

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89

**Date:** 20161214

**Docket:** CA 451122

**Registry:** Halifax

**Between:**

Shannex Inc.

Appellant

v.

Dora Construction Limited and Myron Upham

Respondents

**Judge:** The Honourable Justice Joel Fichaud

**Appeal Heard:** November 22, 2016, in Halifax, Nova Scotia

**Subject:** Summary judgment – Unjust enrichment

**Summary:** Shannex built a new assisted living facility. Dora Construction was its general contractor. Then the pipes froze and remediation was needed. Representatives of Shannex and Dora met with Mr. Upham, the remediation contractor, to discuss what was to be done. After his work, Mr. Upham sent two invoices. Both Shannex and Dora refused to pay one of the invoices. Mr. Upham threatened to lien Shannex’s facility. Then Shannex and Mr. Upham, each through counsel, negotiated a settlement. The settlement included a payment to Mr. Upham and Mr. Upham’s signed release of all claims against Shannex.

Five years later, Mr. Upham sued Dora and Shannex for the unpaid amount of the disputed invoice. Mr. Upham’s pleading included a claim for unjust enrichment. Dora crossclaimed against Shannex, and Shannex third-partied Mr. Upham on the crossclaim. Under Rule 13.04(1), Shannex moved for summary judgment (1) to dismiss Mr. Upham’s claim against

Shannex, and (2) for judgment against Mr. Upham on Shannex's third-party claim. In the Supreme Court, the chambers judge dismissed Shannex's motion for summary judgment.

Shannex appealed to the Court of Appeal.

**Issues:** Did the judge err in law by dismissing Shannex's motion for summary judgment?

**Result:** The Court of Appeal allowed the appeal in part. The Court set out the test for the amended Rule 13.04. Shannex satisfied the test on its motion for summary judgment to dismiss Mr. Upham's direct claim against Shannex. In that respect, the chambers judge erred in his view of the elements of unjust enrichment. Shannex's motion for summary judgment on its third-party claim did not satisfy the test for summary judgment, and the Court dismissed that ground of appeal.

*This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 22 pages.*