

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Alumitech Architectural Glass & Metal Ltd. v. J.W. Lindsay Enterprises Ltd., 2006 NSSC 14

**Date:** 20060116

**Docket:** S.H. 177985

**Registry:** Halifax

**Between:**

Alumitech Architectural Glass & Metal Limited

Plaintiff

Defendant by Counter-Claim

v.

J.W. Lindsay Enterprises Limited

Defendant

Plaintiff by Counter-Claim

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice A. David MacAdam

**Heard:** December 20, 21, 22, 2005 in Halifax, Nova Scotia

**Subject:** Contract - Quantum Meruit

**Summary:** Plaintiff contracted with defendant. The President of the plaintiff says he and the defendant's representative, although not agreeing on the square footage of the work to be performed by the defendant, agreed it was to be at a unit price per square foot. The defendants, during or following the performance of the work, were to recalculate the square footage. The defendant's negotiator has since died. Their estimator, who also attended the meeting with the President of the plaintiff, denied the agreement was for a unit price. He said it was for a lump sum as appeared on the purchase order issued by the plaintiff. Both parties agreed that if there was no "consensus ad idem" the compensation due the plaintiff was to be calculated on a quantum meruit. The plaintiff suggested that a reasonable remuneration would be the unit price based on the plaintiff's calculation of the square footage

**of work. The defendant tendered its costs to perform the work, which, together with a “modest” allowance for profit resulted in an amount equal to the lump sum figure being advanced by the defendant.**

**Issue: In applying the doctrine of Quantum Meruit how is “reasonable compensation” to be determined?**

**Result: In determining “reasonable compensation” there are four possibilities.**

- 1. Act on the evidence of the costs to perform the work, plus a reasonable allowance for profit;**
- 2. Act on evidence as to what reasonable rates would be;**
- 3. Consider aborted negotiations as to price;**
- 4. Consider the opinion of experts as to a reasonable sum.**

**Although acting on costs to perform, together with a reasonable allowance for profit, may have the effect of awarding one side their version of the amount contracted between the parties, when that party’s version of the contract has not been accepted, this may be the only alternative when the other side produces no evidence to enable the “reasonable compensation” to be calculated by using one of the other alternatives and when it does not “seriously” challenge the costs estimates tendered.**

*THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.*