

SUPREME COURT OF NOVA SCOTIA

Citation: Visual Design Consultants Inc. v. Royal and Sun Alliance Insurance Company, 2012 NSSC 387

Date: 20121218
Docket: Hfx. No. 259250
Registry: Halifax

Between:

Visual Design Consultants Incorporated

-and-

Royal and Sun Alliance Insurance Company of Canada

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Judge: The Honourable Justice Robert W. Wright

Heard: October 15, 16, 17, 18, 22 and 23, 2012 in Halifax, Nova Scotia

Written

Decision: December 18, 2012

Subject: Business interruption loss under insurance policy - length of indemnity period and quantification of loss.

Summary: On September 29, 2003 the plaintiff's business premises were severely damaged by Hurricane Juan, which blew the roof off the building. That led to the destruction of all the plaintiff's electronic equipment, including a number of high powered specialized computers that were used in its graphic design business.

The plaintiff was forced to relocate into very substandard temporary premises where it struggled to maintain its business operations. After nearly three months, the plaintiff was able to move back into its restored business premises with newly replaced electronic equipment.

The parties were able to reach a settlement of the property damage claim but were unable to reach agreement on the quantification of the plaintiff's business interruption loss. In the opinion of the defendant's forensic accounting expert, the loss should be quantified anywhere from a low of \$371 to a high of \$37,536. The plaintiff's financial expert quantified the loss under three different scenarios of assumptions, ranging from a low of \$220,306 to a high of \$356,134.

Issues:

- (a) The proper length of the indemnity period (i.e., how long the results of the business were affected by the hurricane damage up to a maximum of 12 months);
- (b) The proper quantification of the business interruption loss during the indemnity period in accordance with the terms of the insurance policy.

Result: The intent of the policy is to replace lost gross profits that the plaintiff would have earned during the indemnity period but for the hurricane damage. The approach taken to the quantification of this loss by the defendant's expert was considered to be too narrow, since it focussed primarily on the question of what specific contracts the plaintiff was able to prove as having been lost. That approach did not adequately take into account the recent growth trend of the business overall. The quantification of the business loss by the defendant's expert was therefore rejected.

With some modification, the approach taken by the plaintiff's financial expert, based as it was on the overall growth trend of the business, was preferred by the court. After making an adjustment for the growth rate, the court accepted the method of calculation of the business loss as set out in the lowest of the three scenarios presented, which produced a rounded amount of \$200,000.

In addition, the court found that the plaintiff was entitled to recover the sum of \$12,240 for Increased Cost of Working under the policy (which was not contested) as well as the sum of \$18,750 to realize the maximum recovery permitted under the policy for professional accounting fees incurred by the plaintiff in developing the claim.

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