

SUPREME COURT OF NOVA SCOTIA

Citation: Rhyno Demolition Inc. v. Nova Scotia (Attorney General), 2005 NSSC 40

Date: 20050221

Docket: S.H. 179668

Registry: Halifax

Between:

Rhyno Demolition Incorporated, a body corporate

Plaintiff

vs.

The Attorney General of Nova Scotia representing Her Majesty The Queen in Right of the Province of Nova Scotia and The Department of Transportation and Public Works for the Province of Nova Scotia and Dineen Construction (Atlantic) Inc., a body corporate

Defendant

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: December 13, 14, 15, 16, 17, 20, 21, 2004
January 12, 2005, in Halifax, Nova Scotia

Summary: Province of Nova Scotia decided to do extensive renovations to its J.W. Johnston Building in Halifax and sent out a request for proposals for a construction management services contract. Dineen's proposal, with a fee of \$464,000, was accepted. Initial recommendation for capital construction funding of approximately \$12,636,000. The majority of tenders were processed through the Provincial Government's Public Tender's Office. However, a few, including the demolition packages were tendered direct by Dineen. Phase A demolition was awarded to Rhyno and completed. Phase B tender was awarded to the lowest tender, Snyder, in the amount of \$383,000. Phase B tender process dropped the bid bond requirement and retained the requirement of performance security. Unique situation in that Dineen was required to obtain an umbrella bond for performance of all contractors. Ten percent performance security was to be paid by successful tenderer. Snyder's immediately paid \$20,000 and was having some difficulty arranging balance of \$18,300. By this time work underway and Snyder's had entitlement to a substantially greater amount than the \$18,300 due by way of performance security and so Dineen advanced this amount as an accommodation. Rhyno took exception and sued alleging the Snyder bid was non-compliant and sought damages in the range of \$332,000 to \$349,000.

- Issue:**
1. Was the Snyder bid compliant?
 2. If Snyder bid non-compliant would Rhyno tender, some \$90,000 greater, have been accepted?
 3. What was the relationship between Dineen, the Province of Nova Scotia and Rhyno?
 4. Damages?

Result: Issue 1:

Snyder bid compliant. Not dealing with bid bond security which is a prerequisite, the entrance fee or ticket to have ones tender opened. Performance security different and not unusual in the trade to have it provided after successful tenderer already performing work.

Issue 2:

No certainty in any event that Snyder tender, particularly in its form tendered, would have been accepted. Failure by Rhyno to establish acceptance on balance of probabilities.

Issue 3:

Dineen not the agent of the Province of Nova Scotia and Rhyno dealt directly with and relied upon Dineen in its contractual relationship.

Issue 4:

Damages assessed at loss of profit in the amount of \$185,000.

Action dismissed. Counsel entitled to be heard on costs.

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