2008S.C.T. 283589
Date: 20081230

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Maine v. Colchester (County), 2008 NSSM 85

BETWEEN:

PERCY MAINE and MARION USHER

CLAIMANT

-and-

MUNICIPALITY OF THE COUNTY OF COLCHESTER

DEFENDANT

DECISION

Alain Bégin, Esq.
McLellan, Richards & Bégin
Barristers & Solicitors
779 Prince Street, PO Box 1064
Truro NS B2N 5G9

Solicitor for the Claimant

Dennis James, Esq.
Paterson Law
Barristers & Solicitors
10 Church St., PO Box 1068
Truro NS B2N 5B9

Solicitor for the Defendant

This matter came on for Hearing on June 18, 2008, September, 29, 2008, at Truro, Nova Scotia.

The claimants claim wrongful removal/conversation of property belonging to the claimants and claim damages in the amount of $25,000.00. The defendants claim they took only those items that were dangerous and/or unsightly and in such poor condition that they had no value and that Marion Usher has no claim as she has no ownership or rights to the property removed. The defendants counterclaim for costs of recovery in the amount of $3,983.10, plus interest.

BACKGROUND:

The claimant, Marion Usher is the owner of property situate at 11834 Hwy #2, Onslow, in the County of Colchester and the claimant, Percy Maine, is the lessor or occupant of a portion of the property owned by Ms. Usher and has used the property for 40 years or so for storage of used trailers, parts and other items that the defendants, the Municipality County of Colchester, has referred to as "junk and debris".

As a result of complaints about the unsightliness of the properly, the defendant investigated the property and ultimately issued a Dangerous and Unsightly Order, deeming the property dangerous and unsightly and ordering the removal of all miscellaneous junk and debris from the property, or storing it in a building or in such a manner that it could not be seen from the road or from neighboring properties. The

Order also provided for the removal of all used mobile homes from the property, however, that portion of the Order was removed by a decision and Order of the Honourable Justice J. E. Scanlan, dated June 1, 2005. In his written decision, Justice Scanlan states at paragraph 3, that the applicant (claimant) indicates to the Court they were prepared to deal and live with an Order which would require the removal of all miscellaneous junk and debris from the property, and/or in such manner that it cannot be seen from the road or from the neighboring properties.

Unfortunately, the claimants did not take the steps the defendant deemed necessary to remedy the dangerous and/or unsightly premises and as a result, retained the services of a contractor to remove the "junk and debris" from the property and thereafter prepared an invoice for the cots associated with the removal and the tipping fees paid to the landfill site.

Applicable Statues:

Section 3 (r) of the *Municipal Government Act*, R.S.N.S. 1998, c. 18 as amended, sets out in the definition section "dangerous and unsightly" as follows:

> (r) "dangerous or unsightly means partly demolished, decayed, deteriorated, or in a state of disrepair so as to be dangerous, unsightly, unhealthy, and includes property."
>
> (i) ashes, junk, cleaning of yards or other rubbish or refuse or a derelict vehicle,

visual, items of equipment or machinery, or bodies of these or parts thereof…

(iii) any other thing that is dangerous, unsightly, unhealthy, or offensive to a person

and also includes, property, a building or structure

(iv) That is in a ruinous or dilapidated condition,;

(v) the condition of which is seriously depreciates the value of land or buildings in the vicinity;

(vi) that is in such a state of non-repair as to be no longer suitable for human habitation or business purpose;

(vii) that is or allurement to children who may play there to their danger

(ix) that is unsightly in relation to neighboring properties because the exterior finish of the building or structure or the landscaping is not maintained."

Section 344, of the *Municipal Government Act*, requires that:

i. "Every property in a municipality be maintained so as not to be dangerous or unsightly.

Section 346, 348, and 352, set out the power of Council.

346. (1) Where a property is dangerous or unsightly, the council may order the owner to remedy the

condition by removal, demolition or repair, specifying in the order what is required to be done.

348. (1) In this Section, "order" means an order made by the administrator, committee, council or court pursuant to this Part…

(3) Where the owner fails to comply with the requirement of an order within the time specified in the order, the administrator may enter upon the property without warrant or other legal process and carry out the work specified in the order.

352 (1) the administrator may, for the purpose of ensuring compliance with this Part, enter in or upon any land or premises at any reasonable time without a warrant.

Section 353 deals with liability:

353 No action shall be maintained against a municipality or against the administrator or any other employee of a municipality for anything done pursuant to this Part."

ISSUES:

(1) Does s. 353 of the *Municipal Government Act*, bar the claimant's action?

(2) Did the removal of the various pieces of property in question constitute conversation?

(3) Where the items of property of any value and if so, has that value been accounted for by the defendant?

(4) Is the defendant municipality entitled to recover costs of the clean up?

EVIDENCE:

A number of witnesses were called by the claimant, including:

Marion Usher, who being one of the claimants, is the owner of the property situate at 11834 No. 2 Hwy, Onslow, Nova Scotia. She is retired and has been a friend of Percy Maine, the second claimant, for approximately 15 years. Ms. Usher helps Mr. Maine carry on a used mobile home business from the same property. This used mobile home business was described by Justice Scanlan in his written decision of December 7, 2007, as "more accurately described as a junk yard for trailers". She described the business as used mobiles, axles, frames and anything used to move them. She was

present on June 8, 2005, when the defendant's agent came to the property to clean up the premises pursuant to the Order issued by the Municipality on January 18, 2005 and later amended by Order of Justice Scanlan dated June 1, 2005. Mr. Maine was not at the property, as he had been removed by the RCMP earlier that morning as a result of alleged threats he had made at the Council meeting on January 13, 2005, to physically prevent any municipal employee from entering onto the property (Exhibit #D-16).

Ms. Usher states she made up a list of things taken from the property. When asked how she made up the list, she stated it was from her memory. She stated she helped with the paper work and showed people around. When asked if she had paperwork, invoices or other evidence of the mobile homes; parts; etc., that were on hand, she stated she had no records. When asked the condition of the mobile or trailer frames that at one time were parts of a mobile home, she described one as being fairly new, but the others were there on the property for considerable years but in her opinion usable.

Ms. Usher was referred to the steel frame called a double-decker. She stated this was used at one time for carrying hard top trailers. She stated it didn't have any bends in it. She was asked about two one-thousand gallon tank. She wasn't sure what they were used for, or if they were for sale. She was asked about a 100 gallon tank and stated she thought it had a couple of years to go before it was out dated. She did not know the value of the tanks. It is noted these same tanks are shown on a list she said she prepared from memory and she placed a value of $1,000 on each of the two, one thousand gallon tanks.

Exhibit #2, consisted of six pages, two of which were estimates. She asked Gary Ross to prepare an estimate for the replacement costs of manufacturing new frames for five different sized trailer frames. The estimate totaled $25,227.05. The second estimate is from Sylrick Enterprises who prepared an estimate for building a mobile home hitch, and the costs of a new frame and mounted fuel tank. She stated she had no knowledge from any records or otherwise what Mr. Maine paid for the frames or whether they were ever part of a mobile trailer at one time. She had no papers or invoices for these items. She had no records of Mr. Maine's inventory, profits, sales, etc. She stated her work experience was in regards to boarding animals.

Ms. Usher acknowledged receiving notice of the "dangerous and unsightly" premises letter as well as the Order of January 18, 2005, and she acknowledged she took no steps to clean up the property between October 29, 2004, and June 8, 2005. She acknowledged that she had informed the employee, David McElhinney, by letter dated December 6, 2004, that the County should be dealing with Percy Maine on this matter. (Exhibit #D-4). Ms. Usher also acknowledged seeing the Order of January 18, 2005, posted on the property. She attended the hearing before Justice Scanlan, as a party and was represented by Mr. Bégin.

Exhibit #D-9, consisted of 21 pages of photographs, two per page, taken on June 8, 2005, by the defendants. Ms. Usher was shown the pictures on cross-examination.

Page 1, shows pictures of old trailer frames. She was asked if these frames showing rust and holes that were representative of the condition of the "frames" on the property in June, 2005, and she answered "obviously". Other pictures in the Exhibits show old rusted and dilapidated frames and parts strewn about the property. She referred to picture 10 as the "junk pile". She was referred to page 11 of the photographs and agreed it was typical of her yard in June, 2005, showing rusted and corroded parts, including frames, axles, tires, old lumber, oil tank, all that they were there for a long period of time.

Ms. Usher prepared a list, Exhibit C-2, of items she recalled from memory that were removed by the defendants. She placed a value of $1,000 to the 40' x 10' frame. Mr. Ross, estimated the cost to rebuild a 40' x 10' frame was $5,746.00. Ms. Usher did not tell Mr. Ross the value she put on this frame; she simply asked him to prepare an estimate to replace it.

Richard Mingo, prepared the Sylrick Enterprises estimate dated December 1, 2005, for fabricating a mobile hitch frame and a frame mounted fuel tank. His evidence was interesting and helpful somewhat to understand Ms. Usher's evidence. Mr. Mingo stated Percy Maine wanted him to do up an estimate for these items that came to $5000-$6,000. He stated he normally does not do up an estimate in this fashion and had he known it would be subject to the court's review, he would have done it up differently. He stated he was shown no pictures by the claimants as to the condition of the frame he was to manufacture.

Mr. Mingo lives near the claimant's property, having lived there most of his life. He described it as a mixed bag of items in disarray. He stated the rusted frames and general condition of them and parts amount to scrap steel.

Gary Ross was called by the claimants. He prepared the estimate dated December 7, 2005, regarding the trailer frames. He is a welder by trade. He stated he was asked by Marion Usher to prepare an estimate to replace the size of frames referred to in his estimate. He was not asked to give an opinion on the condition of the frames in the pictures shown in Exhibit #9; how old the frames were, or the value of the frames.

Neither of the witnesses who prepared estimates for the claimant viewed the "frames"; hitch; or mounted fuel tank, and therefore could not give evidence of their condition and therefore were not able to assist the court in finding that these pieces of equipment or parts were dangerous or unsightly. However, I accept Mr. Mingo's evidence that based on the photographs he was shown at trial, the equipment or parts were in a dilapidated condition and only good for scrap metal.

I find the evidence of Ms. Usher weak at best, and totally unreliable in establishing there was on the property on June 8, 2005, the various frames shown on Ms. Usher's list, Exhibit #2, that she prepared from memory. There was no evidence that Ms. Usher obtained this information from Percy Maine; she had no photographs of the parts and frames; she had no invoices or other documents or papers to show these frame parts were on the property on June 8, 2008. She stated she showed people around the yard,

and helped Mr. Maine with paper work, but had none at trial and did not indicate she had proof of these elsewhere.

I completely reject her evidence as to the value of the tanks shown on the list, Exhibit #2, and having heard the method by which the two estimates were prepared by Mr. Ross and Mr. Mingo, I find the estimates they prepared are unreliable. I do accept the evidence of Mr. Ross and Mr. Mingo as to the state of the property owned by Ms. Usher from which Mr. Maine carried on his used mobile home "junk" yard.

The claimant's property fronts highway No. 2, in Onslow. The photographs introduced by the defendant show many old dilapidated trailers fronting the road or can be seen from the road as well as old trailer parts, debris, and junk, and steel frames. At the back of the property are many old trailer parts; junk and debris, including old fridges and stoves; derelict vehicles; rusty and numerous steel frames and axels; old tires and wheels; old wooden blocks; old oil tanks/drums, car parts; and lumber.

Adjacent to this property are many residential properties.

Witnesses called on behalf of the defendant included:

Wayne Smith of Wayne Smith Welding Company Ltd., has manufactured heavy trailers with a GBW of 20,000 lbs. and over for over 25 years. He provided a letter dated November 15, 2007, to the Municipality after having viewed the photographs taken by

David McElhinney on June 8, 2005 (Exhibit D-9). He stated he has built a number of heavy trailers for many Provinces and has consulting experience with the Department of Transportation and Public Works on a number of safety issued pertaining to heavy trailers. His qualifications were not challenged at trial by the claimant's solicitor.

Mr. Smith stated he has been qualified as an expert witness in Supreme Court in regards to the condition of trailers, chassis, and frames; he is currently a member of the standards committee with the Department of Transportation, Safety Regulations. His experience with mobile homes is limited.

Mr. Smith expressed his opinion that the axels and suspension shown in the photographs are very poor quality, with brake linings missing; tires wore out, and electrical wiring unsafe. From a structural point, he states the steel tubing is deteriorated and the frames cannot be used to transport loads and their value is limited to scrap metal. In referring to pictures on page 11 showing the axels; he states they are rusted; bearings are missing; they have no hubs; lining and electrical wiring are broke away; tires are cracked. Picture 2, showed tubing frames rusted and he stated they could not carry weight. With regards to the I-beam frames, he states it's hard to opinion on their strength or integrity. They are rusted and no paint or primer is evident. He did note that Exhibit #2, page 3, and 4, photographs, he had not seen before and that this frame was made of angle iron which is longer lasting than tubing and on viewing these photos, he opinioned this steel was repairable. He states his opinion set out in his letter of November 15, 2007,

was based on viewing the photos with the tubing frames and that Exhibit #2, is not a trailer frame.

I am satisfied this witness viewed all the pictures in Exhibit D-9, showing the frames of trailers, axels, old tires, wiring and parts and of all the pictures that were clear enough to make an opinion, he expressed the opinion that they were rusty; bent; non-load bearing; bearings seized up and not of any use and old tires that were of no value. He stated the hitch shown in the photo #3, Exhibit #2, was pretty rusty. I accept his evidence as to the state of repair and condition of the items he viewed from the photographs.

David McElhinney has been the deputy building inspector for the Municipality of Colchester for approximately 12 years. He assists Mannie Wtihrow, building inspector for the County, in investigating complaints of dangerous and unsightly premises. He explained how he determines a premises is unsightly or dangerous by saying he visits the site, takes pictures; refers to the *Municipal Government Act* on dangerous and unsightly premises. He compares the property to the surrounding neighborhood properties and considers if it is dangerous for small children. He then meets with Mr. Withrow and sends letters to owners if the premises are deemed dangerous and unsightly. He posted the notices on the property and was present on the day the clean up was carried out on June 18, 2008. He acknowledged on cross-examination that the trailer frames shown in photograph 3, Exhibit D-9, were very close to the road. He stated he was concerned with the tank shown in photograph 3, rolling off the frame and trapping a child. He was asked what the standard practice was in cleaning up a property that was deemed dangerous and

unsightly. He stated normally they do a complete clean up but in this case they did not take everything. As a result, they took the items nearest to the main road that were either dangerous or unsightly. He referred to picture 3, Exhibit # D-9.

Mannie Withrow has been the building inspector for the past 15 years and has been the administrator of the dangerous and unsightly premises for the same period. He has a Level 2 certification from the Province of Nova Scotia. In carrying out and applying the *Municipal Government Act* Part XV, he looks at the condition of the premises and determines if in applying the definition section of dangerous and unsightly premises, s. 3(r), it is hazardous, to people and children; and if it is unsightly. He stated he has approximately 50-100 files a year under this part of the *Act*.

In the case before the Court, he stated the County had received a complaint from an adjoining property owner. After Mr. McElhinney took the pictures, Exhibit D-9, he and McElhinney reviewed the pictures and reviewed the *Act*, they formed the opinion the property was dangerous and unsightly. He described the process of sending the letter to the owner; notice of council meeting; and the Order that was prepared; the notice to the solicitor for the claimant that action was imminent; and finally the cleaning up of the property. He stated they were of the opinion the property fit the definition in s. 3(r).

Mr. Withrow stated the majority of the frames and junk as he described it, were at the front of the property near the road, easily accessible to children and dangerous to children. There was no screening; fencing, etc., that would keep the site safe for children

or obscure to public view. He stated a number of mobiles were lined up, some two deep along the entrance to the property. There was no screening or fencing between the Unser property and the two adjoining properties on either site.

Mr. Withrow stated that after non-compliance with the Order, dated January 18, 2005, he arranged for three estimates and he took the lowest of the three. He then arranged for the RCMP to give assistance in carrying out the Order as a result of Mr. Maine saying at the Council Meeting he would shoot anyone coming on his property. The RCMP escorted Mr. Maine off the property on June 8, 2005, after which Mr. Withrow attended the property all day to supervise the cleanup by the contractor retained to do the clean up under Mr. Withrow's supervision.

Before the work started, Mr. Withrow and the contractor walked around the site and viewed the frames and marked the ones deemed dangerous and unsightly. He referred to photographs, page 1, of Exhibit D-9, as being frames close to the road and he stated dangerous to children falling and playing on them. He stated the majority of the frames were rusty and in very bad shape and were dangerous and unsightly. He stated he cleaned up a number of properties over the past 15 years, in various conditions and to him this site as shown in the pictures, Exhibit D-9, was "junk". Mr. Withrow was present at all times. He stated he was present at the site from 7:30 a.m., until 6:30 p.m. Not all items shown in the photos were taken. They removed all the frames in the photos on page 1; p 9 (top photo). He stated the frames were hazardous and unsafe to children. He stated they also took some old stoves off the frame shown in picture 1. He pointed to

page 3, of D-9, and stated these pictures were typical of the property site and they cleaned this up, referring to picture 3. Mr. Withrow stated picture 4, shows the frame that was removed as well as the junk or debris shown on and around it. He did not take anything inside the mobile homes. Picture 6, shows the state of back of property. He stated it was partly visible from the road. In the bottom photo on page 6, the fridge and stove were removed but not the trailer or camper cap on top. He stated they did not take any of the items shown in the bottom photograph on page 7, as it was at the back of the property and difficult to get at, however, the old truck body shown in the top photo was removed as unsightly. Pictures on page 8 and 9, show items not removed as they were at the back of the property. Picture 10 shows debris at the end of the driveway which was cleaned up. Picture 11 shows axels and an old tank. These were not taken, as Mr. Withrow states he thought they ran out of time that day and they were at the back of the property. They cleaned up as much as possible from the front of the property. He stated some of the items in picture 12, were taken. None of the items in picture 13 were taken as they were at the back of the property and not within sight and not dangerous to children. Mr. Withrow stated they started at the front of the property and worked toward the back.

Mr. Withrow stated that at the end of the day in seeking compliance with an Order, they must look at the circumstances each time and at each place, and then make a judgment call on what is unsightly and dangerous and what can be accomplished in making the property as near as they can to being no unsightly and dangerous.

He pointed to page 18 as being junk at the back of mobile homes. It was not taken. Picture 19 shows old car which was not taken and an old camper which was not taken. It was deemed not to be unsightly where they were located.

Mr. Withrow was referred to Exhibit #2, and the pictures on page 3 and 4, they were of the same item showing in picture 5, Exhibit D-9. He stated it was rusting; it had no current sticker on it; that he had patrolled the areas for many years and saw it there. He stated it had small trees growing around it and was dangerous to children playing. It was hauled away. It was very, very close to the road. See picture 1, 2, and 3, of Exhibit #17.

I accept the evidence of Mr. Elhinney and Mr. Withrow as setting out the condition of the property and the used mobile parts, equipment, junk and debris on the date of cleanup by the County and I accept the photographs, Exhibit D-9, as setting out the condition of the premises and that of the mobile parts, equipment, junk and debris situate thereon. I find they have applied the objective test and have proven on a balance of probabilities the premises were dangerous or unsightly and unsafe for children playing around the area and that the claimants had not taken any steps to clean up the premises in compliance with the Order dated January 18, 2005, or as agreed to at the hearing on May 17, 2005.

All the debris was taken to the landfill site and the steel was taken to a scrap yard and sold. An invoice was received from Cullip Construction Ltd. with attached

breakdown of everything taken to the landfill and the tipping fee. The invoice from Cullip Construction is for $3,450.00. Mr. Withrow stated they had a quote for one day of work and they did everything they could that day to clean up the property. The salvage value of the steel came to $1,600.80.

DECISION AND LAW:

1. **Did the defendant have lawful authority to enter upon the claimant's land to carry out condition 1(b) of the Order issued by Council dated January 18, 2005?**

Section 346, sets out the powers of council to make an Order:

> 346 "(1) Where a property is dangerous or unsightly, the council may order the owner to remedy the condition by removal, demolition or repair, specifying in the order what is required to be done.
>
> (2) An owner may appeal an order of the administrator to the council or to the committee to which the council has delegated its authority within seven days after the order is made."

The Order issued by Council on January 18, 2005, provided for both the removal of the old mobile homes and the removal of miscellaneous junk and debris. The claimants appealed; it would appear only to that portion of the Order that dealt with the removal of the mobiles and the Honourable Justice J. E. Scanlan heard that appeal on

May 19, 2005. Justice Scanlan found that portion of the Order that required removal of the used mobile homes was tantamount to regulating the type of business the claimant, Perry Maine could carry on from the property and that was ultra virus of the *Act*. Justice Scanlan did not find that the defendant could not proceed with the removal of the junk and debris, and in fact, he found the claimants were prepared to live with that condition. At page 2, paragraph 3, of Justice Scanlan's written decision filed December 7, 2007, he states:

> "The applicant (claimants) indicates to the Court they are prepared to deal with and live with an order which would require the removal of all miscellaneous junk and debris from the property, destroying the building, or in such manner that it cannot be seen from the road or from the neighboring properties."

And at page 3, paragraph 4, he states:

> "I am satisfied that under the relevant legislation the municipality has authority to deal with dangerous and unsightly premises. That aspect of the legislation is not being challenged."

And at page 4, paragraph 7, Justice Scanlan states:

> "…In terms of unsightliness of the property, the removal of the miscellaneous junk and debris from the property would seem appropriate. There is nothing in paragraph (b) which would seem inappropriate."

I find the defendants took all necessary steps to inform the claimants that as a result of their inaction in addressing condition 1(b) of the Order issued by Council dated January 18, 2005, the defendant would obtain estimates for the costs of cleaning up the miscellaneous junk and debris that was considered dangerous and/or unsightly. Section 348 (3) of the Act grants this authority.

> "(3) Where the owner fails to comply with the requirements of an order within the time specified in the order, the administrator may enter upon the property without warrant or other legal process and carry out the work specified in the order."

The claimants had the benefit of Justice Scanlan's decision made on May 17, 2005, and the Order signed on June 1, 2005, as well as the letter dated May 26, 2005, from the solicitor for the defendant to the claimant's solicitor stating that the County was proceeding with getting estimates of the clean up and that "the work on that is imminent."

2. Was the property dangerous or unsightly and did those items referred to as "junk and debris" fall into the definition?

Section 3(r) of the *Act* defines property dangerous or unsightly. The burden of proving a property is either dangerous or unsightly is placed upon Council who makes the Order. It is an objective standard. MacAdam J., in **Aloni v. Chester District (Municipality)**, 1996 145 N.S.R. (2d) 56 (N.S.S.C.) summarized the standard as that which "a reasonable person viewing the property in that setting at that time would find it to be unsightly."

I have carefully reviewed all the evidence which the defendant Municipality relied on in forming their decision that the property was either dangerous or unsightly

both in terms of the whole property and the individual items thereon, in that setting and at that time.

The oral evidence from the various witnesses, and the exhibits and evidence, disclose that old, rusty and dilapidated frames with holes in them; miscellaneous pieces of equipment, such as old tires; axels; lumber; fridges; stoves; and other debris, were stored in the yard, both at the front and rear of the property, much of which was left there for years, strewn about the yard. There was no barriers, fences, or lattice, to prevent children from entering upon the property or concealing it from the view of neighboring properties. I find that a reasonable person viewing the property in that setting at that time would construe it to be dangerous property, or unsightly. The large car carrier that was located very near the road and there for many years, was, I find dangerous to children who play in the neighborhood and the defendants were acting within their authority to remove it.

I find that there was sufficient evidence before Council to form the decision the property was dangerous or unsightly and the defendant has met the burden in civil law. There was evidence upon which an objective finding could be made. This authority was confirmed by Grant J., in **Kings County v. Witter** (1991), 101 N.S.R. (2d) where it was stated:

> "Council is an elected body to which the legislation has granted the jurisdiction and authority to make such a finding.

> It may be that I should more properly determine if there was some evidence upon which council could make such a finding."

I find no evidence to support the claimant's argument that the defendant removed inventory from the property that was not dangerous or unsightly and that was contrary to the decision of Justice Scanlan. I accept the evidence of Wayne Smith, David McElhinney and Minnie Withrow as to condition and location of the various items that were removed from the property that Mr. McElhinney and Mr. Withrow considered dangerous or unsightly.

I find on the evidence, the defendant did not remove any trailers or mobile homes and they did not move many items that might be considered dangerous or unsightly because they were located at the back of the property and they ran out of time that particular day.

Therefore, I hold that the claimant's property was dangerous or unsightly and that the miscellaneous items referred to as junk and debris were dangerous or unsightly, as contemplated by the defendant in the *Municipal Government Act*.

3. Were items of any value and if so, has the value been accounted for by the defendant?

It was agreed by the parties at trial that those items that were salvageable at the scrap yard, being the steel, did bring in cash in the amount of $1,600.80. The defendant agrees this sum should be offset as a credit towards the cost of clean up. I find this a property sum that should be credited against the costs of the clean up.

The defendant stated they obtained three estimates for the cost of cleaning and they took the lowest estimate. While the three estimates were not produced at trial, there was no evidence before me that the estimate and invoice from Cullip Construction Ltd. in the amount of $3,450 was unreasonable. I therefore allow this sum plus the tipping fee paid to the local landfill in the amount of $533.10 to be proper charges. From these sums totaling $3,983.10, the sum of $1,600.80 is deducted, leaving the balance for clean up at $2,382.30. The invoice from the Municipality to the claimant, Marion Usher dated June 28, 2005, sets out the total costs for clean up plus interest at the rate of 15 percent per annum. Interest will be granted at the rate of 15 percent per annum on the sum of $2,382.30 from June 28, 2005, to date of judgment. I find comfort in granting the defendant it's costs on clean up and interest in s. 507 of the *Act:*

> 507. "Where a council, village commission, committee or community council or the engineer, the administrator or another employee of a municipality lawfully causes work to be done pursuant to this Act, the cost of the work, with interest at the rate determined by the council, by policy, or by the village commission, by by-law, from the date of the completion of the work until the date of payment, is a first lien on the property upon which, or for the benefit of which, the work was done."

The clean up work was performed pursuant to s. 348(3) supra, and is therefore a proper charge as is the interest.

4. The claimants have framed their cause of action as wrongful removal/conversation of property.

Based on my findings set out above, I find the claimants have not proven a wrongful interference with their property. I refer to the case of **Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce** (1996), 140 N.S.R. (4th) 205, SCC, sited in Mr. James' Brief on the law of conversation, wherein it stated:

> "The tort of conversation involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession."

Professor Friedman in The Law of Torts in Canada, 2nd ed., (Toronto: Carswell, 2002, at 136) sets out the elements of the tort of conversation as follows:

(i) a wrongful act

(ii) involving a chattel

(iii) circumstances of handling, disposing or destruction of a chattel

(iv) with the intention or effect of denying or negating the title of another person to such chattel

And in **Bank of Nova Scotia v. Associates Financial Services** (1978) 25 N.S.R. 2d 352, MacIntosh J. stated:

> "A conversation is an act (or complex series of acts) of willful interference without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Two elements are combined in such interference: (1) dealing with the chattel in a manner inconsistent with the

> right of the person entitled to it, and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right…"

I find the defendant did after making an objective finding that the property was dangerous or unsightly and in proceeding to clean it up pursuant to it's Order, was acting within it's lawful authority it acquired under the statute, therefore, the acts of the defendant were not unlawful.

Having made a finding on the above issues, I find it is not necessary for me to make a finding on the issue of whether the liability of the Municipality is barred by s. 353 of the *Municipal Government Act.*

The defendant shall have it's costs of filing fee on the counterclaim.

Dated at Truro, Nova Scotia this 30th , day of December, 2008.

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Ray E. O'Blenis
Adjudicator