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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	**APPEARANCES:**
DOUG SUSINSKI and LEONARD RUPA Plaintiffs	Kelsey L. Desjardine for the Plaintiffs
- and -	Bernice R. Bowley for the Defendant Municipality of Shoal Lake
MUNICIPALITY OF SHOAL LAKE, DIG ALL CONSTRUCTION (1994) LTD. and DILLON CONSULTING LIMITED Defendants	Anna K. Solmundson for the Defendant Dig All Construction (1994) Ltd.
	Judgment delivered: July 12, 2017

PERLMUTTER A.C.J.Q.B.

Introduction

[1] The defendant Municipality of Shoal Lake (RM) moves for summary judgment dismissing the plaintiffs' action against it and dismissing the related crossclaim of the defendant Dig All Construction (1994) Ltd. (Dig All). Dig All takes no position on this motion.

[2] The essence of this action is that the plaintiffs, who live in neighbouring houses in the RM, from August 2012 to December 2014, experienced infiltration of sewer gas

into their houses. This infiltration began when their houses were hooked up to a municipal sewer system operated by the RM in August 2012. As a result of damages that the plaintiffs allege they sustained by virtue of this infiltration, the plaintiffs initiated this action against the RM, the defendant Dillon Consulting Limited (Dillon), which performed the design work for the sewer system, and Dig All, which performed the related construction work. The claim against the RM is pled in negligence, alleges an agreement between the plaintiffs and the RM for the provision of water and sewer services, and the plaintiffs say that the RM is liable based on the principle in ***Rylands v. Fletcher*** (1868), L.R. 3 H.L. 330, and in nuisance.

Factual Background

[3] In 2009, the RM entered into a contract with the Manitoba Water Services Board (MWSB) in respect to the establishment, design and construction of a low pressure sewer and water system to a new development on the south side of Highway 42 to the south of the land occupied by the plaintiffs. This project was expanded to allow the properties occupied by the plaintiffs to be connected to the system by a gravity-flow sewer and water system. The plaintiffs' houses were downstream from the location where the low pressure sewer line connected to the gravity fed sewer line. The project was to be paid for by the MWSB and the RM. Pursuant to a contract between Dillon and MWSB, Dillon performed the design work for the project, and pursuant to a contract between Dig All and MWSB, Dig All was responsible for construction of the project.

[4] When the plaintiffs complained to the RM after their properties were hooked into the sewer system about foul smells on their properties and moisture in their buildings, the RM worked with engineers from Dillon and representatives from the Province to try to diagnose the cause of the problem and rectify it. The infiltration terminated when the connection between the low pressure line and the gravity fed line was closed in December 2014. The low pressure line from Highway 42 has been permanently relocated. This work was commissioned by the Government of Manitoba, who hired a contractor to do the required work. The RM will pay half the cost of this work.

[5] As a result of this sewer gas infiltration to their properties, the plaintiffs each claim medical symptoms consistent with exposure to sewer gas and each claim a reduction in the value of their properties and costs of repair.

RM's Objection to Affidavit Evidence

[6] The RM registered its objection to the following evidence in the plaintiffs' affidavits on the basis that it is inadmissible hearsay or opinion evidence without expert qualification:

- In paragraph 18 of the plaintiff Doug Susinski's affidavit, he references exhibit 6, which is a letter dated January 15, 2013, from Trevor Teall to the RM that reports on Mr. Teall's observations at the plaintiffs' houses and provides Mr. Teall's opinions on causation. Similar evidence is included in paragraph 17 of the plaintiff Leonard Rupa's affidavit.
- In paragraph 37 of Mr. Susinski's affidavit, he references exhibit 19, which is an email dated September 10, 2015, from Ken Charney to the plaintiffs'

counsel that reports on Mr. Charney's observations when he attended Mr. Susinski's house and provides Mr. Charney's opinions on required work to the house and a related cost estimate. In paragraph 42 of Mr. Rupa's affidavit, he references exhibit 14, which is a similar email dated September 17, 2015, from Mr. Charney to the plaintiffs' counsel regarding Mr. Rupa's house.

[7] With respect to the foregoing evidence regarding both the observations and opinions of Mr. Teall and Mr. Charney, I find that this evidence is only admissible to demonstrate that it was information received by Mr. Susinski and Mr. Rupa (see Queen's Bench Rules 20.02(3) and 39.01(4)). To the extent that it is tendered to attribute any fault to the RM, it is inadmissible because it is hearsay opinion evidence. In motions for summary judgment, expert opinion evidence is not properly before the court unless it is in the form of a sworn affidavit of the expert (***Towers Ltd. v. Quinton's Cleaners Ltd. et al.***, 2009 MBCA 81 at paras. 33-34, 245 Man.R. (2d) 70). An affidavit cannot contain opinions of the deponent unless that person is an expert and is deposing to an opinion within his or her expertise (***Tymkin v. Ewatski et al.***, 2001 MBQB 246 at para. 11, 158 Man.R. (2d) 204).

Plaintiffs' Allegations

[8] At the hearing of this motion, the plaintiffs' counsel indicated that the plaintiffs are not pursuing their claim on a contractual basis against the RM. The plaintiffs' remaining allegations against the RM may be broken down as follows:

- Negligence in the design and construction of the low pressure sewer system;

- Negligence regarding post-construction issues and in particular that the RM did not take sufficient steps after problems with the low pressure sewer system arose;
- Claim for the rule in ***Rylands v. Fletcher***; and
- Claim in nuisance.

Law on Summary Judgment

[9] The law on summary judgment, which is governed by Queen's Bench Rule 20, is well settled. The jurisprudence prescribes a two-step approach. On a motion for summary judgment by a defendant, the defendant must prove on a *prima facie* basis that the plaintiff's action will fail. If the defendant meets that burden, the plaintiff then has the burden to establish that there is a genuine issue for determination. In ***Hryniak v. Mauldin***, 2014 SCC 7, [2014] 1 S.C.R. 87, the Supreme Court of Canada provides an extensive analysis of the scope of summary judgment, including its comments that (at paras. 49-50):

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
>
> These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[10] In ***Lenko v. The Government of Manitoba et al.***, 2016 MBCA 52 (CanLII), the Manitoba Court of Appeal stated the following regarding the application of ***Hryniak*** in Manitoba (at para. 71):

> *Hryniak* did not, however, change the test to be applied on a motion for summary judgment in Manitoba. The test remains whether the claim or defence raises a genuine issue for trial (r 20.03(1)). If there is a genuine issue for trial, it is not for the motion court to resolve that issue; rather, the motion should be dismissed and the matter should proceed to trial. The situation is different in Ontario, where the summary judgment rules have been substantially amended to expand the role of the court in resolving claims without a trial. This difference must be kept in mind when applying *Hryniak* to a motion for summary judgment under the Manitoba rules.

Analysis

Negligence in the design and construction of the low pressure sewer system

[11] This claim is based on the following allegations in the statement of claim:

> 25. The Plaintiffs state that the RM has a duty to take reasonable care to:
>
> (a) ensure that those residents connected to the System and their property are not damaged as a result of these connections;
>
> (b) refuse to approve work on the System which would lead to foreseeable damage to residents connected to the System and their property;
>
> . . . . .
>
> (d) ensure that the accumulation of unnatural noxious substances is prevented from escaping from the System, and causing damage to the adjacent properties, and their occupants.
>
> 26. The Plaintiffs state that the RM has breached its duties of care by failing to ensure that the Plaintiffs and their property were not injured as a result of their connection from the System; by approving the work on the System which led to foreseeable damage to the Plaintiffs and their property; ... and by allowing unnatural noxious substances to escape from the System, causing damage to the Plaintiffs and their properties.

[12] The plaintiffs' counsel indicated that the main focus is the claim in negligence and the construction and design aspect is not as significant as regards to the RM as the remedial work discussed below.

[13] With respect to all of the allegations of negligence against the RM, the RM does not admit that it owed a duty of care to the plaintiffs. For the purpose of adjudicating this motion, I have assumed, without deciding, that a duty of care was owed.

[14] I am satisfied that the RM has proven on a *prima facie* basis that the plaintiffs' action for negligence in the design and construction of the low pressure sewer system will fail because of the evidence that the RM had nothing to do with either the design or the construction of the low pressure sewer system. It is undisputed that no RM staff or employees were involved in any way in the construction of the project. Also undisputed is the evidence from the Chief Administrative Officer (CAO) of the RM that the RM relied entirely upon the skill and expertise of MWSB, Dillon as engineers and Dig All to ensure that the project and all of its associated components were designed and constructed properly and in accordance with recognized and accepted standards of engineering and construction practices. The contract documents show that MWSB provided the specifications and contracted with Dillon for the design work and Dig All built the system. The RM has demonstrated that to the extent the plaintiffs sustained damage in relation to the design or construction of this system, it was not caused by the conduct of the RM and the RM's conduct was not negligent.

[15] With the RM having met this burden, I have considered whether the plaintiffs have raised a genuine issue for determination regarding negligence on the part of the

RM in the design and construction of the low pressure sewer system. The plaintiffs have not provided any evidence from which it could be found, based on the requisite standard, that the RM's standard of care in working with MWSB for the new system was improper or that the standard of care was breached in following the recommendations of MWSB and Dillon for the design and construction of the project. With the RM having no part in the design and construction of the system, in my view, there is no serious issue to be tried regarding negligence on the part of the RM in the design or construction of this system.

Negligence regarding post-construction issues and in particular that the RM did not take sufficient steps after problems with the low pressure sewer system arose

[16] As noted, the plaintiffs' counsel indicated that the main focus of the plaintiffs' negligence claim against the RM is the remedial work and the timing of this work once the plaintiffs' issues were highlighted. This claim is based on the following allegations in the statement of claim:

> 25. The Plaintiffs state that the RM has a duty to take reasonable care to:
>
> . . . . .
>
> (c) take steps to prevent further damage when notified by residents who are suffering damages as a result of the operation of the System; and
>
> (d) ensure that the accumulation of unnatural noxious substances is prevented from escaping from the System, and causing damage to the adjacent properties, and their occupants.
>
> 26. The Plaintiffs state that the RM has breached its duties of care ... by failing to take adequate steps to prevent further damage to the Plaintiffs and their property when notified of these damages; and by allowing unnatural noxious substances to escape from the System, causing damage to the Plaintiffs and their properties.

[17] The plaintiffs say that they were subject to personal injury and property damage due to sewer gas infiltration to their properties from August 2012 to December 2014, when this infiltration stopped after the plaintiffs' properties were no longer connected to the low pressure sewer line that was installed as part of the project. The plaintiffs argue that it is not required for them to set out what the RM should have done. Rather, the court only needs to consider the effect of this situation on the plaintiffs and what someone in their situation would have wanted the RM to do. While the plaintiffs acknowledge that there were remedial efforts made on behalf of the RM, they say that those efforts were not satisfactory. The plaintiffs argue that the RM was negligent for not quickly dealing with the infiltration by disconnecting their properties in the manner that ultimately resolved the problem. As the plaintiffs deposed, despite their numerous requests since about August 2012, the RM took 28 months to stop using the low pressure line. The plaintiffs also argue that if the RM's summary judgment motion is allowed, they will not have recourse against the closest party in proximity to them and that it was not the plaintiffs who retained Dillon or Dig All.

[18] I am satisfied that the RM has proven on a *prima facie* basis that the plaintiffs' action for negligence regarding post-construction issues and in particular that the RM did not take sufficient steps after problems with the low pressure sewer system arose will fail because it is my view that, given the complexity and technicality of this system, as reflected in the evidence, it was reasonable for the RM to have relied upon and followed the advice they received from MWSB and experts. The unchallenged evidence of the CAO of the RM is that after the problems arose, the RM worked with engineers

from Dillon and with representatives from the Province to try to diagnose the cause of the problem and rectify it.

[19] In the hearing of this motion, counsel for the RM provided a detailed chronology based on the affidavit evidence, which included the detailed notes taken by the CAO throughout the relevant time period regarding conversations she had with the plaintiffs, other residents, individuals with Dillon, MWSB and Contec Projects Ltd. (Contec) regarding the attempts to resolve the issues. This evidence indicates that the RM followed the majority of the recommendations that were made from experts to the extent reasonably possible. For example, there is no evidence of a recommendation from Dillon that the RM refused to follow. In my view, by undertaking the consultations that it did and acting on these recommendations for remediation as it did, given the expertise that would have been required by virtue of the technical issues, as evidenced by the challenges that the experts themselves had in dealing with this issue, on a *prima facie* basis, the RM acted reasonably.

[20] My view is further corroborated by my inquiry of the plaintiffs' counsel at the hearing of this motion about whether there is any evidence that, after the RM became aware of the problems the plaintiffs were experiencing, the RM was given a recommendation that it did not follow. The plaintiffs point to a "Health Hazard Order" issued to the RM on April 22, 2013, under ***The Public Health Act***, C.C.S.M., c. P210, which included orders that the RM carry out air monitoring and data collection and implement recommended stages for odour control. However, this order does not require any substantive engineering steps with respect to abandoning the system or the

line. The CAO's notes indicate that in the time period following this order, the requisite air monitoring, data collection and regular follow-ups with Manitoba Health about this monitoring and data collection took place and on May 14, 2014, this order was rescinded. Therefore, there is nothing that was required of the RM by this order which did not take place.

[21] The plaintiffs' counsel argued that the most significant evidence of the RM not following a recommendation are the references in the CAO's note of July 9, 2013, that John Schamber of Contec, with whom the RM was speaking about possible resolutions, was "surprised with the set up that we have" and "[h]is suggestion was to cut off the connection to the gravity fed line and reroute the line around the north shore of the lake." The plaintiffs' counsel argues that months later this is ultimately how the issue was resolved and that a discrete genuine issue for trial is the reasonableness of the RM's conduct from the date of this indication by Mr. Schamber in July 2013 to the date when the line was finally rerouted a year and a half later.

[22] However, this "set up" referred to by Mr. Schamber was not designed or constructed by the RM. As well, when this note and the notes that follow are read in context throughout this timeframe, it is apparent that these were preliminary exchanges and that Mr. Schamber was investigating. His suggestion referenced in the July 9, 2013 note to "cut off the connection to the gravity fed line and reroute the line around the north shore of the lake" also indicates that Mr. Schamber "took our set of drawings and was going to look into it" and that "he had been in conversation with ... (Dillon) about our situation and will continue to correspond with him." On July 10, 2013, there is a

note that Mr. Schamber called and "they have been studying our drawings. Possibly a holding tank may still work before the manhole. Looking into other options and will get back to us." Subsequent notes from this period show continuing consultations between Mr. Schamber, MWSB and Dillon that included Mr. Schamber advising the CAO of the RM in July 2013 about a "few different options [that] were being investigated and considered," only one of which was cutting off the connection to the gravity fed line and rerouting the line around the north shore of the lake.

[23] As such, none of the foregoing alters my view that, on a *prima facie* basis, the RM acted reasonably and that the RM has proven on a *prima facie* basis that the plaintiffs' action for negligence regarding post-construction issues, and in particular that the RM did not take sufficient steps after problems with the low pressure sewer system arose, will fail.

[24] With the RM having met this burden, I have considered whether the plaintiffs have raised a genuine issue for determination regarding post-construction issues and in particular that the RM did not take sufficient steps after problems with the low pressure sewer system arose.

[25] It is the RM's position that in considering the standard of care applicable to it and the issue of whether this standard was breached, given that this case deals with technical systems that are outside the experience of lay people, expert evidence is required by the plaintiffs to establish the standard of care in this particular circumstance with this particular RM. The RM analogizes the case at hand to medical malpractice cases in which, the RM's counsel argues, the plaintiff's burden in responding to a

summary judgment motion is to provide expert evidence establishing the standard of care. The RM relies on ***Karle v. Town of Nipawin***, 2010 SKPC 154 (CanLII), and ***Mondano v. Durham (Regional Municipality)*** (2002), 34 M.P.L.R. (3d) 303 (Ont. S.C.J.), where negligence claims against municipalities arising out of sewer back-up failed in part because there was no expert evidence or evidence of other similar municipalities' practices to establish that the municipality breached the required standard of care.

[26] It is the plaintiffs' position that expert evidence is not required to establish the standard of care and that this court can make its own finding about the applicable standard of care. The plaintiffs argue that a breach of the standard of care can be inferred from the amount of time that lapsed from the start to the end of the infiltration of sewer gas into their properties, the damages that occurred and the plaintiffs' multiple requests for the RM to do something. With respect to the determination of the standard of care, the plaintiffs point to the following passage from ***Ryan v. Victoria (City)***, [1999] 1 S.C.R. 201 (at para. 28):

> Conduct is negligent if it creates an objectively unreasonable risk of harm. To avoid liability, a person must exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.

[27] It is the plaintiffs' position that the likelihood of known or foreseeable harm and the gravity of this harm were high, all of which favours an elevated standard of care.

In support of this position, the plaintiffs point to the Health Hazard Order issued to the RM on April 22, 2013 (as discussed above).

[28] In ***Manitoba Hydro Electric Board v. John Inglis Co. Limited et al.***, 2000 MBQB 218 (CanLII), MacInnes J. (as he then was) noted the following regarding a motion judge's approach to the evidence on summary judgment motions (at paras. 18, 20):

> We are told by other authorities that **it is not sufficient for the responding plaintiff on a summary judgment application to say that more and better evidence will or may be available at trial, the time is now**; - and that motions judges are not to throw up their hands and say in effect "let a trial judge sort out this mess". Rather, the court is required to take a "hard look at the merits of an action".
>
> I take from the authorities that on a summary judgment motion I am to review all of the evidence before me. That includes considering credibility, where possible, not for the purpose of weighing the evidence to determine whether the plaintiff will or will not succeed in its litigation, that is, whether its case passes muster on a balance of probabilities, but rather to determine whether the case has a realistic chance of success. And, in this context, "real" is not intended to establish a level of probability. Rather, it is to denote a realistic rather than theoretical prospect of success; in other words, **the plaintiff's case, when held up to scrutiny in light of all of the evidence available for consideration on the motion, must have an air of reality to it and not be merely the product of wishful, fanciful or imaginative thinking on the part of the plaintiff**.
>
> [emphasis added]

[29] While there is little doubt that the plaintiffs are of the view that the RM ought to have acted differently and at least should have cut off the connection to the system sooner than it did, there is no evidence, expert or otherwise, which gives rise to a genuine issue for determination about whether the RM acted reasonably in all the circumstances in the steps it took after problems with the low pressure sewer system arose. As noted, while the Health Hazard Order that is relied upon by the plaintiffs

included orders that the RM carry out air monitoring and data collection and implement recommended stages for odour control, it did not require any substantive engineering steps with respect to abandoning the system or the line. The CAO's notes indicate that in the time period following this order, the requisite air monitoring, data collection and regular follow-ups with Manitoba Health about this monitoring and data collection took place and on May 14, 2014, this order was rescinded.

[30] Whether expert evidence is required or not, on the evidentiary record, the RM has put forward detailed factual evidence that it took reasonable steps, made consultations with the appropriate people and in the circumstances acted reasonably on those consultations and recommendations. I have concluded that the plaintiffs' burden of establishing that there is a genuine issue for determination has not been met by the plaintiffs because they have not put forward sufficient evidence from which it could be found, based on the requisite standard, that the RM's standard of care was breached with respect to the sufficiency of the steps taken by the RM after the problems with the low pressure sewer system arose.

Claim for the rule in Rylands v. Fletcher

[31] It is undisputed that the three elements for imposing strict liability pursuant to the principle in ***Rylands v. Fletcher*** are:

(a) a non-natural use of land;

(b) an escape of something likely to cause mischief; and

(c) damages.

[32] In ***Tock v. St. John's Metropolitan Area Board***, [1989] 2 S.C.R. 1181, La Forest J. wrote (at p. 1190):

> **Public sewerage and drainage systems are an indispensable part of the infrastructures necessary to support urban life**, and it is clear in my mind that the storm sewer in question here was constructed pursuant to planning decisions of the very sort alluded to in Williams' comments. As such, it would be difficult to conceive of a user of land falling more squarely within those that may be said to be ordinary and proper for the general benefit of the community ....
>
> In summary, if, as argued by Prosser at p. 147 of his essay "The Principle of *Rylands v. Fletcher*," in *Selected Topics on the Law of Torts*, the touchstone for the application of **the rule in *Rylands v. Fletcher*** is to be damage occurring from a user inappropriate to the place where it is maintained (Prosser cites the example of the pig in the parlour), I would hold that the rule **cannot be invoked where a municipality or regional authority, acting under the warrant of statute and pursuant to a planning decision taken in good faith, constructs and operates a sewer and storm drain system in a given locality**.
>
> [emphasis added]

[33] The plaintiffs concede that the use of a municipal sewer to move sewage is "natural" as regards to this test. However, it is the plaintiffs' position that the infiltration of sewer gas is not natural and is outside the normal protection afforded to a municipality as described in ***Tock***. In support of their position, the plaintiffs again point to the CAO's note of July 9, 2013, that Mr. Schamber was "surprised with the set up that we have" and "[h]ad never seen a line of this distance without a lift stn." The plaintiffs argue that this, along with the increased danger based on the severity of gas infiltration and potential risk as reflected in the Health Hazard Order, distinguish this case from the normal operation of a sewer system and raise a genuine issue for trial.

[34] I am satisfied that the RM has proven on a *prima facie* basis that the plaintiffs' action based on the rule in ***Rylands v. Fletcher*** will fail because it is my view that this

sewer system comes within the operation of a sewer system by a locality as contemplated in ***Tock***. I am not satisfied that the operation of the sewer system by the RM in the case at hand is a "non-natural use of land". As well, there is no allegation that the RM acted beyond its authority or proceeded with this project in bad faith. On the evidentiary record, the RM was acting within its statutory authority with the sanction of MWSB and acted on expert advice.

[35] In considering whether the plaintiffs have established that there is a genuine issue for determination, I note that there is no evidence to indicate that there was anything inherently dangerous in the manner in which the RM dealt with this sewer system. It is my view that this situation is distinguishable, for example, from the situation in ***Carmel Holdings Ltd. v. Atkins et al.***, [1977] 4 W.W.R. 655 (B.C.S.C.), where the storage of 1,200 gallons of fuel oil in an underground storage tank led to Craig J. indicating, "… I think that the defendant … should be liable on the basis of the rule in *Rylands v. Fletcher*" (at p. 665). For all of the foregoing reasons, I find that the plaintiffs have not put forward sufficient evidence to establish a genuine issue for trial regarding their action based on the rule in ***Rylands v. Fletcher***.

Claim in nuisance

[36] With respect to the plaintiffs' position regarding a claim in nuisance, it is undisputed that s. 395 of ***The Municipal Act***, C.C.S.M., c. M225, is relevant. This section provides:

No liability for certain nuisances
395 A municipality is not liable for a nuisance as a result of

(a) the construction, operation or maintenance of a system or facility for collection, conveyance, treatment or disposal of sewage or storm water, or both sewage and storm water, unless the municipality is negligent; or

(b) the construction or operation of a public work, regardless of whether the authority to construct or operate the work is mandatory or permissive, unless the nuisance could have been prevented by another practicable method of constructing or operating the public work.

[37] The plaintiffs concede that, based on this section, if they cannot prove that the RM was negligent at some point during the salient period then the RM would be entitled to rely on this statutory defence.

[38] Having found that the RM has proven on a *prima facie* basis that the plaintiffs' action for negligence will fail and that the plaintiffs have not raised a genuine issue for determination in this regard, it follows that this statutory defence applies. For these reasons, I find that the RM has proven on a *prima facie* basis that the plaintiffs' action for nuisance will fail and that the plaintiffs have not raised a genuine issue for trial.

Conclusion

[39] For the reasons discussed above, given the strength of the evidentiary record, I am able to make the necessary findings of fact and apply the law to these facts for the purpose of granting summary judgment. In light of the nature of the issues, it is my view that summary judgment in the case at hand is a proportionate, more expeditious and less expensive means to achieve a just result than proceeding to trial. Given the specific and discrete nature of the claims against the RM, this is not a case where

granting summary judgment would defeat the "interest of justice" in the context of the litigation as a whole because of a risk of duplicative proceedings or inconsistent findings of fact (***Hryniak***, para. 60).

[40] For the reasons set out in my analysis above, I am granting summary judgment dismissing the plaintiffs' action against the RM and dismissing Dig All's related crossclaim.

[41] If costs cannot be agreed upon, I will receive written submissions.

_____ A.C.J.Q.B.