

NOVA SCOTIA COURT OF APPEAL

Citation: *E.B.F. Manufacturing Ltd. v. White*, 2005 NSCA 167

Date: 20051230

Docket: CA 238176

Registry: Halifax

Between:

E.B.F. Manufacturing Limited

Appellant/Respondent
by Cross-Appeal

- and -

Eric White

Respondent/Appellant
by Cross-Appeal

- and -

ElectroBraid Fence Ltd.

Intervenor

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: September 29, 2005

Subject: Inventions. Royalties. Patents and patents pending. Interpreting a contract. Standard of Review. Lifting the corporate veil. Repudiation. Acceptance.

Summary: White invented and holds a patent for a braided polyester rope interwoven with conductive copper wire and used as the rail component in an electrically charged fence. Litigation ensued between White and two companies he and his former partners incorporated, EBF and FENCE, to manufacture and market the braided electrical fencing. White sued, claiming unpaid royalties and seeking a declaration that the licence agreement had been repudiated. The trial judge dismissed the claim for repudiation but found that royalties were due to White based on the sales of both companies, FENCE and EBF.

EBF appealed and FENCE intervened on two principal grounds: first, that the trial judge erred in finding that in calculating the royalty payments owed to White by EBF, the gross revenue of FENCE was to be included; and second that the trial judge erred in ordering FENCE to make its books and records available for a review by an accounting professional for the purposes of calculating the royalty payments owing to White by EBF.

White cross-appealed alleging that the trial judge erred in determining that the licence agreement has not been repudiated and remains valid and enforceable.

Held: Both the appeal and the cross-appeal were dismissed.

The trial judge did not err in law by looking outside the written contract in order to resolve uncertainty with respect to key contractual terms, specifically how royalties were to be calculated, and when and by whom they were to be paid. None of his findings of fact or inferences drawn from those facts were the result of palpable and overriding error.

Similarly, no error of law or of fact in lifting the corporate veil and concluding that FENCE was the alter ego of EBF and its owner Bryson. Given the unique and complex features of this case the judge was correct in determining that in order to calculate the royalties owing to White by EBF, the gross revenue of FENCE ought to be included, and by compelling FENCE to make its records available for review in order to complete that necessary calculation.

Finally, the judge did not err in law or in fact when deciding that the contract had not been repudiated by EBF, and further that there had never been an acceptance by White of the alleged repudiation.

Detailed analysis of the evidence, and the law relating to standard of review, contractual interpretation, corporate independence, and repudiation.

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| <p>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 34 pages.</p> |
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