

SUPREME COURT OF NOVA SCOTIA

Citation: 3099376 Nova Scotia Ltd. v. V.P.S. Fisheries Compnay, 2013 NSSC 72

Date: 26 February 2013

Docket: SYDJC284214

Registry: Sydney

Between:

3099376 Nova Scotia Limited, a body corporate, with Head Office
situate at 15 MacKay Street, Sydney Mines, in the Cape Breton Regional
Municipality, Province of Nova Scotia

Plaintiff/

Defendant by Counter-Claim

v.

V.P.S. Fisheries Company Limited, a body corporate, with Head
Office situate at 1415 Leitches Creek Road, Leitches Creek, in the Cape Breton
Regional Municipality, Province of Nova Scotia, and Ricky Rideout, of 1415
Leitches Creek Road, Leitches Creek, in the Cape Breton Regional Municipality,
Province of Nova Scotia

Defendants/

Plaintiffs by Counter-Claim

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Judge: The Honourable Justice Frank Edwards

Heard: February 18th , 19th , & 20th , in Sydney, Nova Scotia

Written Decision: **April 24, 2013**

Subject: Personal Guarantee - Oral - Costs - departure from tariff
CPR 77.06 &77.07

Summary: **The Plaintiff/Defendant by Counter-Claim numbered
company hired the Defendants/Plaintiffs by Counter-**

Claim and his company to catch its snow crab quota. The defendant sold the crab catch to Han Beck Sea Products Inc. which subsequently went bankrupt. The Plaintiff/Defendant by Counter-Claim alleged that the Defendants/Plaintiffs by Counter-Claim had verbally guaranteed payment in the event of Han Beck's default. The Defendants/Plaintiffs by Counter-Claim denied guaranteeing payment. They counterclaimed for payment for catching the crab quota in 2005 and 2006.

Issue: Whether the Plaintiff had proven the Defendant's oral personal guarantee on a balance of probabilities.

Result: There was no personal guarantee ever given by the Defendant. The counterclaim was allowed. The Defendant/Plaintiff by Counterclaim was entitled to be paid for catching the crab for the two years in question. CPR 77.06 and 77.07 noted but costs reduced from tariff amount because Ricky had promoted the sale to Han Beck and had been mistaken re the conversations related to that sale. Everyone else lost in a deal that Ricky encouraged. An award of tariff costs to Ricky would be unfair.

Cases Noted: Niagara Structural Steel Ltd. v. Bellows et al [1964] O.J. No. 807 [1965] 1 O.R. 89, 46 D.L.R. (2d) 705; Regulvar Canada Inc. v. Her Majesty in Right of Ontario, 70 O.R. (3d) 649 (Ont.C.A.); Villeneuve v. Turner [1990] O.J. No. 385.