

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Jeffrie v. Hendriksen*, 2016 NSSC 27

**Date:** 20160120  
**Docket:** *Hfx* No. 346079  
**Registry:** Halifax

**Between:**

Roderick Jeffrie

*Applicant*

v.

Anthony Hendriksen, Inland Marine Services Limited and Three Ports Fisheries  
Limited

*Respondents*

**Judge:** The Honourable Justice Michael J. Wood

**Heard:** January 14-15, 2016, in Halifax, Nova Scotia

**Counsel:** Roderick Jeffrie, self-represented  
Ezra B. Van Gelder and Caitlin Regan-Cottreau, for the  
Respondents

**By the Court:**

[1] Roderick Jeffrie and Anthony Hendriksen are equal shareholders in Three Ports Fisheries Limited (“Three Ports”). In September 2010 they reached an agreement for the sale of Mr. Jeffrie’s shares, however Mr. Hendriksen did not follow through on his commitment. In 2012 I presided over a seven-day application in court to determine whether an enforceable contract existed between the parties or, alternatively, whether Mr. Hendriksen had engaged in oppressive conduct. In February 2013 I issued a written decision (2013 NSSC 50) dismissing Mr. Jeffrie’s claims for breach of contract and oppression. I concluded that an agreement had been reached between the parties but it did not create an enforceable contract because it was never reduced to a formal written document.

[2] Mr. Jeffrie appealed that decision successfully and in May 2015 the Nova Scotia Court of Appeal issued a decision (2015 NSCA 49) declaring the September 2010 agreement to be an enforceable contract. The Court of Appeal’s conclusion was as follows:

The appeal should be allowed. I would remit this matter to the application judge to determine whether specific performance or an assessment of damages would be the appropriate remedy. Both were requested before the judge originally.

[3] In addition to determining whether Mr. Jeffrie would be entitled to specific performance or damages, I was directed to assess the costs of both the original application and the assessment of Mr. Jeffrie’s remedy.

[4] The process for determining Mr. Jeffrie’s remedy started in June 2015. Initially he was represented by legal counsel, however as of September 2015 he was representing himself. Mr. Jeffrie’s position was that the agreement should be enforced and he wanted that question decided as quickly as possible. If it was necessary to calculate damages, this would require more evidence and probably expert witnesses. Mr. Jeffrie wanted to defer that issue until after I decided whether to require Mr. Hendriksen to comply with the terms of the agreement through an order of specific performance.

[5] Both parties filed affidavits and written briefs and a two-day hearing was held on January 14 and 15, 2016. Messrs. Jeffrie and Hendriksen were cross-examined on the affidavits which they had filed, as well as some of the evidence from the initial application.

[6] I need not review the extensive history of the dealings between the parties as this is outlined in the above noted court decisions. What is relevant for this decision are the terms of the agreement reached in September 2010 in which Mr. Hendriksen agreed to buy all of Mr. Jeffrie's shares in Three Ports in exchange for the following:

1. Immediate payment of \$400,000.00.
2. Two payments of \$50,000.00 in April 2011 and April 2012 secured by the assignment of a crab allocation license for Area 23.
3. Transfer of another crab allocation license for Area 23.
4. Transfer of a Hummer motor vehicle.

[7] The parties placed a value of \$100,000.00 on each of the crab allocations for purposes of the agreement. The Hummer motor vehicle was valued at \$25,000.00 and has been in Mr. Jeffrie's possession since September 2010, although the registration has not been transferred to him.

[8] Mr. Hendriksen argued that the crab allocation was subject to a \$25,000.00 liability to be paid by Mr. Jeffrie prior to transfer. That was not my finding nor did the Court of Appeal come to such a conclusion. There was evidence to suggest the issue came up in discussions in late October 2010 but that was after the final agreement had been reached in September. I would not include such a liability as a condition of the agreement.

### **Position of Roderick Jeffrie**

[9] As a non-lawyer Mr. Jeffrie states his position quite clearly. He wants all of the money he is entitled to under the terms of the September 2010 agreement. He also wants compensation because he did not have his money or the crab allocation for the past five years. He does not want the income which might have been earned on his Three Ports' shares during this time, although he has not actually received any payments from the company.

[10] Mr. Jeffrie wants an immediate payment of \$500,000.00, the transfer of a crab allocation license for Area 23 and transfer of the registration for the Hummer. In exchange he will sign over his shares in Three Ports to Mr. Hendriksen. Mr. Jeffrie wants a further hearing to quantify the compensation he should be paid because the transaction did not take place as it should have in the fall of 2010.

### **Position of Anthony Hendriksen**

[11] Mr. Hendriksen acknowledges the Court of Appeal has said there is a binding agreement for the purchase of Mr. Jeffrie's shares. He argues there should be no order of specific performance requiring him to complete the transaction for a variety of reasons. The first is that it is an equitable remedy and Mr. Jeffrie has not come to court with "clean hands" because of allegations made against Mr. Hendriksen which were unfounded. One example is the claim that Mr. Hendriksen engaged in oppressive conduct which I dismissed following the initial application. This finding was upheld by the Court of Appeal.

[12] Mr. Hendriksen also says the agreement is too uncertain to be specifically enforced because Mr. Jeffrie has not proven which crab allocation was to be included in the transaction. Mr. Hendriksen's final objection is that it is no longer possible for him to perform the contract because he does not have the money to do so and the Court should not require specific performance when it knows he cannot comply with such an order.

### **Specific Performance**

[13] Specific performance is an equitable remedy which is often viewed as an alternative to an award of compensatory damages for breach of contract. In some circumstances calculating such damages can be problematic and potentially inaccurate. In this case it would require the Court to place a value on Mr. Jeffrie's shares in Three Ports. This would undoubtedly require opinion evidence from expert witnesses such as business valuers and accountants. It may also require evidence from experts in the fishing industry, particularly with respect to the valuation of crab allocations.

[14] It is apparent, from the evidence filed for the initial application, there is a significant dispute between the parties about the accuracy of Three Ports' financial records. These disputes would have to be resolved in order to provide a reliable evidentiary basis for any expert opinions on valuation. Although experts might be

able to provide their views with respect to the worth of Mr. Jeffrie's shares, the only way he could obtain their value would be to sell them to Mr. Hendriksen or a third party. Mr. Hendriksen is resisting an order for specific performance which presumably means he is not interested in purchasing the shares. Although I have no evidence specifically on this issue, I can envision it would be very difficult to find a person willing to pay significant money to buy into Three Ports given the history of the company and its shareholder dispute.

[15] In considering the issue before me I am satisfied that the only realistic way to compensate Mr. Jeffrie for the bargain which he reached in 2010 is to order Mr. Hendriksen to complete the deal as agreed. A proceeding for quantification of damages for breach of contract based upon potentially competing opinions creates a real risk that a fair outcome might not be achieved. For this reason I believe that specific performance is an appropriate remedy subject to the other arguments raised by Mr. Hendriksen.

### *Clean Hands*

[16] It is recognized that an equitable court may choose to deny a remedy when the party seeking it has behaved badly. In this case, Mr. Hendriksen says Mr. Jeffrie made serious allegations of misconduct against him which were unfounded and has caused him significant harm. These include the claims for oppression in this proceeding which were dismissed. Mr. Hendriksen also says he was subject to investigations and proceedings with various levels of government as a result of Mr. Jeffrie's allegations. These include the Canada Revenue Agency, Department of Fisheries and Oceans and the RCMP.

[17] The issue of third party actions against him was not included in Mr. Hendriksen's affidavit filed in relation to this hearing. The suggestion that Mr. Jeffrie might have been the reason for these investigations only came up in answers given by Mr. Hendriksen in cross-examination and he provided no source for the information. These comments are either Mr. Hendriksen's opinion as to what was motivating the government agencies or comes from what others said to him. In either case, it is not admissible evidence that I will consider.

[18] Mr. Jeffrie's claim for oppression was not successful and those allegations were advanced as an alternative argument to try and enforce the agreement to buy his shares. The lack of success on the part of Mr. Jeffrie may be reflected in an

award of costs but is not the sort of misbehaviour that should deprive him of the remedy of specific performance if it is otherwise appropriate.

*Impossibility*

[19] Mr. Hendriksen's brief and affidavit make no reference to his financial circumstances. In cross-examination Mr. Jeffrie asked him why he did not complete the agreement once the Court of Appeal issued its decision. Mr. Hendriksen's answer was that he did not have the money. In my view this limited evidence is not sufficient to support the argument that it is impossible for Mr. Hendriksen to complete the transaction.

[20] If Mr. Hendriksen wanted to argue that his financial circumstances are an impediment to enforcement of the agreement, he should have done so with a solid evidentiary basis on which he could have been cross-examined. In the absence of this, I am not prepared to consider refusing specific performance on the basis of impossibility.

*Certainty*

[21] Mr. Hendriksen says specific performance should not be granted because there is no certainty with respect to which crab allocation was to be included. In his affidavit filed in relation to this hearing Mr. Hendriksen says he and Mr. Jeffrie agreed he would receive one of two allocations previously held by Percy Whitty and Kevin Spencer, both of which were purchased by Three Ports for \$100,000.00.

[22] In his cross-examination Mr. Hendriksen said the Spencer allocation was sold by Three Ports in 2014, however the company is still the beneficial owner of the Whitty allocation.

[23] In light of Mr. Hendriksen's evidence that the two allocations were purchased for the same price and the parties had agreed that one of those two would be transferred to Mr. Jeffrie as part of the transaction, I see no issue of uncertainty that would prevent an order of specific performance. This is particularly so where only one of the allocations remains within the control of Three Ports.

*Conclusion on Specific Performance*

[24] I am satisfied that specific performance should be granted to Mr. Jeffrie. None of the arguments raised by Mr. Hendriksen would justify refusing to exercise the Court's equitable jurisdiction to give Mr. Jeffrie the remedy that he is entitled to.

[25] In addition to specific performance, Mr. Jeffrie seeks compensation for the delay in closing the transaction. Such compensation has been awarded in a number of cases including *Holmes v. Alexson* 1974 CanLII 677 (ONSC), *Law-Woman Management Corp. v. Peel (Regional Municipality)* 1991 CanLII 7383 (ONSC) and *Stefan and Lichter*, 2005 SKQB 383. If Mr. Jeffrie wishes to have a further hearing to quantify the additional compensation which he is claiming, he may do so by filing a notice of motion with supporting affidavits. Obviously, if Mr. Hendriksen believes there are adjustments which ought to be made in his favour related to Mr. Jeffrie's shares and the Hummer, he is free to raise those issues at that hearing.

[26] The original agreement contemplated an initial payment of \$400,000.00 and two \$50,000.00 payments over the next two years. Since those dates are in the past, I am prepared to order an immediate payment of \$500,000.00 representing the full amount of the cash component of the purchase price. I believe this modification in timing of payments is appropriate given the passage of time and falls within the equitable jurisdiction of the court. Mr. Hendriksen will have the option of making two \$50,000.00 payments, the first of which would be due six months after closing and the second a year after that, provided he assigns an Area 23 crab allocation to Mr. Jeffrie as security for those future payments as contemplated by the original agreement.

[27] The verbal agreement reached in September 2010 did not specify a closing date, although all of the discussions made it clear that the parties wanted it to be as soon as possible. In the circumstances I believe it is reasonable to provide a period of time for the transaction to come together. I would set this at 90 days from the date of this decision.

[28] The agreement was negotiated between Mr. Hendriksen and Mr. Jeffrie, however Three Ports was likely required to participate in order to conclude the transaction, since they were the beneficial owner of the crab allocation and registered owner of the Hummer. For these reasons I would make them a party to this order for specific performance.

**Summary**

[29] For the above reasons I would order specific performance of the agreement between the parties entered into in September of 2010. The terms of the transaction are as follows:

1. Mr. Jeffrie shall endorse for transfer to Mr. Hendriksen share certificates representing all of the shares which he owns in Three Ports.
2. Mr. Hendriksen shall pay to Mr. Jeffrie a cash payment of \$500,000.00. At Mr. Hendriksen's option he can make an immediate payment of \$400,000.00 with payments of \$50,000.00 six months and eighteen months after closing provided he assigns an Area 23 crab allocation to Mr. Jeffrie as security for those future payments.
3. The Area 23 crab allocation formerly owned by Mr. Whitty shall be transferred to Mr. Jeffrie.
4. The vehicle registration for the Hummer shall be transferred to Mr. Jeffrie.
5. The closing date shall be no later than 90 days from the date of this decision.

[30] As the successful party, it is the responsibility of Mr. Jeffrie to prepare an appropriate form of order to reflect this decision. Once he has drafted the order he should send it to Mr. Van Gelder for his review and consent as to form before it is sent to me. If there is any difficulty in settling the final form of order, I would refer the parties to the procedure set out in *Civil Procedure Rule 78.04*.

[31] I am required to deal with the assessment of costs for the initial application which I heard in 2012 as well as this hearing to determine Mr. Jeffrie's remedy. I would ask the parties to provide me with their written submissions on both of these costs questions. Mr. Jeffrie's submissions will be due 45 days from the date of this decision and Mr. Hendriksen's response, 20 days thereafter. If Mr. Jeffrie makes a motion for further compensation as a result of the delay in closing the original agreement, the costs of that step will be assessed at that time.