

**CASE NO.**

**VOL NO.**

**ALIANTELECOM INC.**

**PLAINTIFF**

- and -

**3007620 NOVA SCOTIA LIMITED, carrying  
on business as "Tallships Internet"**

**DEFENDANT**

**Justice Walter R. E. Goodfellow**

**Halifax, Nova Scotia**

**S.H. No. 165537**

**[Cite as: Aliant Telecom Inc. v. 3007620 Nova Scotia Ltd., 2001 NSSC 152]**

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**DATE HEARD:** October 29<sup>th</sup> and 30<sup>th</sup>, 2001

**DECISION:** October 31<sup>st</sup>, 2001 (Orally)

**SUBJECT:** CONTRACT - FRAUDULENT PREFERENCE

**SUMMARY:** D. Eisner operated internet provider service to South Shore permitting area clients to use internet without long distance toll. Initial base sources available to him sold necessitating search for backbone or pipeline and he turned to Aliant. Incorporated Company and continued services under "Tallships Internet". Died December, 1998, widow took over. Sold Company and "Tallships Internet" to D. Zinck as a going concern with transfer of all shares, accounts, client list, etcetera. Findings of fact, Zinck was made fully aware of assets and liabilities and Zinck expressed prior to purchase as a going concern that he would expect to work out a payment schedule for the debt to Aliant. Agreement the 22<sup>nd</sup> of June, 2000, some payments made post the Agreement, then Zinck incorporated a new numbered Company and created "Tallships On-Line" to which he transferred without consideration the client list.

Determined indebtedness at \$99,073.50, disallowed claimed invoice interest *Robb (K.W.) & Associates Ltd. v. Wilson* (1998), 169 N.S.R. (2d) 201 (C.A.). Onus on Aliant met *Whiteway v. Courtland Prop. Inc.* (1997), 162 N.S.R. (2d) 161. Not necessary to

obtain Judgment before seeking declaration avoiding transfer. Court must, as it did, determine entitlement to a Judgment before considering *Assignment and Preferences Act* and *Statute of Elizabeth*. To require an actual Judgment would necessitate two lawsuits and provide debtor a further opportunity by delay, etcetera, to continue fraud against creditor.

Offer to settle at \$55,000.00 not accepted, Tariff A, Scale 3 costs of \$7,325.00 increased by one-third for costs taxed of \$9,766.00. Disbursements claimed of \$2,334.32 reduced to \$1,334.32 (*Wyatt v. Franklin* (1993), 123 N.S.R. (2d) 347. Aliant entitled to Judgment and declaration voiding transfer of client list to new numbered Company and "Tallships On-Line" accounting, etcetera.

<p><b>THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.</b></p>
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