SUPREME COURT OF NOVA SCOTIA
Citation: *Fraser v. 3102602 NS Ltd.*, 2020 NSSC 187

Date: 2020 06 30
Docket: SN 413151
Registry: Sydney

Between:

Paul Fraser

Plaintiff

v.

3102602 Nova Scotia Limited

Defendant

Decision

Judge:	The Honourable Justice John Bodurtha
Heard:	February 19, May 13 & 14, 2019 in Sydney, Nova Scotia
Final Written Submissions:	June 14, 2019
Written Release:	June 30, 2020
Counsel:	Duncan MacEachern, for the Plaintiff Roderick Jeffrie, Defendant

By the Court:

Overview

[1] This is the unfortunate story of how Paul Fraser ("Fraser") and his snow crab allocation became a bargaining chip in Jeffrie's ongoing dispute with Hendriksen.

[2] Roderick Jeffrie ("Jeffrie") and Anthony Hendriksen ("Hendriksen") were equal shareholders in Three Ports Fisheries Limited ("Three Ports"). Three Ports was a company that purchased snow crab and lobster. In the summer of 2010, relations between the shareholders deteriorated to the point where they could no longer work together. An agreement was later reached between the two but Hendriksen failed to honour the agreement. A lawsuit ensued and Jeffrie was ultimately successful.

[3] Before 2010, Fraser's snow crab allocation was being fished by 3102135 Nova Scotia Limited. In 2010 he was advised by 3102135 Nova Scotia Limited that they would be selling all its snow crab allocation to another fish buyer. Fraser wanted Three Ports to continue to purchase his snow crab allocation so he approached Hendriksen to see if he could transfer his allocation into the Big Bras D'Or group, a corporation that Hendriksen was a shareholder in and which sold to Three Ports.

[4] Hendriksen was unable to transfer Fraser's quota into the Big Bras D'or group but instead had it transferred into the Defendant, 3102602 Nova Scotia Limited, a corporation that sold to Three Ports. Jeffrie was the President and a shareholder of the Defendant.

[5] The documents demonstrating the transfer of Fraser's snow crab allocation from 3102135 Nova Scotia Limited to the Defendant were deficient and possibly tampered with, but ultimately, the Department of Fisheries and Oceans ("DFO") approved the documentation and transferred Fraser's allocation to the Defendant.

[6] In 2010, Fraser received payment from Three Ports for his snow crab. In 2011, things turned worse for Fraser; it is no coincidence that this happened around the same time that the Defendant's President, Jeffrie, engaged in a dispute with Hendriksen. Fraser's snow crab allocation was fished by the Defendant, yet he received no compensation for this from either Three Ports or the Defendant. The Defendant continued to fish Fraser's snow crab allocation at least until 2018 without paying any compensation to Fraser.

[7] The Defendant denied the license transferred to it was Paul Fraser's and relied on erroneous documentation from DFO to maintain this assertion. However,

when DFO provided additional documentation demonstrating their error, the Defendant refused to transfer the allocation until Jeffrie's dispute with Hendriksen was resolved. Even after the dispute was resolved the Defendant continued to retain and fish Fraser's allocation for its benefit.

[8] From at least 2011 the Defendant knew that Fraser's snow crab quota allocation had been transferred to it but did not pay him any compensation.

Background

Paul Fraser's Quota and Compensation

[9] Fraser's Area 23 Snow Crab Commercial Fishery Quota for 2011-2018 was prepared by Timothy Hayman, DFO representative, (see Exhibit 6) and was not challenged. The quota is as follows:

Area 23 Snow Crab Commercial Fishery Quota – 2010 to 2018

SEASON	Area 23 Commercial Quota (Metric Tonnes)	Area 23 Science use-of-fish quota (Metric Tonnes)
2010	7141.200	-
2011	6556.900	-
2012	6348.000	-
2013	5749.000	371.000 *
2014	5818.360	301.640
2015	5818.360	301.640
2016	4868.190	333.810
2017	3289.350	350.650
2018	2950.060	325.940
Fraser's allocation		
2011	6.843	-
2012	6.625	-
2013	5.999	0.387
2014	6.072	0.315
2015	6.072	0.315
2016	5.080	0.348
2017	3.432	0.366
2018	3.079	0.340

The second column in the table represents the total allowable catch ("TAC") for Snow Crab Fishing Allocation #23 for a particular year. In 2013 a science

component was added. The TAC for those years was the commercial quota plus the science use-of-fish quota. The second table represents Fraser's allocation based on his 0.10436%. Fraser's percentage allocation is the same for both the commercial quota and the science quota. To convert from metric tonnes to lbs. the amount is multiplied by 2204.

[10] For 2010 Fraser received payment for his proportionate share of the snow crab quota allocation fished by the Defendant. Three Ports made a payment to Fraser because it was not uncommon to provide an advance to fishers and Three Ports assumed it was getting the benefit from his allocation. Typically, fishers are paid in September after the season closes. Three Ports did not receive any compensation from the Defendant in 2010 for Fraser's snow crab allocation. Three Ports assumed the quota from Fraser's allocation had come back to them for processing.

[11] The Individual Licence Transfer Report for the Defendant for 2010 shows negative transfer amounts. These amounts represent overruns which occur when a corporation fishes over their allocation and it represents a transfer going out of the corporation. Essentially, it means more crab was caught than allocated for that licence. It appears that Fraser's transferred quota was used to offset overruns by the Defendant in 2010 (see Exhibit 10, p. 49).

[12] At some point in late 2010/early 2011, Three Ports realised it was not going to get the Defendant's snow crab, including Fraser's allocation, because Jeffrie was planning to join a competitor. Jeffrie was still President of Three Ports at the time and litigation between Jeffrie and Three Ports ensued as a result.

[13] Fraser called Three Ports to pick up his cheque in August 2011 because that was where he believed his quota was being utilised. He was informed there was a problem and he should speak with Hendriksen. He spoke with Hendriksen who told him to go see Jeffrie. He went to Jeffrie and Jeffrie denied having his share allocation or his money.

[14] To determine a payment for snow crab, the buyer would multiply the shore price by the volume of the catch. The amount fishers would have been paid from 2011-2016 would be calculated by deducting, typically, $0.50 from the gross price per pound for crab (see Exhibit 3, Tab 23, pp. 146-147). Fraser should have been paid the following from 2011-2018:

YEAR	%	FLEET	METRIC	METRIC	TOTAL	SHORE	YEARLY

	INTEREST IN FLEET	ALLOCAITON	TON ENTITLE-MENT	TON CONVERSION	LBS	PRICE/ LB	COMPENSATION PAYABLE
2011	0.10436	6556.912 MT	6.8400	6.84* 2,204.63	15079.66	$2.55	$38,453.13
2012	0.10436	6348.007 MT	6.6247	6.6247* 2,204.63	14605.01	$1.75	$25,558.77
2013	0.10436	5748.998 MT	6.3868	6.3868* 2,204.63	14080.53	$1.75	$24,640.93
2014	0.10436	6,120.02 MT	6.3868	6.3868* 2,204.63	14080.53	$2.15	$30,273.14
2015	0.10436	6,120.02 MT	6.3868	6.3868* 2,204.63	14080.35	$2.30	$32,385.21
2016	0.10436	5,201.99 MT	5.4287	5.4287* 2,204.63	11968.28	$3.25	$38,896.91
2017	0.10436	3,640.01 MT	3.7987	3.7987* 2,204.63	8374.73	$4.50	$37,686.28
2018	0.10436	3,276.01 MT	3.4187	3.4187* 2,204.63	7536.971 7	$4.75	$35,800.61
TOTAL AMOUT							$264,294.98

[15] Fraser testified that from 2011–2018 he received no compensation from the Defendant for his snow crab allocation. During this time, the Defendant was the licenced entity with the authority to fish his one individual snow crab quota allocation, which it did.

History of Fraser's Allocation

[16] Several witnesses testified at the hearing but the Defendant, who was represented by the President, Jeffrie, chose to call no witnesses. I found the testimony of the DFO officers, Claire MacDonald, subject matter expert in fisheries, and Timothy Hayman, Regional Senior Fisheries Management Advisor, and Perry LeBlanc ("LeBlanc"), the authorised representative for 3102135 Nova Scotia Limited, to be significant in determining what happened to Fraser's snow crab allocation.

[17] To assist in that determination, it is helpful to understand the snow crab fishery. In the fishery, the corporation is the license holder while the individual fishers hold shares in the corporation. Individual shareholders are prohibited from going out and fishing on their own because the licensed entity is the corporation. The corporation owns the license. Individual shareholders have no interest in the

license. An individual quota holder owns a percentage amount (0.10436%) of the overall quota. Each corporation generally has 16 shareholders.

[18] Fraser was a shareholder for five years in 3102135 Nova Scotia Limited before he left the corporation in 2010. 3102135 Nova Scotia Ltd. was ending its relationship with Three Ports and was going to sell its catch to someone else. Fraser wanted his share quota transferred to 3102132 Nova Scotia Limited (the Big Bras d'Or group), a corporation of which Hendriksen was a shareholder and which sold to Three Ports.

[19] Three Ports started in 2004 and was a partnership between John Simec, Jeffrie and Hendriksen.

[20] 3102135 Nova Scotia Limited sold snow crab to Three Ports up to 2009. In 2010 Hendriksen had a conversation with Perry LeBlanc, ("LeBlanc") who advised that 3102135 Nova Scotia Ltd. was no longer going to sell their catch to Three Ports. Fraser wanted to continue selling his snow crab to Three Ports. Hendriksen met with Fraser and discussed the possibility of him transferring his share quota to the Big Bras d'Or group. After the conversation, Hendriksen later found out membership within the Big Bras d'Or group was full, so he approached Jeffrie because the Defendant corporation in which he was a shareholder only had 15 shareholders; they had room for one more. Fraser was not informed that his snow crab quota allocation was not transferred to the Big Bras d'Or group but would be transferred to the Defendant. It was not until 2011 that Fraser discovered his snow crab allocation had been transferred into the Defendant.

[21] Hendriksen was not concerned about Fraser's snow crab allocation not being transferred to the Big Bras d'Or group because the snow crab allocation was going to the Defendant who sold their catch to Three Ports. Therefore, Fraser's allocation was "staying" in Three Ports.

The Transfer of Fraser's Allocation

a) Evidence of Hendriksen, LeBlanc and Fraser

[22] A transfer from one corporation to another corporation is completed by filling out a Permanent Quota Transfer Application form and submitting it to DFO for processing. If the Quota Transfer Application form is filled out properly there is no way to identify whose individual quota allocation is being transferred. Regarding Fraser's transfer application, Hendriksen testified that he wrote the

stock, amount, and type in the middle of the Snow Crab Permanent Quota Transfer Application form (see Exhibit 3, Tab 5, p. 11) and left the rest of the document blank. He provided the document to Lorne Jessome, an employee of Three Ports, to give to LeBlanc to fill out his part of the form. Jeffrie's name was not on the document when Hendriksen filled in the middle part. Hendriksen does not believe he saw the form again until 2011.

[23] Lorne Jessome brought the form to LeBlanc to complete the transfer. LeBlanc was the authorised representative for the corporation, 3102135 Nova Scotia Ltd., and was responsible for signing the transfer documentation. LeBlanc wanted to speak to Fraser first before signing the documentation. In May 2010 LeBlanc and Fraser met at Tim Hortons. Fraser indicated he wanted to leave the group. They both signed the permanent transfer document and left the top portion indicating the "To" and "From" blank. LeBlanc kept the document and contacted Lorne Jessome to come pick it up. Fraser confirmed that it was his signature on the bottom of the form (see Exhibit 3, Tab 6, p. 13).

[24] Fraser incorrectly signed the document as the license holder. LeBlanc should have signed under the "Signature of Licence Holder or Authorized Representative" because he was the authorized representative for licence holder 3102135 Nova Scotia Ltd., which held licence no. 152704.

[25] LeBlanc and Fraser testified that they only signed one quota transfer form and that was at the meeting at Tim Hortons. The middle part of the form they signed was filled out with poundage and the top part of the form was not filled out.

[26] The request to permanently transfer Fraser's quota from licence no. 152704 to licence no. 152711 was first received on April 28, 2010 (see Exhibit 10, p. 1). The form was returned on April 29, 2010 to 3102135 Nova Scotia Ltd., c/o Perry LeBlanc but had the incorrect fax number on the form. The fax number was for Three Ports (see Exhibit 10, p. 3). A second form was submitted on June 16, 2010 and was rejected by DFO because it was incorrectly completed again (see Exhibit 10, pp. 6-7). A third form was submitted on June 28, 2010. This third form was processed by DFO, although this form incorrectly had the names of LeBlanc and Jeffrie as the licence holders instead of the respective corporations (see Exhibit 10, p. 9).

[27] On August 26, 2010 the Commercial Data Division of DFO approved and completed the transfer form to the Defendant, the holder of licence no. 152711. On August 26, 2010, a fax advising DFO had approved the permanent transfer was

incorrectly sent to Three Ports, although the fax was addressed to the Defendant, c/o Roddie Jeffrie (see Exhibit 10, pp. 21-22).

[28] The Individual Licence Transfer Report lists the permanent transfers processed by DFO on August 26, 2010 (see Exhibit 3, Tab 22, p. 140). The percent 0.104 on the report for that date is Fraser's transfer to the Defendant.

b) Evidence of Claire MacDonald

[29] Claire McDonald testified, and I found her evidence to be credible and I accept it entirely. Claire MacDonald was an employee with DFO and in 2002 she was employed in the resource management branch as a subject matter expert in fisheries. She dealt with snow crab beginning in 2008. Claire MacDonald knew that this was Fraser's quota allocation being transferred because Fraser's name was on the initial transfer form submitted and his name was on the second form that was also rejected by DFO. Claire MacDonald testified that she is "100% confident" that this is Fraser's quota allocation. She based her statement on the Snow Crab Permanent Transfer Application form (see Exhibit 10, p. 9) and the corresponding Permanent Transfer Approvals that shows the receiving company of the quota allocation being the Defendant (see Exhibit 3, Tab 2, p. 6) and the transfer amount being deducted from 3102135 Nova Scotia Ltd. (see Exhibit 10, p. 19).

[30] The DFO Individual Licence Transfer Report for the year 2010 indicates there was only one permanent transfer involving licence no. 152711 (licence holder 3102602 Nova Scotia Ltd.), which is the Defendant (see Exhibit 10, p. 49).

[31] On June 2, 2011 Claire MacDonald wrote to Jeffrie, the Defendant's authorised representative, advising she had reviewed the original shareholder information and subsequent years for the Defendant and could advise that Fraser was never a shareholder in the Defendant. This was in error.

[32] On July 26, 2011 after reviewing further documentation, she corrected herself and sent a fax to the Defendant's authorised representative, Jeffrie, explaining how the permanent quota transfer was processed from 3102135 Nova Scotia Limited, license no. 152704 to the Defendant's licence no. 152711 on August 26, 2010. She provided documentation to Jeffrie showing the quota being transferred to the Defendant (see Exhibit 10, pp. 61-69). She believed the confusion arose from the transfer documentation being faxed to Three Ports instead

of the Defendant. She provided a permanent quota transfer allocation form with a request to transfer Fraser's share to licence holder no. 152701.

[33] In 2011, Claire MacDonald had DFO create a database that she could keep track of the individual shareholder's quota associated with a particular licence should it be transferred between licence holders. Individual shareholders were given start dates of September 30, 2011. If the following year a shareholder was not on the annual shareholder list submitted by the corporation, an end date was entered in the system for that particular shareholder. If a shareholder was still associated with the corporation on December 31st an end date of 4444 was entered into the system.

[34] She made a notation that Fraser should be on the shareholders' list submitted by the Defendant for 2011 and that Jeffrie did not know that LeBlanc had transferred Fraser's share because the confirmation was faxed to Hendriksen (see Exhibit 10, p. 80).

[35] The annual shareholders' list provided by the Defendant continued to omit Fraser's name and Claire MacDonald continued to leave his name in the DFO database up to April 1, 2017 when Fraser's name was removed because of a DFO administrative error. A DFO employee, who was unaware of the background regarding the transfer, removed Fraser's name when updating the database based on the annual shareholder list submitted by the Defendant (see Exhibit 10, p. 37). This was an accident. DFO was keeping Fraser's name in the database based on the permanent transfer in 2010. DFO received no documentation indicating Fraser's quota was transferred out of the Defendant. The Defendant's annual shareholder list was inaccurate from at least 2011 because Fraser's name did not appear on the list.

[36] In July 2011, Jeffrie, the authorised representative for the Defendant, contacted the Sydney Licencing Service Center to inquire why Fraser was a shareholder in the Defendant.

[37] On September 30, 2011 Claire MacDonald sent an email to Janet Langille, the licencing officer in Sydney saying:

> "…I did call Roddie with the intention to ask two questions (Are you going to transfer Paul Fraser from your group? Yes/No and Will Paul Fraser be getting re-imbursed for his 2011 share? Yes/no)

> In summary, after returning my call, Roddie stated that he will not keep what isn't his (Paul Fraser's share) but that Anthony OWES him another share from previous business transactions (there is a list of transactions of buying and transferring shares—Percy Whitty share is what is now in question) and until he gets what he is owed, then nothing is happening. He stated that he is still 50% owner of Three Ports and therefore has access to their finances and he has the cashed cheques where Paul Fraser was paid by Three Ports/Anthony this year. … Roddie stated that he spoke with Paul Fraser recently and told him why the situation is as it is, and unfortunately Paul is in the middle of the Roddie/Anthony dispute.
>
> So, the end result is that until Anthony and Roddie reach some amicable agreement, Paul will be where he is at. Roddie is more than willing to state his case and will gladly respond to any written requests."

[38] On October 1, 2011 Claire MacDonald emailed Fraser advising that Jeffrie does not dispute that Fraser is a shareholder in his company and Fraser has been added as a shareholder to licence no. 152711 in the DFO MARFIS database (see Exhibit 3, Tab 7, p. 15)

[39] On October 19, 2011 Claire MacDonald emailed Fraser confirming that his quota share in 3102135 Nova Scotia Ltd. was transferred to the Defendant on August 26, 2010. His status as a shareholder was confirmed in the DFO licencing system. She copied the lawyer for the Defendant on the email (see Exhibit 3, Tab 9, p. 44)

[40] On November 25, 2011 Claire MacDonald emailed Fraser to confirm that his quota share had been transferred into the Defendant's company and his status as a shareholder was confirmed in the DFO licensing system (see Exhibit 3, p. 58).

[41] On that same date, Claire MacDonald faxed Jeffrie on Fraser's behalf. She enclosed a copy of an email from her to Fraser acknowledging that his quota share was transferred from DFO licence no. 152704 to the Defendant on August 26, 2010. In addition, she attached a Permanent Quota Transfer Application form because the only way a share could be transferred to another licence holder is if the authorised representative provided a completed Permanent Quota Transfer Application form to DFO. Claire MacDonald told Fraser that Jeffrie would have to send DFO a completed form transferring Fraser's share.

[42] On November 30, 2011, Claire MacDonald faxed Jeffrie on Fraser's behalf attaching Fraser's request for a permanent quota transfer from the Defendant to 3102135 Nova Scotia Limited (licence no. 152704). Claire MacDonald knew that

only the authorised representative could transfer the share and she hoped Jeffrie would sign the form since he knew it was Fraser's allocation based on their conversations.

Involvement of the Directors of the Defendant corporation

[43] On February 20, 2013, Fraser, through his counsel, sent correspondence by registered mail to all the directors of the Defendant regarding his snow crab quota allocation (see Exhibit 3, Tab 16). The directors of the Defendant did nothing to assist Fraser or investigate his situation.

[44] The directors of the Defendant have relied upon the authorised representative, Jeffrie, to run things for them. The Defendant never held formal shareholders' meeting or directors' meetings. The Defendant did not elect officers or directors yearly. Jeffrie ran the Defendant and oral agreements were common. The directors of the Defendant's corporation, who testified, were not aware of their duties and liabilities under the *Companies Act*. The evidence was the operations of the Defendant were under the sole control of the President, Jeffrie.

No Witnesses for the Defendant

[45] The Court continually advised the Defendant's representative that until he took the witness stand, his explanations from counsel table were not evidence. At the hearing, the Defendant was provided multiple opportunities to call witnesses and chose not to.

[46] The Defendant was represented by counsel at the Date Assignment Conference. November 2, 2018 was the deadline for the Defendant to submit its witness list. The Defendant failed to provide a witness list by the deadline. At the pre-trial teleconference on February 13, 2019, it was agreed that the Defendant would advise the Plaintiff by February 15, 2019 if there were any witnesses he intended to call. The Defendant emailed the Court on February 15 advising that it agreed with the witness list provided by the Plaintiff except for David Jeffrie.

[47] Pursuant to *Civil Procedure Rule* 4.18(3), the Defendant still had an option to call a witness even if it failed to comply with the finish date because the trial judge can exercise discretion to allow a witness to be called in order to avoid an injustice. Throughout the course of the trial the Defendant was presented with opportunities to call witnesses or be a witness himself in the proceeding but chose not to.

[48] On April 3, 2019, at a teleconference held by the Court between the parties, the Defendant's representative, Jeffrie, advised he was not going to testify. He was advised that if he wanted to explain or provide the Defendant's version of events, he must either get it through cross-examination of the Plaintiff's witnesses or take the stand himself and provide his version. The Defendant's representative continually refused to do that and ultimately sought legal counsel on this point during an adjournment of the proceeding. He advised the Court that he was not going to be a witness.

[49] Again, he was advised by the Court that the record would be the exhibits and the testimony of the witnesses. It was again explained to him that the numerous times when he provided explanations or clarifications from counsel table it was not evidence because it was not sworn testimony.

[50] The Defendant's representative stated throughout the hearing that he was not a witness because he did not have a subpoena served on him. This made no sense to the Court and, I assume, it had something to do with the other directors of the Defendant receiving subpoenas, but I fail to see how that prevented the Defendant's representative, Jeffrie, from testifying. The argument by the Defendant's representative that he would not testify to provide evidence on behalf of the Defendant because he was not subpoenaed has no merit.

[51] Jeffrie refused many opportunities to listen to the Court or Plaintiff's counsel with respect to procedure within the courtroom, and what was evidence. Justice Edwards foresaw this coming and tried to confront it before it happened at the trial readiness conference on December 4, 2018. Justice Edwards acknowledged the failure of the Defendant to complete the discovery examinations, however he extended the deadline for them to be completed by January 16, 2020. The Plaintiff made their offices available but again the Defendant did not show up. Justice Edwards in a letter to the parties on December 4, 2018 summarised the Defendant's behaviour as follows:

> …I advised that I had considered cancelling the trial dates (beginning Feb 19/19) but that I determined that it would be contrary to justice to do that. Mr. Jeffrie has had ample time to get this matter ready for trial but has failed to do so. The Plaintiff is ready to proceed. Mr. Jeffrie provided no explanation for his failure to respond to Mr. MacEachern's efforts to communicate with him.
>
> I am not optimistic that Mr. Jeffrie will make a legitimate effort to be ready for trial. He portrays himself as a victim in various court proceedings during the past eight years. He provided no reasonable explanation for his failure to initiate (let

> alone complete) his desired discoveries. He signed a "Notice of Intention to Act on One's Own" on January 22, 2018. He did not acknowledge that he is bound by the undertakings given by his previous counsel at the Date Assignment Conference held before Justice Gogan on November 3, 2017. At that time Mr. Conahan agreed that the "Parties anticipate finishing discoveries by consent by early 2018". He has ignored his obligation to make documentary disclosure which Mr. MacEachern has now waived. Mr. Jeffrie has done nothing in the past ten months to prepare for trial.
>
> …
>
> I urged Mr. Jeffrie not to delay arranging his discoveries. As noted, I am not optimistic as I believe Mr. Jeffrie's primary objective is to have the trial dates postponed. I hope I am mistaken.

[52] Unfortunately, there was no change in the Defendant's conduct. He was more interested in explaining what transpired from the counsel table rather than calling evidence for the Court's consideration.

Issues

1. Did the actions of the Defendant amount to conversion of the Plaintiff's property being both the permanent snow crab quota and the retention of profits derived by the Defendant or its shareholders in respect of the yearly profits generated from the fishing of Fraser's snow crab allocation?
2. Is the remedy of specific performance, resulting in a declaratory judgment, allowing for the Sheriff of the County of Cape Breton to sign, instead of Jeffrie, on behalf of the Defendant, such necessary documentation to effect an immediate, permanent transfer, of snow crab quota allocation amounting to .10436 percent of the total fleet quota for CFA 23, from the Defendant to a corporation of Fraser's selection appropriate?
3. What are the monetary damages that have been sustained by the Plaintiff, if any?
4. Should punitive damages be awarded against the Defendant?
5. What amount of Prejudgment Interest should be awarded?

Analysis

Issue 1: Did the actions of the Defendant amount to conversion of the Plaintiff's property being both the permanent snow crab quota and the retention of profits derived by the Defendant or its shareholders in respect of the yearly profits generated from the fishing of Fraser's snow crab allocation?

2011-2018 Yearly Profits from Fraser's Allocation

[53] Fraser went to speak with DFO after being told by Jeffrie that he was not a shareholder in the Defendant. Claire MacDonald testified that in September 2011 she found the error committed by DFO. She reviewed the Permanent Quota Transfer Application forms and knew it was Fraser's allocation based on his name on the incorrectly filled out forms. The forms were defective, and they did not get processed until the third Permanent Quota Transfer Application form was received. Even the third form was filled out incorrectly, but DFO processed it anyway transferring the allocation.

[54] Jeffrie is the only one responsible to transfer snow crab in and out of the Defendant. Jeffrie ran the operations for the Defendant. He is the President and the authorised representative for the Defendant. From at least 2011, the Defendant knew Fraser's quota share allocation was transferred to the Defendant, but it continued to submit annual shareholders' lists without Fraser on the list. The Defendant is being wilfully blind to the fact that Fraser's allocation was transferred to the Defendant.

[55] Fraser did not get paid in 2011 although his quota allocation was transferred to the Defendant and fished. A year later, Fraser approached LeBlanc and advised him that he did not get paid for his crab. LeBlanc testified that he had no meetings with Jeffrie over the Fraser allocation because once he signed the papers it was out of his control.

[56] The seminal document at Exhibit 3, Tab 2, p. 6 was generated by DFO. This document demonstrates that a transfer took place between LeBlanc's group, 3102135 Nova Scotia Ltd. (licence no. 152704) and the Defendant (licence no. 152711). This was approved on August 26, 2010. Fraser's allocation was transferred to the Defendant. When this document is read in conjunction with Exhibit 3, Tab 22, p.140, which is the Individual License Transfer Report produced by DFO for License no. 152711, which is held by the Defendant, the permanent transfer of .104 percent into license no. 152711 coincides exactly with Exhibit 3, Tab 2, p. 6.

[57] Claire MacDonald confirmed that Fraser's share was permanently transferred from 3102135 Nova Scotia Ltd. to the Defendant on August 26, 2010 and that it has not been transferred out of the Defendant. She also confirmed that the Defendant has never listed Fraser as a shareholder in documentation provided to DFO.

[58] The Defendant continues to rely on the June 11, 2011 letter of Claire MacDonald even after she admits she was wrong in saying that Fraser was not a shareholder in the Defendant. She wrote to the Defendant to advise of her mistake and the Defendant chooses to ignore her correction.

[59] On April 20, 2012, Corey Large of DFO wrote to Fraser's counsel and indicated that the transfer was done properly (see Exhibit 3, Tab 13). This relates to the third application. The transfer was compliant from their perspective based on their procedures, so they were not going to rescind it. The paperwork was done properly and therefore, they could not reverse the transfer.

[60] The Permanent Quota Transfer Application documents and their various deficiencies cloud the main issue which is: what happened to Fraser's allocation? The answer is that it was transferred to the Defendant. I am convinced after reviewing the documentation from DFO and hearing the testimony of the witnesses, in particular, Claire MacDonald, Tim Hayman, and LeBlanc, that Fraser's snow crab allocation was transferred to the Defendant and fished for the Defendant's benefit since 2010.

[61] Whether the transfer forms were filled out incorrectly, photo-cropped, photo-shopped or manipulated, the Permanent Quota Transfer Allocation was processed by DFO and Fraser's allocation was transferred to the Defendant. There was only one permanent transfer in 2010 into the Defendant and only one permanent transfer in 2010 out of 3102135 Nova Scotia Ltd. The evidence is overwhelming that Fraser's allocation was transferred to the Defendant. I am also convinced that the Defendant knew from at least September 2011 that Fraser's allocation was transferred to and utilised by the Defendant.

[62] As of September 2011, DFO records indicate that Fraser had an allocation in the Defendant, however, the Defendant continued to file annual shareholder registry lists with DFO, leaving Fraser's name off the list.

[63] The Defendant certainly knew about Fraser's allocation as early as 2011 yet they made no inquiries with 3102135 Nova Scotia Ltd. and took no steps to rectify

the situation or to determine whether this was true. None of the directors claimed to be aware of this transfer or the interactions between the authorised representative and DFO. Letters were sent to the directors of the Defendant (see Exhibit 3, Tab 16, p. 56). After receiving the letters, the directors for the Defendant did nothing. They kept Fraser's allocation and the profits arising from it.

Defences Raised by the Defendant

Court decision

[64] The Defendant relies on a license mix-up as part of his defence. However, the fact that Jeffrie and Hendriksen were involved in a dispute (see Exhibit 10, pp.95-96) is not relevant to the fact that Fraser's allocation was transferred to the Defendant and he received no compensation for this allocation since 2011. In any event, the evidence before me is that the dispute between Hendriksen and Jeffrie was resolved in 2017, yet the Defendant retained Fraser's allocation. The Defendant's position was that it was agreed between Hendriksen and Jeffrie that Jeffrie would receive one of two allocations previously held by Percy Whitty ("Whitty") and Kevin Spencer ("Spencer"). The Spencer and Whitty allocations were two assets of Three Ports. In *Roddie Jeffrie v. Anthony Hendriksen, Inland Marine Services Limited and Three Port Fisheries Limited*, 2016 NSSC 27, Hendriksen was ordered by the Court to give Jeffrie the Spencer allocation, but Hendriksen had previously disposed of it, so Jeffrie received Whitty in lieu of the Spencer allocation (see Exhibit 3, Tab 33, p. 8).

[65] The Individual Licence Transfer Report for 2017 for the Big Bras d'Or group (see Exhibit 9) shows Hendriksen complying with the Court order by transferring the Percy Whitty share to the Defendant.

[66] The document shows a permanent transfer of .104 percent, which is equal to one share, from licence no. 152701 (Big Bras d'Or group) to the Defendant, holder of licence no. 152711, requested on May 15, 2017 and approved on May 16, 2017. This corresponds with the snow crab Permanent Quota Transfer Application signed May 3, 2017 showing the transfer of the Witty allocation from the licence no. 152701 to the Defendant (see Exhibit 12). Blair Campbell is the authorised representative for the Big Bras d'Or group. There is a typo on the form with respect to the percentage share which says .0010432%, however, DFO processed the transfer of .104 percent.

[67] Jeffrie directed that the share be placed in his father's name. Jeffrie's father was a shareholder in the Defendant. There is a directors' resolution of the Defendant dated May/17 and only signed by one director, Jeffrie, as President (see Exhibit 18). This resolution authorizes the acceptance of the transfer of the allocation (the Whitty share) from licence no. 152701 to the Defendant and creates a share certificate in the name of David Jeffrie, Jeffrie's father.

[68] After reviewing Exhibits 9, 12, 18 and the evidence of Hendriksen, I find that the Defendant received the Whitty allocation in lieu of the Spencer allocation. Despite this happening, the Defendant never returned Fraser's allocation. The Defendant continued to keep the allocation, and the profits from it. This contradicts the Defendant's statement to Claire McDonald where he said that he was in a dispute with Hendriksen and that until he received the Spencer allocation, he would keep Fraser's. The Defendant received an allocation from Hendriksen but continued to keep Fraser's allocation.

[69] There is further evidence that Fraser's allocation was not the crab allocation referenced in *Roddie Jeffrie v. Anthony Hendriksen, Inland Marine Services Limited and Three Port Fisheries Limited*, 2016 NSSC 27. Justice Wood (as he then was) spoke to the terms of an agreement reached in September 2010, at para. 6. Fraser's transfer allocation was received on June 28, 2010 and processed by DFO on August 26, 2010 before the agreement was reached (see Exhibit 3, Tab 2). The timeframe does not match the Defendant's theory. This decision has no bearing on the Fraser allocation.

Lastly, of note is Dave Jeffrie holding six allocations. The discovery transcript of Jeffrie is where Jeffrie says everything Dave Jeffrie owns is his (see Exhibit 14, pp. 147-148, lines 4-9. That statement coupled with the documentation where David Jeffrie has five common shares then pursuant to the court order of *Roddie Jeffrie v. Anthony Hendriksen, et al.*, the Whitty allocation was transferred permanently to the Defendant in May 2017. Jeffrie signs a director's resolution directing that the share be given to David Jeffrie and his shareholding in the Defendant goes from five shares in 2017 to six shares in 2018 because of the Whitty allocation being transferred (see Exhibit 8, pp. 1-3).

Jeffrie's Illness

[70] Hendriksen testified that Jeffrie was still conducting business out of Three Ports in 2010 and denied on cross-examination the suggestion by Jeffrie that he

was not there in 2010. Jeffrie could have engaged in a more detailed cross-examination of Mr. Hendriksen to challenge that statement by providing his medical history or calling witnesses to verify his illness in 2010. The evidence before me is that Jeffrie was ill in 2010, but there is no indication when he was ill, the duration, and the severity of the illness. In 2010, he remained the authorised representative for the Defendant and the Individual Licence Transfer Report for the Defendant (see Exhibit 3, Tab 22, p. 40) shows one permanent transfer requested in June, along with a number of temporary transfers from July–December. There was no evidence before the court that these transfers were prepared by someone other than the authorised representative, Jeffrie. Jeffrie was the President and he was the authorised representative of the Defendant and was the only person authorised to perform transfers.

[71] In the Nova Scotia Court of Appeal decision *Jeffrie v. Hendriksen*, 2015 NSCA 49, at para. 2 indicates that in 2010 Jeffrie was well enough to negotiate an agreement between himself and Hendriksen. In 2010, the only authorised representative for the Defendant was Jeffrie who claims to be ill in 2010, but when the Court reviews the Individual License Transfer Report for the Defendant, the authorised representative for the Defendant was doing transactions in 2010 from July to December based on that report. I find that Jeffrie was sick in 2010, but clearly at times throughout the year he was conducting business for the Defendant.

Conflict of Interest of Fraser's Counsel

[72] This was raised informally by the Defendant in 2013 during the discovery of the parties and as of the date of the hearing no motion was brought before the Court seeking to have Plaintiff's counsel disqualified. There was no convincing evidence presented to the Court on this issue even though the Defendant was provided an opportunity to bring such a motion prior to the hearing.

[73] At the date assignment conference held in 2017, the Defendant's counsel did not raise the issue. Since 2013 the Defendant has had every opportunity to bring a motion but chose not to. The Defendant has had three lawyers represent it and none of them brought a motion seeking to remove Plaintiff's counsel based on a conflict. At a Pre-trial Conference on February 13, 2019, the Court provided the Defendant a further opportunity to bring a motion regarding the alleged conflict. The Defendant was to file its motion materials by Friday, February 15, 2019. The Defendant failed to provide its motion materials by the deadline. The pattern of

the Defendant being provided opportunities and then failing to utilise those opportunities continues.

Deficiencies with the Permanent Quota Transfer Allocation forms

[74] The Plaintiff admits the permanent quota transfer allocation documents are deficient. Fraser and LeBlanc believe the documents were tampered with. They both testified that they only signed one form. LeBlanc never met Marilyn White, the Commissioner of Oaths on the documents. He doesn't know who she is. Marilyn White's signature was not on the paperwork when he signed it. He believes the documents were altered because he only signed one copy.

[75] Fraser and LeBlanc both testified to the various changes on the transfer documents with the Defendant implying that Hendriksen was the individual who altered the documents while the Plaintiff inferred that it was Jeffrie since he was the only one responsible for transfers for the Defendant in 2010.

[76] The Defendant relies on the deficiencies within the transfer documents however as previously indicated this is irrelevant in determining the ultimate issue before me. Whether Marilyn White witnessed the signature of the respective individuals is irrelevant because the documentation transferring Fraser's allocation was approved and processed by DFO. DFO viewed it as a valid transfer to the Defendant because the final Permanent Quota Transfer Allocation form was compliant. By 2011 the President, Jeffrie, and the Defendant corporation knew that Fraser's individual share quota allocation was transferred to the Defendant.

[77] LeBlanc testified that the allocation he transferred was Fraser's. DFO says the allocation was Fraser's. I find Fraser's allocation was transferred to the Defendant on August 26, 2010.

Did the Actions of the Defendant amount to Conversion?

[78] In *Fraser v. 3102602 Nova Scotia Ltd.*, 2015 NSSC 207, at para. 27, the Court sets out the essential requirements for conversion:

> 27...the essential features of the tort of conversion to be: (i) a wrongful act; (ii) involving a chattel; (iii) consisting of handling, disposing or destruction of the chattel; (iv) with the intention or effect of denying or negating the title of another to such chattel...

[79] For the tort of conversion, liability can attach to the Defendant where the theft was a direct and intentional interference with the property of the Plaintiff and the Plaintiff will be ordinarily entitled to the full value of the chattel as well as any profits lost as a result of the conversion (see *Musgrave v. Basin View Village*, [1998] N.S.J. No. 35, at para 71).

[80] Lastly, the British Columbia Court of Appeal in *Insurance Corp. of British Columbia v. Atwal*, 2012 BCCA 12, at para. 25 discusses how it does not matter if the conversion was committed innocently because it is a strict liability tort:

> 25 Conversion is a strict liability tort and as such, it is not a defence to a claim for conversion that the wrongful act (the interference with the owner's right of possession and/or title) was committed innocently: *Boma Manufacturing Ltd*. at para. 31. Liability for conversion does not require proof that the tortfeasor knew, for example, that the property was stolen. Both a purchaser and a vendor of stolen goods may be liable in conversion regardless of the state of their knowledge: *Nilsson Bros. Inc. v. McNamara Estate*, [1992] 3 W.W.R. 761 (Alta. C.A.). The plaintiff need only establish that the act, which was wrongful in its effect of interfering with the rights of the legitimate owner, was done deliberately or intentionally: *373409 Alberta Ltd. (Receiver of) v. Bank of Montreal*, 2002 SCC 81, [2002] 4 S.C.R. 312 (S.C.C.) at para. 8.

[81] The Court finds that the Defendant has committed the tort of conversion. The Defendant intentionally refused to pay Fraser for the use of his snow crab allocation from 2011 to 2018. The Defendant refused to transfer Fraser's snow crab allocation to another corporation. The Defendant deprived Fraser of the use of his snow crab allocation and the potential profits from fishing the allocation. The Defendant fished Fraser's snow crab allocation and retained the profits itself or through its shareholders.

Conclusion

[82] I find the Plaintiff has proven on a balance of probabilities that Fraser's snow crab allocation was transferred to the Defendant and the Defendant has retained it and fished it to its benefit.

[83] The Defendant's actions amount to conversion. Whether the conversion was done innocently does not matter, the Plaintiff need only prove that "there was an interference with the owner's right of possession and/or title."

Issue 2: Is the remedy of specific performance, resulting in a declaratory judgment, allowing for the Sheriff of the County of Cape Breton to sign,

instead of Jeffrie, on behalf of the Defendant, such necessary documentation to effect an immediate, permanent transfer, of snow crab quota allocation amounting to .10436 percent of the total fleet quota for CFA 23, from the Defendant to a corporation of Fraser's selection appropriate?

Declaratory Relief

[84] In *Saulnier v. Royal Bank of Canada*, 2008 SCC 58, the Supreme Court of Canada found that a fishing licence can be classified as personal property for certain statutory purposes, and therefore can be subject to legal encumbrances. Therefore, should Jeffrie, as the Defendant's authorised representative, refuse to transfer Fraser's allocation to the corporation of his choice, I direct the Sheriff for the Sydney Judicial District, as trustee of the Defendant, to execute the snow crab Permanent Quota Transfer Allocation form in place of the authorised representative for the Defendant to transfer Fraser's allocation from the Defendant to a corporation on behalf of Fraser.

Issue 3: What are the monetary damages that have been sustained by the Plaintiff, if any?

[85] I find that Fraser is entitled to compensation for the years 2011-2020 based on the formula at para. 14 in this decision. If the parties are unable to agree on the compensation for 2019 and 2020. I will reconvene the parties to hear evidence on this specific issue.

Issue 4: Should punitive damages be awarded against the Defendant?

Punitive Damages

[86] The Plaintiff submits that punitive damages are warranted in a case such as this and seeks an amount of $100,000.

[87] An award of punitive damages is only justified in exceptional cases when the defendant's conduct requires punishment. This Court in *VonMaltzahn v. Koppernaes*, 2018 NSSC 192, discussed when punitive damages should be awarded at paras. 57-58:

> 57 Punitive Damages are awarded to deter a defendant from committing torts in the future and as punishment. They are granted when a plaintiff proves the defendant's conduct was "...so malicious, oppressive and high-handed that it

> offends the court's sense of decency." (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.) at para.199) and is a "...marked departure from ordinary standards of decent behaviour" (*Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (S.C.C.) at para. 36.)
>
> 58 In *Whiten* (supra) the Supreme Court of Canada set out a number of factors the court should consider. The award is to be proportionate to the blameworthy conduct, the vulnerability of the plaintiff, the harm or potential harm directed toward the plaintiff, the advantage wrongfully gained by the defendant, the need for deterrence, and the other penalties assessed against the defendant because of his or her misconduct.

[88] In *Fernandes v. Penncorp Life Insurance Co./La Cie D'Assurance-Vie Penncorp*, 2014 ONCA 61, Pepall J.A. summarised the applicable principles arising from two Supreme Court of Canada decisions regarding punitive damages:

> 74 The law relating to punitive damages was canvassed in detail by the Supreme Court in *Whiten* and addressed again more recently in *Fidler*. The key applicable principles may be summarized as follows.
>
> • Punitive damages are designed to address the objectives of retribution, deterrence and denunciation, not to compensate the plaintiff: *Whiten*, at paras. 43 and 94, and *Fidler*, at para 61.
>
> • They are awarded only where compensatory damages are insufficient to accomplish these objectives: *Whiten*, at para. 94.
>
> • They are the exception rather than the rule: *Whiten*, at para. 94.
>
> • The impugned conduct must depart markedly from ordinary standards of decency; it is conduct that is malicious, oppressive or high-handed and that offends the court's sense of decency: *Whiten*, at paras. 36 and 94; and *Fidler*, at para. 62.[4]
>
> • In addition to the breach of contract, there must be an independent actionable wrong: *Whiten*, at para. 78, and *Fidler*, at para. 63.
>
> • In a case of breach of an insurance contract for failure to pay insurance benefits, a breach by the insurer of its contractual duty to act in good faith will constitute an independent actionable wrong: *Whiten*, at para. 79, and *Fidler*, at para. 63.

[89] In the current case, the Defendant knew from at least 2011, and possibly earlier that it was fishing Fraser's snow crab allocation. It continued to retain the allocation even after DFO provided documentation to demonstrate the allocation was Frasers.

[90] The Defendant denied Fraser his yearly compensation from his snow crab allocation, and as a result of fishing Fraser's allocation the Defendant earned income which has been retained by the Defendant or its shareholders.

[91] In considering proportionality to the blameworthiness of the Defendant's actions and the degree of the Plaintiff's vulnerability, I find the Defendant has a high degree of blameworthiness and there was no imbalance between the parties during the course of their dealings.

[92] The Defendant, through its actions, knew that it was purposely causing harm to Fraser by not returning his allocation and fishing it for its own benefit. Deterrence both specific and general is justified in this case.

[93] Punitive damages should only be awarded "if, but only if" considering compensatory damages I them inadequate to meet the objectives of retribution, deterrence, and denunciation (see *2703203 Manitoba Inc. v. Parks*, 2007 NSCA 36, at para. 136).

[94] By wrongfully taking Fraser's allocation the Defendant has committed the intentional act of conversion. I conclude that punitive damages in the amount of $15,000 are warranted in this case.

Issue 5: What amount of Prejudgment Interest should be awarded?

Prejudgment interest

[95] Prejudgment interest is awarded from the time the cause of action arose until judgment. This is found in s. 41(i) of the *Judicature Act*, R.S.N.S. 1989, c. 240, which reads:

> 41 In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:
>
> …
>
> (i) in any proceeding for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal;

[96] The Court has discretion to award interest for a shorter period under s. 41(k) which reads:

> (k) the Court in its discretion may decline to award interest under clause (i) or may reduce the rate of interest or the period for which it is awarded if
>
> > (i) interest is payable as of right by virtue of an agreement or otherwise by law,
> >
> > (ii) the claimant has not during the whole of the pre-judgment period been deprived of the use of money now being awarded, or
> >
> > (iii) the claimant has been responsible for undue delay in the litigation.

[97] The Court of Appeal in *Couse v. Goodyear Canada Inc.*, 2005 NSCA 46, highlighted that there must be a reason to reduce the prejudgment interest mandated by s. 41(i) of the *Judicature Act*. I see no reason to depart from the mandate. Reviewing the factors under s. 41(k), there was no agreement between Fraser and the Defendant where interest would be payable as of right; Fraser has been deprived of the use of the money that the Defendant owes him for the entire prejudgment period; and Fraser has not been responsible for any undue delay in this litigation. Fraser has continued to advance the litigation despite the actions of the Defendant.

[98] I award Fraser prejudgment interest from the date the cause of action arose until the date of the judgment.

Costs

[99] If the parties are unable to agree to costs, I will receive submissions from the parties within 30 days of today's date.

[100] I direct counsel for the Plaintiff to prepare the Order.

Bodurtha, J.