

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Curtmar Farms Ltd. v. Tetreault, 2006 NSSC 246

**Date:** 20060427

**Docket:** 215493

**Registry:** Truro

**Between:**

Curtmar Farms Limited

Plaintiff

v.

Barbara A. Tetreault and Norman Tetreault

Defendant

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**DECISION**

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** April 26 & 27, 2006, in Truro , Nova Scotia

**Written Decision:** August 8, 2006

**Counsel:** Mr. Robert A. Carruthers/Ms. Kerri Ann Robson,  
Solicitors for the Plaintiff

Mr. Gary Richard/Ms. Linda Hupman,  
Solicitors for the Defendants

**By the Court:**

[1] This is a dispute related to the 33 cattle as delivered by the plaintiff to the defendants. I am satisfied there was an arrangement made as between the parties to have these 33 cattle, most of which were Ayrshire cattle, delivered to New York. I am further satisfied the agreement was that the cattle would be delivered there for the price of \$1,500.00 Canadian plus the trucking which cost just under \$3,000.00. I am satisfied this was not a consignment arrangement, as alleged by the defendants. There was evidence from Mr. Tetreault that he had asked Mr. Moxsom to do the conversion to Canadian funds because Mr. Moxsom always had a calculator with him and he could do the conversion into U.S. funds. That was just for the purpose of Mr. Moxsom having a greater degree of certainty or understanding in U.S. funds, during the discussion as to whether or not he was interested in purchasing these cattle.

[2] By way of background, I refer to the fact the parties had an ongoing relationship whereby the parties had, over a number of years entered into an agreement to sell different herd lots. They knew the business, they knew one another and they trusted one another. Other than the first time they did business most of the deals were done on nothing more than a verbal agreement and a

handshake. In other words their word was their honour. They hoped and expected they would both make money in every transaction. In this deal, however, they were about to embark on an arrangement that just happened to run into a terrible time in terms of the cattle industry. It was just pre-mad cow but it was in a period when the milk market in the U.S. was about to become very depressed. One consequence of that was that cattle prices became very depressed. It is something like the stock market only it is a different kind of stock. It is all about timing and the timing in this case, for Mr. Tetreault, was terrible.

[3] We heard from Mr. Smith who was the person who first called Mr. Moxsom in relation to this herd. I accept Mr. Moxsom's evidence in regards to the fact this was the herd that was not negotiated or was not discussed pre New Years. This was a herd he just found out about not too long before the sale occurred and the agreement was negotiated with Mr. Tetreault. In other words, there were two different herds discussed by Mr. Tetreault and Mr. Moxsom around the time of the sale of this lot of 33 cattle. The evidence related to one lot and the representation related to that herd should not be used to confuse the facts related to this lot of 33 cattle.

[4] Mr. Smith said it was a good herd. Both he and Mr. Moxsom talked about the reasons they were sold. They were not sold because they were substandard cattle, they were sold because the farmer in Prince Edward Island was sick. He suffered a stroke in the preceding year and when Mr. Moxsom went to the farm with Mr. Smith they themselves culled out the cattle they thought were not of superior quality to send to New York.

[5] The cattle were delivered at the time that was arranged by the parties to this litigation. There was only a slight delay at the boarder because the customs people at the US Boarder sent them to the wrong parking lot. Other than that, in terms of industry standards, these cattle were not penned up and in a truck being abused for any period of time which was excessively long. The transportation did not injure the cattle. There was a lot of evidence in terms of how long they took to get there but nothing that was unexpected or beyond standard. Mr. Moxsom has shipped hundreds, perhaps thousands of cattle over the years. He certainly delivered them to Mr. Tetreault before. He knew how long it would take to get there and they were not stuck anywhere on route. They even arranged for truck drivers to change in New Brunswick so that the trucker Mr. Spiddle, Sr. relieved Mr. Spiddle, Jr. I reiterate, there was not an inordinate amount of time taken to deliver these cattle.

[6] They were inspected by a vet before they left Prince Edward Island and they were inspected by a vet at the boarder in the U.S. I am satisfied that really the inspection was nothing but a cursory inspection to match the ear tags up with the cattle and make sure the ones that were on the manifest were in fact the ones that were still in the truck. Even though it was a cursory inspection, I expect that if these cattle were in terribly bad shape there would have been some opportunity at that time for the vet, Mr. Moxsom and Mr. Spiddle to note any obvious problem. More important in this case is that Ms. Tetreault had a chance to observe the cattle at the boarder.

[7] Ms. Tetreault is a person who has been around cattle all her life. She knows the cattle business as well as Mr. Tetreault and Mr. Moxsom. She knows a good cow when she sees it and she knows a good heifer when she sees it. There was nothing in her evidence which would suggest to me that these cattle were in any way distressed as a result of the trip. Her evidence was, and I do not put as much weight in this as I do in the evidence of Mr. Moxsom and the evidence of Mr. Smith, this was not a bunch of cattle that she would have bought for herself.

[8] I accept the evidence of Mr. Moxsom and I accept the evidence of Mr. Smith. These were good cattle. The one difficulty was and it was recognized by all the parties, Mr. Moxsom, Mr. Tetreault and Ms. Tetreault, these cattle perhaps would have been easier to market into the Ayrshire market in the United States had they been registered cattle as opposed to grade cattle. The evidence of Mr. Moxsom, as accepted by the Court, is that just because a cow is not registered does not mean it is not a superior animal in terms of milk production or any other attributes that you are looking for in a good animal.

[9] Mr. Moxsom has indicated there are many situations where farmers in fact raised superior cattle to those that are registered. Unregistered cattle can be grade cattle that just didn't get into the registration process. In this case the problem with the cattle in terms of registration was that the previous owner, that is the person that Mr. Moxsom purchased the cattle from was ill. The registration processes had been allowed to slip. The priority for the PEI owners, Mr. and Mrs. Moss, was to run the farm in Prince Edward Island. They hired people because they could not run it themselves after Mr. Moss' stroke. They did not pay attention to the registration process. That does not mean they did not pay attention to the cattle.

[10] The cattle, I am satisfied, were in fact good cattle. There were some open calves, there were some short bred heifers, there were some short bred cows and they knew the mix in the herd. As with any herd I suppose you never know when an animal is short bred. There were no preg tests to confirm whether or not they have in fact conceived or if they are carrying a calf. But that is the risk that you run when you purchase cattle without complete testing.

[11] Insofar as **all the parties** knew at the time of the purchase they were getting a good herd, most of them were bred, some short bred. As regards the problems that appeared in terms of short bred versus confirmed pregnancies, none of that showed up at the boarder. None of it showed up three days later in Mr. Tetreault's house. That only became evident some time down the road at best, if I accept the evidence of the defendants.

[12] There was a 17 year old cow in the herd which is old by industry standards. Mr. Moxsom referred to the 17 year old cow and he said he told Ms. Tetreault it was a 17 year old cow but it was in good shape. He told her this before he put it on

the truck in PEI. He mentioned it again at the boarder, and she talked about how fine this cow looked for 17 years old. He pointed it out to her.

[13] At trial Mr. Moxsom talked about the fact that in terms of blood lines and breeding and genetics, if you get a cow that is 17 years old still producing well, still with a good utter and conceiving and giving good calves, that is indicative of a good blood line and something that you might want to keep. Farmers know there are risks but good blood lines are sometimes worth taking a chance. Think of it from a business perspective, if you have an animal that can produce a lot of milk and the offspring are likely to produce calves who genetically have a trait that they have longevity, it is much better than raising a heifer for two or three years before you get the first calf and they are all done by the time they are seven years old. For that reason it makes sense if you get an animal that can produce and genetically give offspring over a period of 17 years instead of five, seven or ten. Mr. Moxsom said, yes they can be considered a more valuable asset but there are risks.

[14] I am satisfied and I accept the evidence of Mr. Moxsom to the effect that he told Ms. Tetreault there was a 17 year old animal even before they left PEI and she



said send her along. Mr. Moxsom could have culled her out at the time that he purchased the cattle in Prince Edward Island. It was not something that surprised him. It was part of his consideration in terms of making the deal with the Mosses. As far as he knew there was nothing wrong with the 17 year old cow. I accept Mr. Tetreault's evidence that her calf turned out to be what he called a monster cow. In other words, she was obviously beyond her prime and this last calf didn't work out and they both died shortly thereafter. When he purchased it he knew what he was purchasing and he purchased the risk.

[15] In terms of the agreement as between the parties, I am satisfied that in this agreement as with at least three prior deals, the agreement was for a purchase versus consignment. In relation to the three other herds, and I refer to one in particular where there were at least eight cows that had died because they had been bred to a bull which was simply throwing off calves that were too big, he said they were coming out at 150 pounds per calf and it was simply too hard on the animals that were trying to deliver them. Mr. Tetreault says, it was my loss. Even though he said that was suppose to have been a so-called consignment agreement as well. It was not a consignment agreement and that is why it was Mr. Tetreault's loss. I am satisfied the agreement existed for the three prior purchases as it did for this

one. The understanding as between the parties was not that the risk remains with Mr. Moxsom but in fact the risk is with the Tetreaults.

[16] The deal was, and I accept this part of Mr. and Mrs. Tetreault's evidence, they could not finance the capital aspect of this purchase and they needed a reasonable time to sell the cattle before they could in fact pay for them. Mr. Moxsom was okay with that. He knew what the expectations were, he knew there was a time which they needed to sell the cattle and they would send the money on to him as soon as they received it. That does not mean that all of the losses were Mr. Moxsom's. The same situation existed when the nine cows died or the one with the broken leg and the calves were lost. That was Mr. Tetreault's risk.

[17] **The market was Mr. Tetreault's risk as well.** I am satisfied the market did collapse as attested to by Mr. Tetreault's evidence.

[18] That was not the only tragedy that befell Mr. and Mrs. Tetreault. Their house burned just shortly after the market collapsed. They lost the contents and they lost their pets. It all burned and was destroyed when Ms. Tetreault was at her mother's funeral wake. Afterwards Ms. Tetreault was depressed. They did not have

enough feed for any cattle except their own herd. They had to go out and buy the additional feed and silage, hay silage and grain because when the market collapsed they could not sell the cattle except at a loss. Their water was freezing because it was going through the house which had burned.

[19] The number of tragedies that befell the Tetreaults did not change the agreement. They were still obliged to pay the sum in Canadian funds of \$1,500.00 per head plus just under \$3,000.00 for trucking. They were obliged to do that at the very latest when these cattle were sold.

[20] I already pointed out to Mr. Richard the difficulty I had in terms of logically understanding what Mr. and Mrs. Tetreault were saying about their herd being so severely depressed by these 14 Ayrshires in terms of price. I am satisfied instead that the whole market was depressed. They were selling their Holstein herd and the Ayrshires into that depressed market and they only received \$40,000.00 U.S. for the entire herd of 85 animals. Even if you gave a zero value for the Ayrshires the math is indicative of the depressed market. Like I said, at \$900.00 a head for the Holsteins they should have received \$63,900.00 U.S. just for the Holsteins. That is the market Mr Tetreault thought he was selling into when he agreed to a

price with Mr. Moxsom. He was hoping to make \$100.00 U.S. a head profit on the Ayrshires. So one would expect the market at the time he did the deal would have been yielding \$1,000.00 a head for the Ayrshires. At no time does the evidence convince me the Ayrshires would have sold for more than the Holsteins. That is not the market. There is a niche market in the U.S. for the Ayrshires and papers would have helped but none of this explains the prices the Tetreaults got for the Ayrshires other than the depressed market.

[21] I go back to the agreement, the agreement was \$1,500.00 Canadian per head for 33 cattle. Mr. Tetreault certainly understood by the time the cattle arrived that there were three Holsteins in the truck as well as the Ayrshires. That would not be unusual to fill the truck. He agreed to this and the deal as to price remained the same. They inspected the cattle at the boarder. They were delivered and no apparent problems were noted for a long, long time. Then the complaints started in terms of the registration and complaints started in terms of the quality of the herd. In reality what it was reflective of was that the markets were going down and Mr. Tetreault realized he could not make that \$100.00 a head profit he expected. He realized he was going to lose money on this deal. He held out as long as he could.

[22] Even if I am wrong the suggestion by Mr. Tetreault is that he held these cattle for, he said 400 days in his pleadings. At best he held them for a year. He says it cost me \$50,000.00 to keep them. I simply do not accept the evidence in terms of the cost of board. He said he put that figure up good and high just to more or less get back at Mr. Moxsom. These cattle, at worst, I am satisfied would be paying their way. Any dairy farmer is going to milk these cattle and the yield, even with the complaints that Mr. Tetreault referred to in terms of heifers that were suppose to have been bred not freshening. I am very sceptical of Mr. Tetreault's evidence on the issue of milk production which could be used to offset cost to keep the cattle for one year or less. There are no records to indicate that it was as he says now.

[23] In terms of a claim for board, I am satisfied these cattle would be producing enough to pay their own way in terms of feed and board and perhaps even a profit. As to the suggestion now that any profit he might have made, or even selling them at a reduced amount, it has all been eaten up in terms of cost of boarding these cattle, I do not accept it. Like I said, through my questions during the evidence, this was pipeline milking and they would not have been hooking the cattle up to the milkers if they were not producing. Farmers can see pretty quick when Cattle

are not producing and they do not milk them for nothing. The defendants continued to milk these cattle.

[24] In the end I am satisfied the amounts claimed in terms of \$1,500.00 per head plus \$3,000.00 for trucking is due and owing. The total will be reduced by the \$27,000.00 that was already received by Mr. Moxsom.

[25] As regards the interest claim, I am satisfied the agreement was that the cattle would be paid for when they were sold as opposed to at the time of delivery, therefore interest will not start until May 1, 2003 when all of the cattle were sold. I am satisfied that the rate should be five percent as opposed to the rate of 24% Mr. Moxsom claimed. I have no evidence to indicate what the actual interest rates were but I am not going to allow two percent per month. There were no invoices that suggested two percent per month, there were no bills of sale suggesting two percent per month and twenty-four percent per year is certainly more than the market rate. I will allow the legal rate of five percent interest starting May 1, 2003 up to today's date.

[26] As regards costs, the total involved is a relatively small amount. I know that there was a fair bit of trial time and preparation when you consider the amounts involved but I am satisfied this is an appropriate case for a lump sum amount which is not excessive considering the amount of time that is involved and discoveries, etc. I am going to award costs in the amount of \$1,200.00 in addition to the amount awarded.

[27] I might say to the Tetreaults and to Mr. and Mrs. Moxsom as well, I understand the difficult times that farmers have gone through. I have some compassion for the Tetreaults in terms of the tragedy that has befallen them including family tragedy, their age in terms of retirement and their ability to recover from the market conditions and this loss. I understand the depressed market be it for beef, or milk cattle. When I make my decision I have a great deal of compassion for them but a deal is a deal. When people litigate it is a matter for the Court to decide, based on the evidence, who loses and what the agreement was. I repeat, is not without compassion that I render my decision.

08/08/06