

SCCH 403679

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Earth-Water Concepts Inc. v. Myres, 2012 NSSM 29

BETWEEN

Earth-Water Concepts Inc.

CLAIMANT

-and-

Madeline T Myres

DEFENDANT

DECISION and ORDER

This case came before the Small Claims Court on August 23, 2012.

Rick Gagne represented the claimant in this case and Deborah Logan assisted the defendant.

The defendant was involved with a Development Agreement in HRM which required a hydro-geological assessment to be completed to the satisfaction of HRM. The defendant and claimant entered into a contract where the estimated cost to complete a level I and level II assessment was \$3885.00 plus tax.

The best evidence before this court as to what was required in the testing to be completed by the claimant was that of the claimant's witness Mr. Gagne. The defendant made assumptions about the report not based on any knowledge she had in the area involved in the water testing analysis. The defendant was unable to show that the claimant did not know what he was doing in preparing his report. With respect to the defendant's defense that the contract was limited to the amount of \$3885 plus HST and disbursements this

was simply not correct. The agreement which was signed between the parties gave a cost estimate not a finite amount. The agreement also stated quite clearly that the cost estimate was subject to change.

The evidence was that the report and requirements to complete the report were extensive and the work completed was reflected in the invoices of the claimant.

The claim was \$11,721.05 and this included interest and legal costs which the claimant incurred in trying to obtain payment of its account. The amount claim for legal costs was \$646.68 plus HST of \$84.23[\$730.91] and this claim is not allowed. There is nothing in the agreement to show that legal costs would be allowed in the event the agreement was breached or invoices were not paid. The amount of interest accruing on legal fees and outstanding invoice amounts would be nominal and deminimus.

Therefore I would allow \$11,721.05 less the \$730.91 for total amount of \$10,990.14 plus costs.

It Is Therefore Ordered that the defendant pay the claimant the following sums:

\$10,990.14

\$ 182.94 court costs

\$11,173.08 total

Dated at Halifax August 29, 2012