

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** 3289444 *Nova Scotia Limited v. R.W. Armstrong & Associates Inc.*,  
2018 NSCA 26

**Date:** 20180320  
**Docket:** CA 463909  
**Registry:** Halifax

**Between:**

3289444 Nova Scotia Limited

Appellant

v.

R.W. Armstrong & Associates Inc. and MASDAR Abu Dhabi Future Energy  
Company

Respondents

**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** January 16, 2018, in Halifax, Nova Scotia

**Subject:** *Court Jurisdiction and Proceedings Transfer Act*, S.N.S.  
2003, (2<sup>nd</sup> Sess.), c. 2 – *forum non conveniens* doctrine –  
contractual forum preference clauses

**Summary:** High Performance Energy Systems (“HPES”), a Nova Scotian company, contracted to provide services and deliverables to a construction project in the United Arab Emirates (“UAE”). HPES encountered difficulties and entered receivership. Its receiver assigned to the Numbered Company the rights of HPES under the UAE contract. The Numbered Company sued in the Supreme Court of Nova Scotia against the project’s general contractor and owner, companies based in the UAE. The Defendants moved to stay the action on the basis that Nova Scotia was a *forum non conveniens*.

The motions judge held that the Supreme Court of Nova Scotia had territorial competence and there was a presumption of a real and substantial connection to Nova Scotia under s. 11 of the *Court Jurisdiction and Proceedings Transfer Act* (“*CJPTA*”), but the Defendants had rebutted the presumption under s. 12 of the *CJPTA*. The judge declined to exercise the court’s jurisdiction as Nova Scotia was a *forum non conveniens*. The judge cited, among other factors, the forum preference clause in the parties’ contract.

The Numbered Company applied for leave to appeal and moved to adduce fresh evidence.

**Issues:** Should the Court of Appeal accept the fresh evidence? Should leave to appeal be granted? On the appeal, did the motions judge make an appealable error in balancing the criteria under s. 12 of the *CJPTA* and the *forum non conveniens* doctrine or in his use of the contractual forum preference clause?

**Result:** The Court of Appeal declined to accept the proposed fresh evidence. The evidence did not satisfy the criteria under *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

The Court granted leave to appeal because the grounds raised an arguable issue.

The Court dismissed the appeal. The motions judge did not err in his application of the criteria under s. 12 of the *CJPTA* and the *forum non conveniens* doctrine, or in his use of the contractual forum preference provision as a factor in the balancing exercise.

***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 18 pages.***