

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

FRESHWATER FISH MARKETING CORPORATION

Plaintiff

- and -

ALEX MORIN

Defendant

MEMORANDUM OF JUDGMENT

1

A trial was held in this matter on February 7, 1996 at Hay River. At the conclusion of the trial, I indicated that judgment would be granted to the Plaintiff, Freshwater Fish Marketing Corporation ("FFMC"), in the amount claimed (\$27,812.41) and that I would issue a written decision with respect to interest and costs.

2

This trial was held immediately after the trial of *Freshwater Fish Marketing Corporation v. Robert Ross* (CV 04399). At the request of Mr. Morin, Mr. Ross was permitted to speak for him and also to conduct some of the cross-examination of the Plaintiff's witnesses.

3

The background to the case is similar to that of *Freshwater Fish Marketing Corporation v. Robert Ross*. Mr. Morin was engaged in a large commercial fishing operation. He was known to be a very good fisherman. He fell into arrears with respect to credit advanced to him by FFMC and in 1993 discontinued fishing. FFMC and Mr. Morin were unable to reach any agreement as to payment of the arrears.

**Prejudgment Interest**

4 Dave Bergunder, who testified for FFMC, began supervising credit for FFMC in Hay River in 1985. He testified that he discussed credit and the various things it could be used for with Mr. Morin. Mr. Morin would come into the office quite frequently and they would discuss, for example, the use of purchase orders for supplies and how the credit system worked in that regard. Mr. Bergunder was aware that Mr. Morin had limited ability to read and write, but Mr. Bergunder was satisfied that he understood about the credit obligations and how the money calculated on the basis of fish caught would be applied.

5 Specifically on the issue of interest, Mr. Bergunder testified that he would go over the interest charges on the weekly statements with Mr. Morin. He said that a few times Mr. Morin became quite concerned about the high rate of interest charged. Mr. Bergunder testified that he explained the prime plus 2% rate and was satisfied that Mr. Morin understood how it was calculated and charged.

6 Both Mr. Bergunder and Glen Soloy, witnesses for FFMC, adopted their evidence from the trial in *Freshwater Fish Marketing Corporation v. Robert Ross*, and that evidence was applied to this trial. The document contained at Tab 223 of Exhibit 4 on this trial, entitled Credit Policy to Fishermen is the FFMC credit policy that was in effect at the time that Mr. Morin was advanced credit, from 1989 to 1992. Paragraph 6 of the policy defines the interest to be charged on such advances of credit to be "the rate charged to the Corporation for its own working capital plus 2%, charged from the day the advance is made".

In a later policy, found at Tab 101 of Exhibit 1 and which was not in effect until May of 1993, the definition was changed to refer to bank prime plus 2%.

8 It was the evidence of Mr. Soloy and Mr. Bergunder that the rate charged to the Corporation for its own working capital was the prime rate charged by the Canadian Imperial Bank of Commerce. This was therefore the rate charged under paragraph 6 of the policy in effect during the time that Mr. Morin was in arrears.

9 There was no written agreement between FFMC and Mr. Morin with respect to the payment of interest.

10 Counsel for FFMC also read in as part of his case an excerpt from the evidence given by Mr. Morin at his Examination for Discovery in April of 1994. In his evidence, Mr. Morin admitted knowing that interest was charged on the money or credit advanced to him and that he owed a total of approximately \$30,000.00 to FFMC.

11 Mr. Morin called no evidence at the trial and did not testify.

12 I am satisfied on all the evidence that it was understood and agreed to by Mr. Morin that interest would be charged as per FFMC policy. FFMC shall have included in its judgment interest on the sum of \$27,812.41 at prime plus 2% from January 2, 1993 to February 7, 1996. In all the circumstances, I think it would be just to fix post-judgment interest from February 7, 1996 at 5%.

### Costs

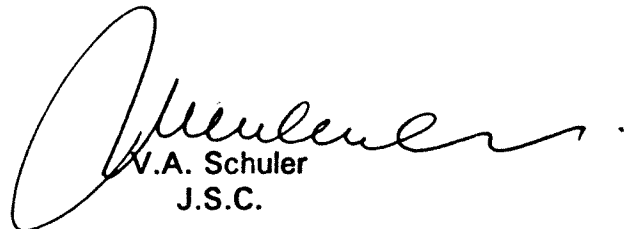
13 The successful party is usually awarded costs. There is no reason to depart

from that principle in this case.

14 Counsel for FFMC submits that costs should be awarded in a multiple of Column 4. He argues that costs are significant and that FFMC has been put to great expense in this action.

15 I am satisfied that Mr. Morin's case was presented in such a way as to attempt to explain why and how Mr. Morin fell into arrears. All considered, I find it appropriate to order that FFMC receive costs in Column 4 with no multiple to apply. As with the Ross case, these will not include the seizure costs, which shall be dealt with in such further proceedings as may occur relating to the goods seized.

16 I thank Mr. Johnson and Ms. Shaner, counsel for the Plaintiff, for their very fair presentation of this case.

  
V.A. Schuler  
J.S.C.

Yellowknife, Northwest Territories  
20 March 1996

Counsel for the Plaintiff: Earl D. Johnson, Q.C.

Counsel for the Defendant: Represented himself,  
assisted by Robert Ross

CV 04397

---

IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

---

BETWEEN:

FRESHWATER FISH MARKETING CORPORATION

Plaintiff

- and -

ALEX MORIN

Defendant

---

MEMORANDUM OF JUDGMENT  
HONOURABLE MADAM JUSTICE V.A. SCHULER

---

