

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Annapolis Valley Peat Moss Co Ltd v. Barone Monti Trading Inc, cob  
Monti Peat Moss, 2004 NSSC 229

**Date:** 20041109

**Docket:** S.AR. No. 209271

**Registry:** Annapolis Royal

**Between:**

Annapolis Valley Peat Moss Company Ltd

Plaintiff

v.

Barone Monti Trading Inc., in its own name and carrying on business under the  
style and name of Monti Peat Moss

Defendant

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**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** October 26, 2004, in Annapolis Royal, N.S. Last submission received  
October 29, 2004.

**Subject:** Seizure under Execution Order of goods claimed by party other than  
defendant. **Civil Procedure Rules** 53.08(2) and 50.03.

**Summary:** The plaintiff entered default judgment against the defendant and in April,  
2004, seized chattels in the name of the defendant under an execution  
order. The applicant intervened claiming the defendant had acquired the  
chattels solely as agent for the applicant and that the defendant had no  
interest in the chattels. The chattels consisted of equipment used to  
process, compress and pack peat moss. The chattels were purchased at a  
creditor's auction held in July, 2003. One Golods represented to the  
auctioneer and completed a bidder's registration form in the name of the

defendant and was successful at the sale. The money used to purchase the chattel was that of the applicant. The invoices for the bidder's registration form were made out in the name of the defendant, both at the time of the auction and subsequently at the request of the defendant. The defendant company was an Ontario company that purchased and resold peat moss. The applicant operated a large mushroom growing operation in Pennsylvania and used peat moss as one ingredient in connection with his business. He did not own peat bogs, process peat, or sell peat moss. The applicant was the secretary and one of two directors of the defendant, but neither he nor the President of the defendant could say what share holdings, if any, the applicant, or the President, or anyone else, held in the defendant. The owner of the building in which the chattels were situated testified that Golods advised him at the auction that he represented the defendant and further testified that the defendant negotiated with him after the auction, for the purchase of the building in which the chattels were situated and for arrangements to remove the chattels. In July, 2004, three months after the seizure under execution order, the applicant requested the auctioneer to change the invoice for the chattels.

**Result:**

Onus was on the applicant to show that the defendant acquired the property in its name but only as agent for the applicant. The applicant failed to discharge this onus.

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