

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

FRESHWATER FISH MARKETING CORPORATION

Plaintiff

- and -

ROBERT ROSS

Defendant

MEMORANDUM OF JUDGMENT

1 A trial was held in this matter on February 5, 6 and 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 (\$6914.30) and that I would issue a written decision with respect to interest and costs.

2 Briefly, this was a claim by FFMC for arrears owing to it by the Defendant, Robert Ross, who was a commercial fisherman for many years. FFMC extended credit to Mr. Ross, as it did to other fishermen fishing on Great Slave Lake. The credit was for operating capital for commercial fishing. By section 7(h) of the Freshwater Fish Marketing Act, R.S.C., c. F-13, which creates FFMC, FFMC has the power to make loans of working capital to persons engaged in commercial fishing.

3 Fishermen would sell the fish they caught to FFMC. A daily catch record was kept for each fisherman and sent weekly to Winnipeg, where the amount of fish would be multiplied by the current price per pound, in effect turning the fish into money. Some of the money would go to pay amounts outstanding on the fisherman's account. These amounts would generally be for advances or expenditures for supplies or help. Some of the money would be paid directly to the fisherman. For the most part, fishermen's accounts were paid by means of this sale of fish, although some fishermen would also make cash payments on their accounts. Mr. Ross paid by means of the sale of fish.

4 Mr. Ross did not dispute the fact that he fell into arrears.

Prejudgment Interest

5 The document contained at Tab 100 of Exhibit 1, entitled Credit Policy to Fishermen is the FFMC credit policy that was in effect at the time that Mr. Ross was being advanced credit, that is from 1989 to 1992.

6 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".

7 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%.

Both witnesses who testified on behalf of the Plaintiff, Glen Soloy and Dave Bergunder, testified 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. Ross was obtaining credit.

8 There was no written agreement between FFMC and Mr. Ross with respect to the payment of interest. I must therefore look at all the evidence to determine whether in fact Mr. Ross agreed to pay the interest as per the policy.

9 Dave Bergunder testified that he was employed by FFMC in the 1980's and as part of his job was involved in and for a time supervised the extension of credit to fishermen. After 1985 he discussed with Mr. Ross the credit policy and its terms as well as Mr. Ross' individual account with FFMC. Mr. Bergunder testified that he discussed with Mr. Ross the weekly statements pertaining to his account, including the interest charges. He was aware that Mr. Ross was concerned about the interest rate but according to Mr. Bergunder he understood the rate and how it was charged. Mr. Ross continued to request credit during the relevant period of time notwithstanding his concerns about the interest rate.

10 In his own evidence, Mr. Ross admitted that he understood how credit was to be obtained. He did not dispute the amount stated in the Statement of Claim to be owing, which includes some interest. Mr. Ross testified that although he felt that the interest rate charged was high, he understood that those were the rules and that he

would have to abide by them if he wanted to fish. He candidly admitted that Mr. Bergunder would sit down with him once a week after he fell into arrears to explain where he was in terms of the amount owing.

11 I am, therefore, satisfied that it was understood and agreed to by Mr. Ross that interest would be charged as per FFMC policy. Accordingly, FFMC shall have included in its judgment interest on the sum of \$6914.30 at prime plus 2% from January 2, 1993 to February 7, 1996. Pursuant to s. 56.2 of the Judicature Act, R.S.N.W.T. 1988, c. J-1 as amended, I fix post-judgment interest, being interest from February 7, 1996, at 5%. In doing so, I have taken into account the amount of the claim and the circumstances of the case, including what I heard from Mr. Ross about his own financial circumstances.

Costs

12 The successful party is usually awarded costs. There is no reason to depart from that principle in this case.

13 Counsel for FFMC submits that costs should be awarded in a multiple of Column 2 or 3. He argues that costs are significant because of delay by Mr. Ross in the course of the action.

14 This action was commenced by FFMC in January of 1993. Discoveries were held in April of 1994. I do not view that period of time as involving any delay beyond what would commonly be encountered in a contested debt action. In January of

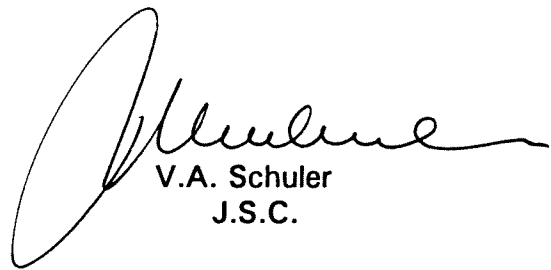
1995, counsel for Mr. Ross applied to amend the Statement of Defence. That application was refused and the matter was ordered to be set for trial. In March of 1995, Mr. Ross' counsel filed a Notice of Ceasing to Act. The Court set the trial to commence May 30, 1995 but in early May Mr. Ross obtained an adjournment to seek new counsel. On August 28, 1995 a new trial date was set for February 5, 1996.

15 I find that there was no delay other than what would reasonably occur in a contested action, even a debt action, until such time as the trial was adjourned so that Mr. Ross could obtain new counsel. There was a delay while he apparently made attempts, albeit unsuccessfully, to obtain counsel. There is no evidence before me that he was specifically responsible for the length of time until the matter again came to trial, i.e. from May to February. It may have been due in part to court scheduling requirements.

16 As to the trial itself, much of the cross-examination by Mr. Ross (who represented himself) of FFMC's witnesses and much of the evidence called by Mr. Ross was directed to explaining problems that Mr. Ross and apparently others perceived in the dealings between FFMC and the fishermen and problems that he actually experienced in his own commercial fishing operation. While some of his concerns were clearly political ones and irrelevant to the issue of whether money was owed, I am satisfied that he conducted his case and presented his evidence with a view to explaining how and why he fell into arrears. I also note that Mr. Ross, having been refused a further adjournment for purposes of obtaining counsel, came to trial well prepared to present his evidence and make his arguments.

17 Considering the amount of money claimed in this action, and that the issues were not complicated, and in all the circumstances, I decline to reflect in the award of costs any delay that might be attributable to Mr. Ross. I award costs to FFMC in Column 3 of the tariff with no multiple to apply. As submitted by counsel for FFMC, these will not include the seizure costs of \$1865.75, which shall be dealt with in such further proceedings as may occur relating to the goods seized.

18 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

CV 04399

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HONOURABLE MADAM JUSTICE V.A. SCHULER

