

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Stewart v. Stewart Estate, 2005 NSSC 355

**Date:** 20051229

**Docket:** S. BW. No. 222089

**Registry:** Bridgewater

**Between:**

Ronald Ross Stewart

Plaintiff/Defendant by Counterclaim

v.

Ruth Augusta Stewart, Administrator of the Estate of  
Noble Harry Stewart, Deceased

Defendant/Plaintiff by Counterclaim

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**Judge:** The Honourable Justice Allan P. Boudreau

**Heard:** at Shelburne and Barrington, Nova Scotia on  
March 29, 30, 31, June 2 and 20, 2005

**Written Decision:** December 29, 2005

**Subject:** **CONTRACTS - (Fisheries) - Uncertainty**  
**- Implied terms - Duress**  
**- Illegality of object**  
**- Unconscionable - Ratification**

**Summary:** This is another case involving a dispute over the rights to fish a lobster licence between family members of a deceased lobster fisherman. The Plaintiff, Ronald Ross Stewart ("Ronald") is the son of the deceased lobster fisherman, Noble Harry Stewart ("Noble Harry"), and the defendant, Ruth Augusta Stewart ("Ruth") is the widow of the late Noble Harry. Noble Harry died intestate and his lobster licence ("the Licence") and his fishing gear were the object of an agreement for their use entered into between Ronald and Ruth. The main question to be determined is under what circumstances or terms were the Licences and fishing gear of the late Noble Harry permitted to be used by Ronald. Ronald has claimed it was for an indefinite term whereas Ruth argues it was a permission resulting from an unenforceable agreement primarily reached under duress and without consideration, or alternatively that it was at most understood to be an agreement for a fixed term of five years.

There are also concurrent proceedings before the Court of Probate for Nova Scotia dealing with objections to Releases to any claim in the Estate of the late Noble Harry (“the Estate”) signed by all the siblings of Noble Harry. I shall deal with those objections more fully in a separate decision; however, I can state here that the result of those proceedings in the Court of Probate is that all the Releases have been rejected and declared null or void and of no force and effect.

- Issue:**
1. Is the Agreement legally binding on Ruth personally or on the Estate given that she was only granted Administration in January of 2002?
  2. Was the Agreement entered into under duress or coercion such as to render it unenforceable?
  3. Is the Agreement void for lack of consideration on the part of Ronald?
  4. Is the Agreement unenforceable because it is unconscionable?
  5. Is the Agreement unenforceable because it was entered into between close family relations?
  6. Is the Agreement void because of illegal terms given DFO’s five year limitation on Estates holding fishing licences?
  7. Is the Agreement void for uncertainty of terms?
  8. If the Agreement was valid, was it a simple indefinite contract of employment which could be terminated on appropriate notice?
  9. If the Agreement was valid, did Ronald commit a fundamental breach such as to terminate or repudiate the Agreement?
  10. If the Agreement was valid, did Ronald agree to terminate it under the terms agreed to between his and Ruth’s legal counsel when agreeing not to oppose the sale of the licence to DFO and to fish out the lobster season until the end of May, 2004?

**Result:** Found the contract valid, binding and enforceable. Awarded two years fishing income. Fact specific.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***