

CASE NO.

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SOUTH SHORE HOME &
GARDEN LIMITED and
JUERGEN ZIEGLER

- and -

CLARENCE THIBEAU

Appellants

Respondent

C.A. No. 157868

Halifax

CHIPMAN, J.A.

[Cite as: South Shore Home & Garden Ltd. v. Thibeau., 1999 NSCA 146]

APPEAL HEARD:

November 23, 1999

JUDGMENT DELIVERED:

November 25, 1999

SUBJECT:

PRACTICE - accepted offer to settle - application for summary judgment pursuant to Civil Procedure Rule 41A.08(1)

SUMMARY:

During discovery examinations in proceedings between the parties they signed a memorandum of agreement providing that the outstanding proceedings would be held in abeyance for 120 days. During that time, the appellants were to offer two projects to the respondent for bidding and, on certain conditions, were to award a contract to the respondent for the respondent's bid price, plus the sum of \$6,250.00. Upon the signing of the contract, the proceedings were to be dismissed. No contract was in fact offered to the respondent by the appellants within the period of 120 days. The respondent applied to the Chambers judge for summary judgment pursuant to Rule 41A.08(1). The Chambers judge ordered the outstanding proceedings dismissed and awarded judgment to the respondent against the appellants for \$6,250.00.

ISSUE:

Was the memorandum of agreement an accepted offer to settle that could be enforced by summary judgment pursuant to **Civil Procedure Rule 41A.08(1)**?

RESULT:

The Court of Appeal allowed the appeal and held that the memorandum was not an accepted offer to settle that could be enforced pursuant to **Civil Procedure Rule 41A.08(1)**. It did not settle the litigation but simply provided for its being held in abeyance pending agreement. The result was further disagreement between the parties. The order of the Chambers judge was set aside and the appeal allowed without costs.

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