

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Dexter Construction v. Nova Scotia (Attorney General), 2004 NSSC 267

Date: 20041220
Docket: SH 165314
Registry: Halifax

Between:

Dexter Construction Company Limited

Plaintiff

v.

The Attorney General of Nova Scotia
representing Her Majesty The Queen in the right of
the Province of Nova Scotia

Defendant

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Judge: The Honourable Justice Allan P. Boudreau

Heard: By written submissions received at the end of October and the first of November, 2004

Decision on Costs: December 20, 2004

Subject: Costs in Civil Cases.

Issue: What is an appropriate award of costs where success at the trial is divided?

Summary: Dexter Construction Company Limited, (“Dexter”) tendered on a project for highway and bridge repair with the Department of Transportation and Public Works for the Province of Nova Scotia, (“DTPW). The project was awarded to Dexter, it being the lowest compliant bidder. A contract was entered into between the parties shortly thereafter. A few weeks after the contract was finalized, DTPW became aware that it had made an error in its tendering documents whereby the Dexter bid could cost DTPW additional monies for repairs to the concrete deck on the CNR overpass, (“the Bridge”), portion of the project. Dexter has sued for alleged unpaid concrete removal work, being some \$535,000.00, plus interest.

DTPW contends that Dexter knew or ought to have known that item 5.13.02 of the amended tender documents entitled, “Concrete Removal on Bridge Decks - Restoration” was in error and that it was an obvious duplicate of item 5.13.08 entitled, “Concrete Bridge Deck Repair”. Dexter bid the first item at \$1,000.00 per unit and the second item at \$140.00 per unit. DTPW has paid for all the work in question at \$140.00 per unit and Dexter has sued claiming it is entitled to \$1,000.00 per unit in accordance with item 5.13.02 of the contract. A pivotal issue is the state of Dexter’s knowledge regarding the two items in question at the time of submitting its bid and entering into the contract for the project. Dexter was partly successful and recovered one half of the amount claimed on the main contract, plus the amount claimed regarding interest on the hold back, as simple pre-judgment interest and not compound interest as claimed.

Result: Found Dexter entitled to costs based primarily on the amount recovered even though success had been less than the original amount claimed.
(Fact Specific)

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