

CASE NO.**VOL. NO.****PAGE**

A.A. PUTNAM & SONS (1997) LIMITED

FAIRVIEW FARMS LIMITED and
M.S.D. ENTERPRISES LIMITED
and A.A. PUTNAM & SONS
INVESTMENTS LIMITED and
JEAN PUTNAM, CLAUDIA
PUTNAM and LORNE PUTNAM

- and -

(Appellant)

(Respondents)

ca 157649

Halifax, N.S.

FREEMAN, J.A.

[Cite as: A.A. Putnam & Sons (1997) Ltd. v. Fairview Farms Ltd., 2000 NSCA 27]

APPEAL HEARD:

January 25, 1999

JUDGMENT DELIVERED:

February 9, 2000

SUBJECT: **Contracts; Rectification****SUMMARY:**

When three brothers divided business operations centered on the family farm among their three companies in 1987, they achieved a rough equivalence of value by conveying the dairy operation with its assets and offsetting liabilities as a going concern to the company of the oldest brother, whose son took over the dairy management. A stumbling block was the fact that the breakup value of the dairy was some \$450,000 greater than its value as a going concern; the milk quota alone was worth more than a million dollars. To avoid a potential windfall, it was agreed that if the milk quota was sold piecemeal the proceeds would be equally divided. There were two kinds of quotas, fluid milk quota for milk sold for consumption as such and market share quota permitting sales for industrial milk to be processed as butter or cheese. A preliminary agreement referred to the division of the proceeds from the sale of "milk quota" and the final agreement referred to "fluid milk quota." The son of the older brother began selling quota and took the position he was not accountable to his uncles' companies because he was selling only industrial quota, not fluid milk quota. By 1997 when quota worth about \$540,000 had been sold, the dairy license was lost for quality infractions and the remaining

quota was sold for \$1,042,132. Proceeds of only two sales totalling \$281,000 were shared under the agreement. The uncles brought action on behalf of their companies. The trial judge found it had been agreed that proceeds from the sales of all milk quota should be equally divided and rectified the final agreement to remove the word “fluid” as a modifier for “milk quota.” The oldest brother’s company appealed.

ISSUES: Was rectification of the agreement the appropriate remedy?

RESULT: The appeal was dismissed with costs. The trial judge committed no reversible error in determining that the intention of the contracting parties had been that proceeds from the sale of all milk quota was to be divided among the three brothers’ companies. He correctly applied the law governing the rectification of contracts.

This information sheet does not form part of the court’s decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 11 pages.