

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Doug Boehner Trucking & Excavating Ltd. v. United Gulf Developments Ltd. , 2006 NSSC 130

**Date:** 20060421  
**Docket:** S.H.192468  
**Registry:** Halifax

**Between:**

Doug Boehner Trucking & Excavating Limited

Plaintiff

v.

United Gulf Developments Limited, and greater Homes Inc.

Defendants

**And Between:**

United Gulf Developments Limited, and Greater Homes Inc.

Plaintiffs by Counterclaim

-and-

Doug Boehner Trucking & Excavating Limited and W. Eric Whebby Limited

Defendants by Counterclaim

-and-

W. Eric Whebby Limited

Third Party by Counterclaim

-and-

Garden Crest Developments Limited

Fourth Party by Counterclaim

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**Judge:** The Honourable Justice Charles E. Haliburton

**Heard:** March 6, 7, 8 & 9, 2006 in Halifax, Nova Scotia

**Written Decision:** April 21, 2006

**Subject:** Negligence of contractor delivering contaminated soil to residential development: Sale of Goods Act: Nuisance

**Summary:** Whebby contracted to excavate and remove soil from one development site and sold the material to Boehner for use in landscaping residential development. Materials delivered by Whebby, stock piled and later distributed by Boehner. Material subsequently proved to be contaminated and requested to be removed and delivered to landfill under DOE supervision.  
Contracts existed between Garden Crest & Whebby  
Whebby & Boehner  
Boehner & United/Greater Homes  
Contracts creating duties, duties breached by Garden Crest/Whebby & Boehner. United failed to mitigate problem to limit its loss.  
Garden Crest failed in duty to advise Whebby of contamination.  
Whebby failed to monitor quality of material which they knew was required to be “clean”.  
Boehner failed to monitor “clean” fill and proceeded to landscape development with material obviously unfit for intended purpose.  
United, having discovered unsuitability, failed to halt delivery/landscaping with the material.  
United incurred expense of \$500,188 in remediation.  
All parties contributing in various measure to the loss suffered.

**Issue:** Whether contractor liable in negligence to third party for supply of contaminated material.  
Whether sales of goods act protections are triggered in circumstances.  
Whether supply of contaminated material gives rise to action in nuisance.

**Result:** Judgment for United/Boehner against Garden Crest \$36,002 and Whebby \$221,510

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