

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Hart and Freeman, JJ.A.

Cite as: Nova Scotia Power Corporation v. Caliper Equities Ltd., 1992 NSCA 60

B E T W E E N:

NOVA SCOTIA POWER CORPORATION

Appellant

) Harry E. Wrathall, Q.C., and
) Scott C. Norton
) for appellant
)
)

CALIPER EQUITIES LIMITED and
ONE SACKVILLE PLACE

Respondents

) David A. Miller, Q.C.
) for respondents
)
)
) Appeal Heard:
) October 1, 1992
)
)
) Judgment Delivered:
) October 1, 1992
)
)

THE COURT: Appeal dismissed with costs per oral reasons for judgment of Freeman, J.A., Hart and Jones, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

The issue in this appeal is the standard of care owed by the Nova Scotia Power Corporation

to its customer, the respondent Caliper Equities Limited, as the result of a planned power interruption.

The Power Corporation gave reasonable notice of the proposed outage to the respondent in a telephone call to the operator of its eight-storey office building on Terminal Road in Halifax. It was anticipated the power would be off for three to four hours so lines could be changed to accommodate a construction project; there was no emergency. The building operator, James Charter, agreed that the building could be shut down "providing there is no extreme cold weather." He was given to understand the work would not be done in extreme cold.

The trial judge, Mr. Justice Peter Richard, accepted the respondent's evidence that permission was conditional on the weather not being extremely cold. What was meant by "extreme cold" was not discussed.

The work was done on Sunday, December 11, 1988. The oil-fired furnace, which could not operate without electricity, was down for approximately four or four and one-half hours. The next morning leaks were discovered in hot water heating pipes running through a portion of the second floor which overhung the first storey. Temperatures had been well below freezing, and below average for that season, with a brisk wind. Expert and other testimony established that the pipes had frozen and burst.

A building operator had been on hand to admit the appellant's work crew. He did not repeat a warning about the cold weather. After power had been shut off he asked how long the job would take and was given to understand it would last about an hour and a half. Later he was told a problem had been encountered. He said the power was off four and one-half hours.

After the warning by Mr. Charter, the appellant knew or should have known there was a risk in undertaking the work under sub-freezing conditions. It accepted the risks involved in carrying on with the project under the weather conditions then prevailing.

The Power Corporation merely had to wait for warmer weather before doing the work. Under the weather conditions prevailing, the damage that occurred was predictable.

The trial judge committed no error of law and no reversible error in his assessment of the facts. The appeal is dismissed with costs which we fix at \$700.00.

Freeman, J.A.

Concurred in: Hart, J.A.
 Jones, J.A..

S.C.A.No.02617

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION

B E T W E E N:

NOVA SCOTIA POWER CORPORATION)	REASONS FOR
)	
- and -)	JUDGMENT OF:
)	
CALIPER EQUITIES LIMITED and)	FREEMAN, J.A.
ONE SACKVILLE PLACE)	
)	(Orally)

S.C.A.No.02617

**IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION**

B E T W E E N:

NOVA SCOTIA POWER CORPORATION

appellant

- and -

CALIPER EQUITIES LIMITED and
ONE SACKVILLE PLACE

respondents

ORDER FOR JUDGMENT

REASONS FOR JUDGMENT having been delivered orally this day by Freeman, J.A.; Hart
and Jones, JJ.A., concurring;

IT IS ORDERED that the appeal be dismissed with costs in the amount of \$700.00.

DATED at Halifax, Nova Scotia, this 1st day of October, 1992.

Registrar

S.C.A.No.02617

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

NOVA SCOTIA POWER CORPORATION

appellant

- and -

CALIPER EQUITIES LIMITED and
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respondents

ORDER FOR JUDGMENT
