

67. [Redacted]

68. [Redacted]

69. [Redacted]

70. [Redacted]

71. [Partially redacted] .... the Suez Canal was blocked as a result of a navigational error by the command of the 200,000-ton container ship "Ever Given" between March 23rd and March 29th, 2021.

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75. This too was a well-known event, which was consistently presented and discussed in the international and in the local media.

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77. Notwithstanding all of any of these limitations, the Respondent worked diligently in its attempt to move ahead with development requirements pursuant to the provisions of the Buy- Back Agreement.

78. In addition to the excavation work to which I have deposed above, the Respondent applied for and obtained a driveway and right-of-way permit in February, 2019, and an on-site septic disposal system permit in October, 2019.

79. The Respondent's applications for these permits were made to the Applicant.

80. Additionally, the Respondent made application to the Applicant, on or around August 22nd, 2024, for a Building Permit to allow for the final construction on and improvement pf the Property.

81. Included with the Respondent's application for the Building Permit were all required documentation and drawings.

82. Despite receiving the Applicant's verbal representations and assurances that the Building Permit referred to above would be forthcoming . It was later denied.

SWORN TO AND AFFIRMED
BEFORE ME, this 19th day of February, 2025)

)
) **Arni Lively**
)
)
)
)
)

Gavin Giles, K.C.,
A Barrister of the Supreme Court
of Nova Scotia

46163017