

CASE NO.

VOL. NO.

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**R. BAKER FISHERIES LIMITED - and
and ROBERT W. BAKER
(Appellants)**

**ATLANTIC CLAM HARVESTERS LIMITED,
2434132 NOVA SCOTIA LIMITED,
JOHN W. S. MULLER, JOHN M.
POLLOCK, FRANK deWAARD,
JOHN CAMERON WIDRIG
and LAURELLE WIDRIG
(Respondents)**

CA 177542

Halifax, N.S.

SAUNDERS, J.A.

[Cite as: *R. Baker Fisheries Ltd. v. Atlantic Clam Harvesters Ltd.*, 2002 NSCA 82]

APPEAL HEARD: May 28, 2002

JUDGMENT DELIVERED: June 11, 2002

SUBJECT: Striking out a cause of action. CPR 14.25. Amending Pleadings. CPR 15. Res Judicata. CPR 25.01. Essentials in Pleading Tort of Conspiracy.

SUMMARY: The appellants alleged they were thwarted in their attempts to realize upon the fruits of their previous successful litigation by the respondents' actions and sued them for conspiracy. Certain of the respondents applied in chambers to strike out the statement of claim on the basis that it disclosed no reasonable cause of action, was frivolous or vexatious, otherwise amounted to an abuse of process, or was *res judicata*.

The Chambers judge refused to grant the appellants an adjournment to retain counsel; struck out the statement of claim pursuant to **CPR 14.25(1)(a)**; and further declared that the action was *res judicata* under **CPR 25.01**. The Chambers judge did not find it necessary to decide whether the claim was frivolous or vexatious, or an abuse of process. The appellants appealed.

HELD: Appeal dismissed. Whether to grant or refuse an adjournment is within the presiding judge's discretion. Here no error in the exercise of that discretion.

This statement of claim did not set out material facts which, if proved, would give rise to a cause of action in conspiracy. The Chambers judge was correct in striking out the appellants' claim. Further, the statement of claim was so defective, so bereft of substance, as to preclude any meaningful amending process. No error or injustice in not granting leave to amend the pleadings yet again.

It was not necessary to express any opinion concerning the Chambers judge's additional finding that the action was also *res judicata*.

Dismissing the appeal would not preclude the appellants from commencing a new proceeding advancing the proper and essential legal requirements for pleading conspiracy, nor would it presume or preclude whatever defences might be available to parties named in such a suit.

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 6 pages.