

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: Atlantic Ova Pro Ltd., Re, 2006 NSSC 61

Date: 20060222
Docket: S.H. 257588
Registry: Halifax

In the Matter of the Bankruptcy of Atlantic Ova Pro Ltd.

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Registrar: Richard W. Cregan, Q.C.

Heard: January 24, 2006

Written Decision: February 22, 2006

Subject: The debtor was engaged in the aquaculture industry producing salmon eggs which it sold to a major salmon producer. The debtor's operations were financed through the producer who also sold it the smolt (young salmon) which produced the eggs and their feed. The producer assigned its entire operation to the petitioner who was also a major player in the Atlantic salmon industry.

Summary: Throughout, the debtor was having difficulty producing acceptable eggs, because the smolt were infected with Bacterial Kidney Disease. This resulted in substantial financial losses for the debtor and it being unable to service the debt owed to the petitioner. The other creditors were being paid according to terms.

Issue: The petitioner alleged that the debtor should be adjudged bankrupt and a receiving order granted against it. It claimed that as acts of bankruptcy the debtor had ceased to meet its liabilities generally as they became due and that it had fraudulently transferred its assets. The debtor replied by claiming that there was a *bona fide* dispute with the petitioner, that it had not ceased to meet its liabilities, that it had not acted fraudulently with respect to its assets; and that the

petitioner was using the bankruptcy proceeding for an improper purpose.

Result:

The court held that the petitioner had failed to prove an act of bankruptcy on the debtor's part. In the circumstances, as the petitioner's debt was the only debt in default, it could not be said that the debtor has ceased to meet its liabilities generally as they become due. Furthermore, none of the special circumstances whereby a single creditor may make a petition were present. Also the court held that allegations of fraud on the debtor's part were not proven.

The petition was dismissed.

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