

Case No.

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**Eastern Canada Coal Gas Venture Limited v. Cape Breton Development Corporation**

1993

109924

Sydney, Nova Scotia

Justice Frank C. Edwards

## LIBRARY HEADING

Cite as: Eastern Canada Coal Gas Venture Ltd. v. Cape Breton Development Corporation, 2001 NSSC 196

**DATES HEARD:** September 5, 2000 - October 17, 2001

**DECISION:** December 18, 2001

**SUBJECT:** Breach of Contract, Mutual Mistake and Negligent Misrepresentation

**SUMMARY:** This is an action by Eastern Canadian Coal Gas Venture Limited (Venture) against the Cape Breton Development Corporation (Devco). On the application of Venture, The Attorney General of Canada was substituted as the named Defendant.

In June 1992, Devco and Venture signed a Coal Gas Agreement (CGA) and a Memorandum of Understanding (MOU) to use coalbed methane to produce electricity. The agreements specified the use of gas from Devco's Phalen Colliery only. The project was to be financed by a \$5 million loan from CIBC and a \$1.2 million investment by Devco.

Venture had earlier contracted with Nova Scotia Power (NSP) to sell electricity to NSP as of April 1, 1993. The only gas available on April 1, 1993 was from Devco's Lingan Colliery. Venture knew that Phalen gas would not be available until early in 1994. Despite the terms of its contract with Devco for Phalen gas, Venture decided to start electrical generation on April 1, 1993 using Lingan gas. Unfortunately, Lingan Colliery flooded in November 1992. Lingan gas was suddenly and permanently not available.

Venture then took the position that Devco was obliged to provide Phalen gas as of April 1, 1993. Venture denied that it had ever been its intention to start electrical generation using Lingan gas.

Until November 1992, Devco had relied on Venture's feasibility study which appeared to say that Phalen gas alone would support the project. In February, 1993, the author of the Venture study, Andrew Liney, advised Devco that Phalen gas alone was not sufficient. At Devco's request, Mr. Liney provided a second report which confirmed his advice that the project was a non-starter on Phalen gas alone.

On March 29, 1993, Devco cancelled the project because of the insufficiency of Phalen gas. Contrary to Venture's assertion, Devco did not cancel the project because of the flooding of Lingan Colliery or because of a dispute with Venture over the cost of an underground pipeline.

Both Venture and Devco had proceeded in the mistaken belief that Phalen gas alone could support the project. "Mutual mistake" fundamental to the parties' agreement results in rescission of the agreement. Devco was justified in terminating its involvement with the project.

There was no negligent misrepresentation by Devco.

**CASES NOTED:** *Marleau v. Savage*, 2000 Carswell Ont 2226 (Ontario S.C.J.)  
*Bruce v. Waterloo Swim Club* (1990, 73 O.R. (2d) 709 (H.C.)  
*Bell v. Lever Brothers Ltd.* [1932] A.C. 161  
*Sheikh Brothers, Ltd. v. Ochsner*, [1957] A.C. 136  
*Griffith v. Brymer* (1903), 19 T.L.R. 434  
*Solle v. Butcher*, [1950] 1 K.B. 671  
*Associated Japanese Bank v. Credit du Nord*, [1988] 3 All E.R. 902  
*R. v. Ontario Flue-Cured Tobacco* case (1965), 51 D.L.R. (2d) 7 (Ont.C.A.)  
*Garrard et al. v. Lund et al.*, [1921] 1 W.W.R. 329  
*Chandler v. Webster* [1904] 1 K.B. 493, at 499  
*Marwood et al. v. Charter Credit Corporation* (1970), 12 DLR (3d) 765 (NSSC)  
*Cognos Inc.* (1993), 99 D.L.R. (4<sup>th</sup>) 626 (S.C.C.)

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