

SUPREME COURT OF NOVA SCOTIA

Citation: Murphy v. New Ross Home Hardware Ltd., 2011 NSSC 199

Date: 20110525

Docket: Ken No. 294509

Registry: Kentville

Marty Todd Murphy

Plaintiff

and

New Ross Hardware Limited

Defendant

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Judge: The Honourable Justice Gerald R. P. Moir

Heard: May 10, 2011

Subjects: Civil Procedure, expedited proceeding for smaller claims, converting under Rule 58; right to jury trial, loss of same under Rules 57 and 58

Summary: A few months before a scheduled jury trial, defendant moved to convert to the Under \$100,000 procedure. Only cost saving is trial without a jury.

Issues: Whether to grant motion under Rule 58 applying Rule 57 and excluding trial by jury.

Result: Motion granted. Rule 58.02(2) provides the criteria, including proportionality. The criteria are met. The Rules deliberately override the right to a jury for smaller monetary claims, and a jury trial is disproportionately expensive in the circumstances.

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