

**IN THE SUPREME COURT OF NOVA SCOTIA**

(Cite as: *Cape Breton Development Corporation v. D. Roper Services Ltd.*, 2002 NSSC 39)

**CAPE BRETON DEVELOPMENT CORPORATION**

**Plaintiff/Defendant by Counterclaim**

v.

**D. ROPER SERVICES LIMITED**

**Defendant/Plaintiff by Counterclaim**

**Justice A. David MacAdam**

**Halifax, NS**

**SN. No. 04087**

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**HEARD:** Before the Honourable Justice A. David MacAdam

**WRITTEN RELEASE**

**OF DECISION:** March 5, 2002

**SUBJECT:** Costs - Judicial Discretion - *Civil Procedure Rule 63.02* - Pre-Judgment Interest

**SUMMARY:** Plaintiff was successful at trial in obtaining an award of \$270,000.00 against the defendant. The \$270,000.00 was determined to be the amount involved in respect to calculating plaintiff's costs. Notwithstanding both counsel submitted that Scale 5 would be appropriate, I applied Scale 4 on the basis the issues of law and fact were not so technical or unique as to warrant or justify a Scale 5 award. Although the trial took in excess of 25 days, plus subsequent written and oral submissions, the issues were primarily factual, involving well known principles of the law of contract.

The defendant asserted that since the plaintiff had withdrawn a number of its claims at the outset and during the continuation of the trial and there had been failure of pre-trial disclosure of documents introduced into evidence, that the defendant was entitled to costs based on the amount of the claims withdrawn. This submission was not accepted. However, in view of the conduct of the plaintiff, the amount of plaintiff's costs were reduced by 20%.

Both parties claimed costs in respect to the decision on the counter-claim advanced by the defendant against the plaintiff. The plaintiff was found to have breached his contract with the defendant, but in the circumstances, the only damages awarded were nominal as compared to the amount claimed. The plaintiff claimed entitlement to costs on the basis that the original claim in excess of \$3,000,000.00 had resulted in an award of only \$10,000.00, while the defendant claimed that it had been successful in obtaining a finding that the plaintiff had breached its contract but only been unsuccessful in maintaining its claim for damages as a result of the plaintiff's breach. Although the defendant was successful and awarded \$10,000.00, having regard to the nominal amount of damages awarded, held that neither the plaintiff, nor the defendant, were entitled to costs on the counter-claim.

In respect to pre-judgment interest, held that the delay in bringing this matter to trial did not justify an award of pre-judgment interest from the date of the loss until the date of decision. Notwithstanding concession by counsel for the defendant, as to the appropriate period for pre-judgment interest, in view of the lack of justification for the long delay in bringing this matter to trial, pre-judgment interest only awarded for a period of five years.