

SUPREME COURT OF NOVA SCOTIA

Citation: Abbott and Haliburton Company v. WBLI Chartered Accountants,
2012 NSSC 210

Date: 20120601

Docket: Hfx. 270401

Registry: Halifax

Between:

Abbott and Haliburton Company Limited; A.W. Allen & Son Limited; Berwick Building Supplies Limited; Bishop's Falls Building Supplies Limited; Arthur Boudreau & Fils Ltée; Brennan Contractors & Supplies Ltd.; F.J. Brideau & Fils Limitee; Cabot Building Supplies Company (1988) Limited; Robert Churchill Building Supplies Limited; CDL Holdings Limited, formerly Chester Dawe Limited; Fraser Supplies (1980) Ltd.; R.D. Gillis Building Supplies Limited; Yvon Godin Ltd.; Truro Wood Industries Limited/Home Care Properties Limited; Hann's Hardware and Sporting Goods Limited; Harbour Breton Building Supplies Limited; Hillier's Trades Limited; Hubcraft Building Supplies Limited; Lumbermart Limited; Maple Leaf Farm Supplies Limited; S.W. Mifflin Ltd.; Nauss Brothers Limited; O'Leary Farmers' Co-operative Ass'n. Ltd.; Pellerin Building Supplies Inc.; Pleasant Supplies Incorporated; J.I. Pritchett & Sons Limited; Centre Multi-Décor De Richibucto Ltée; U.J. Robichaud & Sons Woodworkers Limited; La Quincaillerie Saint-Louis Ltée; R & J Swinamer's Supplies Limited; 508686 N.B. INC. operating as T.N.T. Insulation and Building Supplies; Taylor Lumber and Building Supplies Limited; Two by Four Lumber Sales Ltd.; Walbourne Enterprises Ltd.; Western Bay Hardware Limited; White's Construction Limited; D.J. Williams and Sons Limited; and Woodland Building Supplies Limited

Plaintiffs

v.

White Burgess Langille Inman, carrying on business as WBLI Chartered
Accountants

First Defendant

v.

R. Brian Burgess

Second Defendant

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- Judge:** The Honourable Justice Arthur W.D. Pickup
- Heard:** March 26th and 27th, 2012, in Halifax, Nova Scotia
- Written Decision:** June 1, 2012
- Subject:** Civil procedure; evidence; affidavits; independence of expert witnesses; Civil Procedure Rule 39
- Summary:** The defendants WBLI and Burgess acted as external auditors for the plaintiff AWARD over a period of about 25 years. AWARD subsequently commenced a proceeding, alleging negligence by the defendants. As a preliminary to a motion for summary judgment, the defendants challenged two affidavits filed on behalf of the plaintiffs. One affidavit was provided by one of the plaintiffs, O’Hearn, purporting to provide direct evidence of his dealings with one of the defendants. The other affidavit was from an accountant, MacMillan, who was put forward as an expert.
- Issue:** Should the O’Hearn and MacMillan affidavits be struck under Rule 39.
- Result:** Both affidavits were struck. The O’Hearn affidavit failed to meet the requirements of Rule 39, being tainted by inadmissible hearsay, innuendo and argument, to a degree that it could not be salvaged by the court. As to the MacMillan affidavit, the court concluded that it was permissible to consider whether it was an admissible expert’s opinion on the motion, since all the evidence that would be available to the trial judge was already before the court. The MacMillan affidavit was struck on the basis that the proposed expert was not sufficiently independent.