

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** E.B.F. Manufacturing Ltd. v. White, 2009 NSSC 280

**Date:** 2009/09/21

**Docket:** Hfx 247580

**Registry:** Halifax

**Between:**

E.B.F. Manufacturing Limited and ElectroBraid Fence Limited

Plaintiffs

v.

Eric White and White Rhino Inc.

Defendants

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**Judge:** The Honourable Justice Gerald R. P. Moir

**Heard:** 22, 23, 24, 27, 28, 29, 30 April, 2009

**Last  
Submission:** May 12, 2009

**Subject:** Contracts, repudiation, fundamental breach; Patents, damages, loss of contribution

**Summary:** The parties went through a trial in 2003, in which the issues were repudiation by E.B.F. of an exclusive licence agreement under which White granted an extensive licence to manufacture and sell electrified fencing invented and patented by White. The court found there had been no repudiation. Just the same, White went into competition. In this trial, E.B.F. claimed damages for breach of the exclusive licence agreement by White. White counterclaimed for a declaration that the agreement was terminated for repudiation or fundamental breach.

**Issues:** (1) Whether repudiation or fundamental breach had been established?  
(2) If not, damages had to be assessed for White's competition.

**Result:** Further breaches since 2003 were insufficient to found repudiation or fundamental breach, and, in any case, White did not accept the repudiation or elect to treat the exclusive licence agreement as terminated. Damages were assessed on the basis that E.B.F. lost a sale for each of White's sales, and damages were assessed on the value each sale would have contributed to below the line expenses and profits, that is, E.B.F.'s actual gross profit per sale.

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