

CASE NO.

VOL. NO.

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**DAVID A. MURPHY and
SONIA MURPHY**

- and -

**CLAUSSEN WALTERS
& ASSOCIATES LIMITED**

(Appellants)

(Respondents)

CA172627

Halifax, N.S.

**Saunders, J.A.
Hallett, J.A.
Freeman, J.A.**

[Cite as: *Murphy v. Claussen Walters & Associates Limited*, 2002 NSCA 20]

APPEAL HEARD:

January 23 2002

JUDGMENT DELIVERED:

February 5, 2002

SUBJECT:

**Costs. Recovery of disbursements incurred in retaining an expert.
CPR 40. Judicial Discretion.**

SUMMARY:

The appellants were sued successfully for breach of contract and unjust enrichment. They argued that the trial judge erred in refusing to award costs to a co-defendant against whom the action was discontinued and in obliging them to pay \$16,500 incurred by the respondent in retaining an expert witness.

HELD:

It was well within the trial judge's discretion to decline to award any costs to Dr. Sonia Murphy who, as the trial judge found, shared the same trial lawyer and whose costs were then negligible. That ground of appeal was dismissed.

However, the trial judge erred in finding that disbursements totalling \$16,500 incurred while engaging an expert in real estate appraisal were a "just" and "reasonable" charge against the appellants when there was no evidentiary basis upon which to make such a determination. The matter was referred to a taxing master for the sole purpose of determining, upon a proper evidentiary basis, whether all or a portion of such disbursement was a just and reasonable charge against the appellants.

<p>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 5 pages.</p>
