

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Sable Mary Seismic Inc. v. Geophysical Services Inc.*,  
2012 NSCA 33

**Date:** 20120329

**Docket:** CA 325703

**Registry:** Halifax

**Between:**

Sable Mary Seismic Incorporated and  
Matthew Kimball

Appellant

v.

Geophysical Services Incorporated

Respondent

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** October 3, 2011

**Subject:** Breach of Contract; Duty to give reasons; Reasonable apprehension of bias and bias; Damages for fraud

**Summary:** The appellants entered into a series of contracts with the respondent. Letters documenting the contracts set out the compensation for the corporate appellant as cost plus 5% for its supply of seismic crews. When the respondent took over its own crewing function it discovered a significant drop in crew expenses that could not be accounted for. The appellants claimed that it was contractually entitled to charge a set monthly amount for crew costs, but charged actual wages plus 30 % plus 6% plus 5% for significant periods of time. The appellants claimed they had no documents or ability to demonstrate how the invoices for crew costs had actually been calculated. The trial judge found that the contract was actual cost plus 5%. Expert evidence was accepted demonstrating an overpayment of approximately \$1.7million. The trial judge also found the appellants liable in fraud for some, but not all of the amounts billed, in excess of the terms of the contracts. The

counter-claim by the appellants alleging breach of contract by the respondent for a failure to profit share was dismissed. The appellants claimed a host of errors by the trial judge including: reasonable apprehension of bias or bias, failure to give adequate reasons, palpable and overriding errors in fact, and miscalculation of damages for fraud.

**Issue:** Was the process tainted by reasonable apprehension of bias or bias; were the reasons by the trial judge adequate; did the trial judge err in his findings of fact or mixed law and fact; and commit reversible error in his calculation of damages for fraud.

**Result:** The claim of reasonable apprehension of bias and bias was without merit. The reasons of the trial judge were far from generic. He stated with considerable clarity the positions and evidence of each party and accepted the evidence adduced by the respondent. He found the evidence adduced by the appellants not to be credible and gave reasons why. The findings by the trial judge were, for the most part, reasonable and supported by the evidence. There were no palpable and overriding errors. The complaints by the appellants were little more than an attempt to re-argue their case in the hope that this Court would accept arguments that did not hold sway with the trial judge. With respect to the calculation of damages, if it was erroneous, the award was lower than might otherwise be warranted. The appeal was dismissed with costs.

*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 53 pages.*