

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Force Construction Ltd. v. Queen Elizabeth II Health Sciences Centre, 2008 NSSC 214

Date: 20080911

Docket: SH 174143

Registry: Halifax

Between:

Force Construction Limited, a body corporate, and
Bell Electric Incorporated, a body corporate

Plaintiffs

v.

Queen Elizabeth II Health Sciences Centre, a body
corporate

Defendant

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Judge: The Honourable Justice C. Richard Coughlan

Heard: April 28, 29 and 30, May 5 and 6, 2008, in Halifax, Nova
Scotia

Written Decision: September 11, 2008

Subject: Contract - Tendering process - Duty to treat bidders fairly
and equally

Summary:

The Queen Elizabeth Health Sciences Centre called a tender to construct its ophthalmology unit. Force Construction submitted the lowest bid. The Manager of Construction Services for the Hospital had previous experience with Force Construction having high unit labour rates. Force Construction had the highest unit labour rates. The Manager considered the practice of submitting high unit labour rates should be discouraged. He assumed a contingency overrun of 10% on the project's cost, labour comprising 50% of the cost and all bidders using equivalent manhours. He calculated Force Construction's bid exceeded the second lowest bid by \$1,187.00. The tender was awarded to the second lowest bidder. Force Construction and Bell Electric Incorporated, the electrical subcontractor on the Force Construction bid, sued the Hospital

Issue:

- 1) Did the Hospital have a contract with Force Construction and, if so, did the Hospital breach the contract?
- 2) If the Hospital breached its contract with Force Construction, to what damages is Force Construction entitled?
- 3) Did the Hospital owe a duty of care to Bell Electric and, if so, did the Hospital breach the duty?
- 4) If the Hospital breached its duty of care to Bell Electric, to what damages is Bell Electric entitled?

Result:

The Hospital did not treat Force Construction fairly and equally, and therefore breached the contract it had with Force Construction and damages were assessed.

The Hospital did not owe a duty of care to Bell Electric and its claim was dismissed.

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