

SUPREME COURT OF NOVA SCOTIA
Citation: *Boyce v. Abousamak*, 2014 NSSC 258

Date: 2014-07-11
Docket: Hfx. No. 344479
Registry: Halifax

Between:

Michael Boyce and Kimberley Susan Arnold-Boyce

Plaintiffs

v.

Wael Abousamak, Allison Williamson

Defendants

LIBRARY HEADING

Judge: The Honourable Justice Peter P. Rosinski

Heard: April 14, 15, 16 and 17, 2014 in Halifax, Nova Scotia

Written Decision: June 24, 2014

Subject: Negligence – in context of residential tenancies – fire caused by careless handling or disposal of cigarette materials?

Summary: Defendants were both smokers who had moved into a home not permitting smoking inside. Therefore they smoked on the back deck. On April 25, 2010 a fire originating in the area of the back deck destroyed much of the house such that it had to

be rebuilt. Plaintiff's claim in negligence against Defendants.

Issues:

- (1) Has the cause and origin of the fire been determined on a balance of probabilities?
- (2) If associated with the cause of the fire, were either of the Defendants negligent?
- (3) Did the Plaintiffs' expert stray beyond his independent role into an advocate's role
- (4) Should the Court have drawn an adverse inference against the Defendants based on a material party witness not produced (i.e. Ms. Williamson)?
- (5) If the Defendants are found responsible, should a "betterment allowance" be credited in their favour against the Plaintiffs?
- (6) What is the proper rate of pre-judgment interest?

Result:

- (1) Cause of fire remains undetermined.
- (2) Defendants not negligent regarding their handling and disposal of cigarette materials.
- (3) Plaintiffs' expert did not stray into an advocate's role.
- (4) No adverse inference to be drawn against Defendants as a result of a material party witness not being produced.
- (5) No "betterment allowance" provisionally available to defendants as there was no evidence of agreement to that effect.
- (6) Provisionally, pre-judgment interest rate to be set at 2%.

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

