

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Zinck v. Halifax (Regional Municipality)*, 2007 NSSM 12

**Date:** 20070430

**Claim:** SCCH 275493

**Registry:** Halifax

**Between:**

Stephen Zinck, Zbigniew Kuczynski, o.b.a. Zibi's Autos Unlimited

Claimants

v.

Halifax Regional Municipality

Defendant

**Adjudicator:** W. Augustus Richardson, QC

**Heard:** April 17, 2007 in Halifax, Nova Scotia.

**Appearances:** Stephen Zinck, for himself and the other Claimant  
Sarah J. Knight, for the Defendant

**By the Court:**

[1] This claim arises out of the Rolling Stones concert that took place in Halifax in September 2006. The claimants operate a car repair and body shop located adjacent the Halifax Commons, where the concert took place. They claimed compensation from both the concert organizers and the Defendant for the disruption to their business they say was caused by the various traffic restrictions instituted by the Defendant in the days surrounding the concert. They could get no satisfaction. So they launched this claim against the Defendant.

[2] By way of background to this claim, the Claimants' business ("Zibi's") is located on the "north-east" corner of Cornwallis and North Park Street. (I place compass directions in quotation marks because they are only approximates, and are used as much for visualization purposes as for compass headings.)

[3] Cornwallis runs "east west" and ends at North Park Street. North Park Street runs "north and south." Its north bound and south bound lanes are divided by a median.

[4] The Halifax Commons, a large green space or park, runs along the "west" side of North Park Street. Its "northern" border is formed by Cunard Street, which runs "east west." Its "southern" border is formed by Cogswell Street, which also runs "east west."

[5] The concern promoters had decided to erect the Rolling Stones concert stage in the “south east” corner of the Commons. The stage was enormous. Its parts and pieces were trucked into Halifax as part of a convoy of upwards of 50 or more tractor trailers and other vehicles. The stage hands needed a staging area to park and unload their trucks, and then move the stage components to their place of assembly. The staging area had to be as close to the final place of assembly to minimize both the carrying distance and the damage to the Commons turf that could otherwise be caused by trucks or other vehicles driving over the grassed areas.

[6] The Defendant, in conjunction with the concert promoters, determined that the southbound lanes of South Park Street, between Cornwallis and Cogswell would have to be closed from September 17-25, 2006, to be used as the staging area. The Defendant subsequently decided to close all of North Park running between Cogswell and Cunard Street, because of concerns for the safety of the stage and assembly hands as they moved about South Park street during the assembly of the stage. The concert itself took place on Saturday, September 23<sup>rd</sup>. On that day all the streets bordering the four sides of the Commons were barred to vehicular traffic.

[7] The Defendant advertised the traffic restrictions and street closures well in advance. It distributed newsletters to people and businesses in the neighbourhood. The Claimants received at least one of these newsletters. They were aware of the restrictions.

[8] The Claimants run no advertising other than their Yellow Pages ad. Their business as an auto repair and body shop depends upon:

- a. drive-by's;
- b. first time customers who may or may not have made appointments beforehand;  
and
- c. existing customers.

[9] Mr Zinck agreed that save for about an hour or so on Monday, September 25<sup>th</sup> the street closures and traffic restrictions that were put into effect never completely blocked all access to his business. Customers could always access his business by driving “west” along Cornwallis Street. However, because Cornwallis was blocked where it entered South Park Street, customers attempting to do this would experience delays and traffic jams as other cars, blocked at South Park, turned back. As well, customers who might normally have accessed the business via North Park street could not; or were faced with traffic jams of such duration that they would give up the attempt.

[10] Mr Zinck, who gave evidence on behalf of the claimants, stated that they experienced a decline in business during the week of September 18<sup>th</sup>-22<sup>nd</sup>. (They are not open on the weekend.) He said they also lost business on Monday, September 25<sup>th</sup>, during which time the concert stage was being disassembled.

[11] Mr Zinck also objected to the Defendant's decision to close or restrict traffic in way in which it did. He said that the Defendant could and should have closed Cunard rather than South Park, letting the concert promoters use an entrance to the Commons on the Cunard Street side of the park.

## **The Issues**

[12] As I understand the Claimants' claim, there are three issues:

- a. Did the Defendant have the power to close or restrict the streets that it did;
- b. If it did, was it negligent in the exercise of that power; and
- c. If it was negligent, did the Claimants establish any loss resulting therefrom.

### **A: Power to Close Streets**

[13] Section 322 of the *Municipal Government Act*, RSNS 1989, c.18, as amended, permits a city such as the Defendant to temporarily close streets or restrict traffic thereon under certain conditions:

- 322 The [city] engineer may
- (a) permit a person to use a portion of a street for construction or other temporary purpose;
  - (b) temporarily close a street, or part thereof, for the protection of the public, to allow work to be done on the street or on lands and buildings adjacent to the street or for any other purpose beneficial to the public interest.

[14] The Defendant called evidence from its communications, traffic engineering and major event departments. I was satisfied on this evidence that the Defendant was acting "for the protection of the public" within the meaning of s.322(b) when it imposed the traffic restrictions and street closures that it did. Assembling and dis-assembling the huge concert stage required a large number of workers and equipment moving about in a restricted area that bordered and crossed busy streets. Not to have closed those streets would have been to risk property damage and injury or death to both motorists and concert employees as well as pedestrian members of the public.

[15] I am accordingly satisfied that the Defendant did have the power or authority to close or restrict the use of streets in respect of the Rolling Stones concert.

### **B: Was There Any Negligence?**

[16] I assume here (without deciding) that the power exercised by the Defendant under s.322(b) represented an operational rather than policy decision. On that assumption the Defendant was required to exercise its power in a reasonable way. And on the evidence I was satisfied that it did. It advertised the closures ahead of time, and provided maps and descriptions of alternate routes. It provided newsletters to residents and businesses in the area. All of this would have enabled customers to take alternate routes, or make appointments for different days. It provided the same opportunity to businesses such as the Claimants to so advise their customers. As well, the Defendant ensured that (with the exception of an hour or two) the Claimants always had at least some access to their business. It did all that it reasonably could to limit the disruption that would be caused to the Claimants, short of banning the concert altogether.

[17] I do not accept Mr Zinck's argument that the Defendant could have arranged to have the staging area on Cunard Street. While the Defendant could have done that, I am satisfied that such a step would have increased the damage done to the grounds of the Commons. Moreover, there was no evidence that such a step would have resulted in any less disruption to the Claimants' business, since presumably some customers would in normal course approach it along Cunard Street.

### **C: Was There Any Loss to the Claimants**

[18] Even if I had found the Defendant negligent in the exercise of its powers under s.322, the Claimants would still have had to prove that damage was caused to them by that negligence. But the Claimants' evidence on this point was not convincing.

[19] Mr Zinck's evidence of income loss consisted of his evidence that:

- a. on a few days no new customers showed up; and
- b. his evidence that a few customers who had scheduled appointments for that week did not show up at the appointed time; and
- c. the income for September was less than the income for October.

[20] However, Mr Zinck did not know whether customers who did not show up the week of the concert showed up the next week after the concert was over. Nor did he know whether the business's overall annual income was less for 2006 than it was for 2005. Indeed, he stated that it was roughly the same. He also admitted that business income fluctuated from month to month in any event, and that, for example, January might be a busy month one year, but not the next.

[21] This evidence did not satisfy me on a balance of probabilities that the Claimants had experienced a loss of business as a result of the concert. While common sense might suggest that some customers gave up trying to get to the business that week, it also suggests that such customers would try the next week. To prove a loss the Claimants had to establish not just a disruption in their business, but that they were not able to recover that loss in the next weeks.

The Claimants business was not so busy that they could not have accommodated a customer who missed an appointment one week (hence causing loss to the Claimants) by giving them an appointment the next (thereby recovering that loss). And indeed, Mr Zinck's evidence that the 2006 income was not significantly different from that in 2005 suggests—or at least is equally consistent with—a finding that that is in fact what happened.

[22] Since the onus is on the Claimants to prove that there was a loss, and since they have failed to meet that onus, I would have find that they had failed to establish one of the necessary elements of a claim based on negligence.

[23] I will accordingly make an order dismissing the Claimants claim.

Dated at Halifax, this 30th day of April, 2007

Original: Court File )  
Copy: Claimant )  
Copy: Defendants )

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W. Augustus Richardson, QC  
ADJUDICATOR