

NOVA SCOTIA COURT OF APPEAL
Citation: *Bardsley v. Stewart*, 2014 NSCA 106

Date: 20141126
Docket: CA 420522
Registry: Halifax

Between:

James Bardsley, of Halifax, in the County of Halifax, Province of Nova Scotia;
Palmer Refrigeration Inc., a body corporate, incorporated under the
laws of the Province of Nova Scotia; and Palmer Engineering Ltd.
(a.k.a. Palmer Geothermal & Associates)

Appellants

v.

David Stewart, of Dartmouth, in the County of Halifax, Province of Nova Scotia;
Peter Beaini, of Bedford, in the County of Halifax, Province of Nova Scotia; and
High Performance Energy Systems Inc., a body corporate, incorporated under the
laws of the Province of Nova Scotia (in receivership)

Respondents

Judge:	The Honourable Justice M. Jill Hamilton
Appeal Heard:	September 23, 2014, in Halifax, Nova Scotia
Subject:	Equitable Set-off
Summary:	At the hearing of a preliminary motion and again at the commencement of the main hearing, recognizing that a non-party may have an interest in the patent application, it was agreed the remedy of an assignment of a patent application would not be dealt with. The judge did order Mr. Bardsley to transfer his interests in the patent application to High Performance to the extent possible. The judge also found Mr. Bardsley acted improperly in several respects in his dealings

with High Performance, a company in receivership, and ordered the appellants to pay certain amounts to it. He took these actions into account when he denied the appellants equitable set-off with respect to any amounts they may be able to prove are owed to them by High Performance.

Issues:

- (1) Did the judge err by improperly granting a remedy which was not before him?
- (2) Did the judge err in refusing to grant equitable set-off to the appellants?

Result:

Appeal dismissed. Ordering Mr. Bardsley to transfer his interest in the patent application to High Performance to the extent possible, was not the remedy it was agreed would not be dealt with. The judge did not err in finding that equitable set-off had not been claimed or argued, by changing his mind or by considering wrong factors when deciding not to grant equitable set-off. He did not err in applying the doctrine of “clean hands” on the facts of this appeal.

<p><i>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 19 pages.</i></p>
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