

COURT OF APPEAL FOR ONTARIO

CITATION: Northmarket Holdings Inc. v. Redvers, 2012 ONCA 149

DATE: 20120308

DOCKET: C54308

Feldman, Hoy JJ.A. and Spence J. (*Ad Hoc*)

BETWEEN

Northmarket Holdings Inc.

Plaintiff (Appellant)

and

Michael Redvers, Terry Redvers, 1591957 Ontario Inc., 1124760 Ontario Inc.,  
Quality Haulage & Farming Ltd., Natcor Construction Inc., MAR-SAN Excavating  
& Grading Ltd., Detra Builders Inc., John EEK & Son Ltd. Maacon Construction  
Corporation, The Corporation of the Regional Municipality of York,  
The Corporation of the Town of Newmarket and the York Region District School  
Board.

Defendants (Respondent)

and

Linvest Properties (Valleyview) Limited

Third Party (Respondent)

James J. Feehely and Colleen E. Butler, for the appellant

C.M. Loopstra, Q.C and Fiona H Li, for the respondent, The Corporation of the  
Town of Newmarket

Donald Rogers, for the respondent, Linvest Properties (Valleyview) Limited

Heard and released orally: February 16, 2012

On appeal from the order of Justice Mark L. Edwards of the Superior Court of Justice, dated august 5, 2011.

#### ENDORSEMENT

[1] The appellant land owner authorized its tenant to deposit some fill on the demised land. The tenant allowed third parties to deposit significantly more fill than authorized by the appellant. It appears that the source of some of that fill was a subdivision within the Corporation of the Town of Newmarket. The appellant sued Newmarket for negligence.

[2] The motion judge distinguished the case relied on by the appellant, *Berendson v. Ontario*, [2001] 2 S.C.R. 849, found that Newmarket did not owe the appellant a duty of care and dismissed the appellant's claim against Newmarket.

[3] We agree with the motion judge that *Berendson* is very much distinguishable and that, on the facts of this case, Newmarket did not owe a duty of care to the appellant to ensure that not more fill than the appellant had authorized its tenant to deposit on the demised land was dumped there by parties developing subdivisions in Newmarket.

[4] We do not find it necessary to address the more general issue of the potential scope of a municipality's private duty of care in other circumstances.

[5] In his factum, the appellant sought leave to appeal the costs order of the motion judge. We see no error in principle in the motion judge's exercise of discretion in fixing costs.

[6] The appeal is dismissed, with costs in the agreed upon amounts of \$10,442.89 to Newmarket and \$7,499.85 to Linvest, both inclusive of disbursements and HST.

"K. Feldman J.A."  
"Alexandra Hoy J.A."  
"Spence J. (ad hoc)"