

CASE NO. S.H.

VOL. NO.

Sumner M. Fraser and others

Plaintiffs

- and -

Westminer Canada Limited and others

Defendants

Justice Gerald R.P. Moir

Halifax, NS

S.H.107381

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[Cite as: Fraser v. Westminer Canada Ltd., 2001 NSSC 176]

Date of Decision: November 9, 2001

Subjects: Estoppel by record (res judicata), issue estoppel, mutuality of parties, privity; Courts, abuse of process, re-litigation of issues; Evidence, admissibility, findings in a previous civil case.
Securities regulations, material changes, effects of the S.C.C. decision in *Pezim*.
Torts, interference with economic relations; conspiracy to injure; negligence, *Foss v. Harbottle*, duty of care.

Summary: Some defendants took steps against former directors including the CEO of Seabright after Westminer had acquired Seabright. Justice Nunn found these defendants liable to the former directors in conspiracy. His decision was upheld on appeal. Then this suite was brought.

The plaintiffs were investors in a new venture started by the CEO after the acquisition. They claimed that the steps taken against the CEO prevented the new venture from going public and lead to its eventual failure.

The plaintiffs argued that the defence was abusive to the extent it sought findings inconsistent with Justice Nunn's and, alternatively, his essential findings were evidence to be weighed in this case. The

defendants argued the plaintiffs were bound by findings made by Justice Nunn concerning remoteness and causation of losses in the new venture and, alternatively, the previous findings were inadmissible to prove present issues-of-fact.

In addition to the intentional torts found previously against some defendants, the plaintiffs argued the defendants owed them a duty of care when taking steps against the CEO and others.

Conclusions: Neither issue estoppel nor abuse of process applied against either side. Justice Nunn's essential findings were evidence but were not determinative. The same factual conclusions were reached respecting the misconduct of some defendants, but different conclusions were reached respecting the failure of the new venture and causation. The decision of the S.C.C. in *Pezim* did not alter the analysis made by Justice Nunn or support a finding that the defendants' actions had been reasonable.

Defendants were not liable to the plaintiffs in conspiracy or intentional interference because the intent, purpose and direction of defendants' actions were to inflict injury on the former directors, not the present plaintiffs. The case was not within *Foss v. Harbottle*, however, the defendants were not liable to the plaintiffs in negligence because the second principle in *Anns* precluded a duty of care.

Alternatively, the court provided findings on causation, mitigation and damages.

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Library Heading - Oral Decision

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Justice Gerald R.P. Moir

Halifax, NS

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Date of Decision: (Orally)

Released in Writing:

Subject:

Summary:

Conclusion:

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