

SUPREME COURT OF NOVA SCOTIA

Citation: E.B.F. Manufacturing Ltd. v. White, 2009 NSSC 329

Date: 2009/11/05

Docket: Hfx No. 247580

Registry: Halifax

Between:

E. B. F. Manufacturing Limited and ElectroBraid Fence Limited

Plaintiffs

and

Eric White and White Rhino Inc.

Defendants

S U P P L E M E N T A R Y D E C I S I O N

Judge: The Honourable Justice Gerald R. P. Moir

Heard: 22, 23, 24, 27, 28, 29, 30 April 2009

**Last Written
Submissions:** November 2, 2009

Counsel: Ms. Jane O'Neill
and Mr. Daniel Watt, Articled Clerk, for the plaintiffs

Mr. Colin Piercey
and Mr. Nathan Sutherland, for the defendants

Moir, J:

[1] I assessed ElectroBraid's loss of profits at para. 125 to para. 163 of my decision dated September 21, 2009. I concluded that "\$352,000 accurately reflects ElectroBraid's loss of profits".

[2] Ms. O'Neill suggests that I inadvertently left out almost \$100,000 in lost profits related to sales by the defendants into the retail and wholesale markets.

[3] Mr. Piercey submits that the round figure of \$352,000 may have been a "global damages amount" meant to reflect "a reasonable assessment of the overall damages". He does acknowledge that I may have intended otherwise and inadvertently failed to include sales to the retail, and wholesale markets.

[4] I failed to include losses resulting from sales into the markets. I accepted the calculations made by the experts, but made adjustments according to my findings on each of the accounting issues listed at para. 144 of my earlier decision.

[5] The use of a round figure was not intended to indicate a global assessment that departed from the expert calculations. Although the experts express their

conclusions in exact figures down to the nearest cent, I found that I could not honestly be that precise. There was room for some minor variances on several of the accounting issues. I chose to express my conclusion in a rounded figure to show that the exercise had not been perfectly precise.

[6] Unfortunately, I chose to round a figure that did not include losses from sales into the markets although I found (see para. 148) all those amounts should be included.

[7] The correct amount is \$449,768.75, which I would round to \$450,000 just to avoid the implication that the assessment can be so precise. Mr. White is entitled to set off \$25,000, which is also a slightly imprecise assessment. Judgment would be for \$425,000.

[8] A rate of 3.5% has been agreed for prejudgment interest. Costs to the plaintiffs in the amount of \$48,750 are agreed.

[9] Agreement has not been reached on disbursements. Also, Ms. O'Neill may wish to comment on Mr. Piercey's form of order. Counsel may make further submissions on those subjects.

J.