

SUPREME COURT OF NOVA SCOTIA

Citation: Little Island Fisheries Ltd. v. Royal Harbour Seafoods Inc.,
2009 NSSC 300

Date: 20091102

Docket: Hfx. No. 312627

Registry: Halifax

Between:

Little Island Fisheries Limited, Allot Fisheries Limited, Black Knight Fisheries Limited, Valley Princess Fisheries Limited, Lady Marielle Fisheries Limited, Steven P. Fisheries Limited, 1883811 Nova Scotia Limited (formerly known as Seaman's Toy Fisheries Limited), Kelly Lynn Fisheries Limited, Derek D'Ent Fisheries Limited and C&B Fisheries Limited, each being a body corporate with its head office at Lower West Pubnico, Yarmouth County, Nova Scotia (hereinafter referred to as "Little Island" or "Little Island Group")

Plaintiffs/Moving Party

- and -

Royal Harbour Seafoods Inc., a company established under the laws of Canada with head office in the Province of Quebec, Royal Harbour Seafoods LP, a limited partnership established under the laws of the Province of New Brunswick, and registered to carry on business pursuant to a Certificate of Registration issued by the Province of Nova Scotia on the 15th day of April, 2009, Royal Harbour Seafoods General Partner Inc., a corporation established under the laws of the Province of New Brunswick, in its capacity as the general partner of Royal Harbour Seafoods LP, (hereinafter collectively referred to as "Royal Harbour"),
Joel Comeau and Howard d'Entremont

Defendants/Respondents

- and -

Derek d'Entremont, Michael d'Entremont, Arnold d'Entremont, Roseanne Fiorello, Gilbert d'Entremont, Nova's Finest Fisheries Inc., Charlesville Fisheries Ltd., and Inshore Fisheries Limited

Third Parties

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Judge: The Honourable Justice Frank Edwards

Heard: September 30 and October 1, 2009, in Halifax, Nova Scotia

Subject: Motion to vacate *Lis Pendens* pursuant to Section 58(2)(b) of the

Land Registration Act.

Facts: An agreement of purchase and sale for the purchase of the Moving Party's property by the Respondent was rescinded by the Moving Party. The Respondent brought an action but, shortly afterward, abandoned its claim for specific performance of the sales agreement.

Issue: (a) Whether the Respondent claims any interest in Moving Party's property.

(b) Whether there is any evidence that damages might not be an adequate remedy.

Result: Motion granted. Although the Respondent asserted a constructive or resulting trust, it sought no title in the Moving Party's land, no declaration of an interest in that land, or any relief that would affect the Moving Party's ownership of its land. In the circumstances, damages would be an adequate remedy.

Cases Noted: *Dempsey v. Dempsey* (2008), 266 N.S.R. (2d) 196; *Saulnier Estate v. Keating* (1988), 89 N.S.R. (2d) 179 (S.C.T.D.); *Capital Builders Ltd. v. Woodbine Management Ltd.* (1983), 48 B.C.L.R. 84 (S.C.); *Soulos v. Korkontzilas*, [1997] S.C.J. No. 52; *International Corona Resources Ltd. v. LAC Minerals Ltd.*, [1989] 2 S.C.R. 574; *Murphy Oil Co. v. Predator Corp.* (2006), 67 Alta. L.R. (4th) 325 (Q.B.); *Valley v. McLeod Valley Casing Services Ltd.* (2004), 31 Alta. L.R. (4th) 80 (Q.B.); *Homebuilder Inc. v. Man-Sonic Industries Inc.* (1987), 28 C.L.R. 18 (Ont. S.C.); *931473 Ontario Ltd. v. Coldwell Banker Canada Inc.* (1991), 5 C.P.C. (3d) 238 (Ont. S.C.J.); *Cini v. 2030315 Ontario Ltd.*, 2007 CarswellOnt 3269 (Ont. S.C.J.); *Demers v Desrochers*, 2009 CarswellOnt 46001; *Matheson v. Gordon* (2004), 16 R.P.R. (4th) 299 (Ont S.C.J.); *Cannon v. Lange* (1998), 203 N.B.R. (2d) 121 (N.B. C.A.); *Alberta Court in Valley v. McLeod Valley Casing Services Ltd.* (2004), 31 Alta. L.R. (4th) 80 (Q.B.); *Goddard v. Hambleton* (2005), 237 N.S.R. (2d) 1 (C.A.); *Soulos v. Korkontzilas*, [1997] S.C.J. No. 52; *Michelin Tires (Canada) Ltd. v. R.*, 2001 FCA 145 (Federal Ct. Appeal), leave to appeal refused at 2001 CarswellNat 2734 (S.C.C.)

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