

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: 3322662 Nova Scotia Ltd. v. Foley, 2022 NSSM 45

**Claim:** SCY No. 516468  
**Registry:** Yarmouth

**Between:**

3322662 Nova Scotia Ltd.

Claimant

– and –

Ryan Scott Foley

Defendant

**DECISION**

ADJUDICATOR: Andrew S. Nickerson, K.C.

HEARD: November 9, 2022

DECISION: November 21, 2022

Matthew J. Fraser for the Claimant

Christopher Martin Arisz for the Defendant

## FACTS

[1] The fundamental dispute in this matter is whether or not the Defendant is personally liable in this matter.

[2] I am provided with a lease dated November 2, 2018, which is stated as being between “3312662 Nova Scotia Limited” and “3300364 Nova Scotia Limited (Sou’Wester Athletics)”. I am also provided with a document entitled “lease amending agreement” with an unspecified date in 2020. This document is stated as being between “3312662 Nova Scotia Limited” and “3300364 Nova Scotia Limited”.

[3] The essence of the claim is that the Claimant alleges that the Defendant did not leave the premises in a reasonable condition when the lease was terminated. Essentially the premises were left in a state of disrepair which required extensive remediation. It is alleged that this is in violation of the terms of the lease.

[4] In evidence are printouts from the Registry of Joint Stock company showing that a company with the name 3300364 Nova Scotia Limited was incorporated on August 2, 2016. Also in evidence is the Registry of Joint Stock Companies’ record showing that the name “Souwester Athletics” was registered to Mr. Ryan Foley on August 12, 2019.

[5] The Claimant’s evidence was that he made no real distinction among 3300364 Nova Scotia Limited, Souwester Athletics, and Mr. Foley personally.

[6] Mr. Foley testified that 3300364 Nova Scotia Limited was incorporated in 2016 in order to carry on a health and wellness business. He says that continuously since that time, the company was using the name “Souwester Athletics” as the

operational or tradename for the fitness centres that the company was operating. He says that all times 3300364 Nova Scotia Limited was the entity that operated the business. He says that he is the director of the company, but also an employee of the company among many other employees. He performs various functions, including working as a personal trainer.

[7] Mr. Foley says that it came as a shock to him to find that the name Souwester Athletics was shown as being registered to his name, as he had always thought it was under the company's name. He says that in 2019 the company had hired an administrator who had done the registration unbeknownst to him.

[8] Mr. Foley testifies that he did nothing as a sole proprietorship. He states that all business was done under the name of 3300364 Nova Scotia Limited. He says all employees are paid by 3300364 Nova Scotia Limited, all bills are paid by that company and all tax filings are done by that company. He says he has not personally operated at any time as Souwester Athletics.

[9] Also produced in evidence are the cheques utilized to make the rent payments. These cheques are drawn on the Canadian Imperial Bank of Commerce at Shelburne. The name embossed on the checks is "3300364 Nova Scotia Limited". "Sou'wester Athletics" is printed in smaller type just below the name "3300364 Nova Scotia Limited".

[10] In cross-examination Mr. Fraser elicited that Mr. Foley had personally been engaged in the painting of some items referred to as "wall balls" which had resulted in the overspray being left on the floors of the building. He also elicited that the Defendant Mr. Foley had been involved in removing a refrigerator and taking it to the dump. Also, that Mr. Foley had been involved with the removal of

certain items all and supervising the removal of the heat pumps by a contractor, which left holes in the walls of the premises.

## ISSUE

[11] Mr. Arisz submits that the numbered company “3300364 Nova Scotia Limited” is the proper Defendant and that Mr. Foley cannot be held personally liable, as all transactions were entered into on behalf of 3300364 Nova Scotia Limited. He alleges that at all times Mr. Foley was acting as an employee of that company, and not in his personal capacity.

[12] Mr. Fraser argues that the record at the Registry of Joint Stock Companies shows the name “Souwester Athletics” is registered to Mr. Foley personally, and the fact that that name was referenced in the lease agreement, implies that Mr. Foley should be held personally liable. Mr. Fraser also argues that Mr. Foley should be held personally liable because he was the one who actually performed a number of the tasks which caused the damages.

## ANALYSIS

[13] I have reviewed the Canadian jurisprudence with respect to the issue often referred to as “piercing the corporate veil”. The starting point for the principle that a corporation is separate from its shareholders was established long ago in **Salomon v. Salomon & Co., [1897] A.C. 22 (H.L.)**

[14] Over the years there have been a few specific circumstances where the courts have pierced the corporate veil. In Nova Scotia, **Spring Garden Holdings Ltd. v. Ryan Duffy's Restaurants Ltd., 2010 NSSC 71** provides an extensive and thorough examination of those circumstances. Associate Chief Justice Smith summarized the circumstances where exceptions will be made as follows:

[47] As noted by Saunders J.A. in **White v. E.B.F. Manufacturing Ltd.**, supra, the principle that corporations are separate legal entities, despite the fact that they may have the same shareholders, has been fundamental to the common law since the House of Lords decision in **Salomon v. Salomon & Co.**, supra. This principle is rigidly applied, although in appropriate circumstances courts have seen fit to lift the corporate veil and disregard the separate legal status of a corporation.

[48] As further noted by Saunders J.A. in **White v. E.B.F. Manufacturing Ltd.**, supra, lifting the corporate veil is not limited solely to cases where fraud, deceit or the use of a corporation for an improper purpose is both pleaded and proved.

[49] The separate status of a corporation can be ignored when required by statute (such as a tax statute), when a contract entered into by a group of companies requires that the members of the group be treated as one and, as occurred in **White v. E.B.F. Manufacturing Ltd.**, supra, when a corporation is found to be acting as the agent of another (in **White**, supra, Fence was found to be the agent of E.B.F. – see ¶ 55.)

[50] In **White v. E.B.F. Manufacturing Ltd.**, supra, Saunders J.A. quoted with approval from **Le Car GmbH v. Dusty Roads Holdings Ltd. et al.**, supra, where Murphy J. identified three situations where the courts have lifted the corporate veil:

- (a) where failure to do so would be unfair and lead to a result “flagrantly opposed to justice”;
- (b) where representations are made or activities undertaken for a fraudulent or other objectionable, illegal or improper purpose to facilitate doing something that would be illegal or improper for an individual shareholder to do personally; or (c) where the corporation is merely acting as the controlling shareholder’s agent.

[15] I do not find this case demonstrates circumstances such as are referred to in paragraph [49] of her decision. I find that the only applicable circumstance from the quoted portion of Justice Murphy’s decision would be (b).

[16] I have no evidence that operating the business of 3300364 Nova Scotia Limited through that corporation was done for any “fraudulent or other objectionable, illegal or improper purpose”.

[17] I am not persuaded by the argument that the fact that “Sou’Wester Athletics” appears on the lease or in the cheques of the company negates the fundamental **Solomon** principle. I find that “Sou’Wester Athletics” was always the name under which the 3300364 Nova Scotia Limited operated, even before the registration on August 12, 2019. There was no such registration in 2018 when the lease was signed and the “lease amending agreement” does not reference “Sou’Wester Athletics”. This creates a strong inference that the landlord knew the corporate entity with whom the landlord was contracting.

[18] As to the cheques, since the company always operated under “Sou’Wester Athletics”, I do not see how the registration in 2019 is persuasive. The company always operated under that tradename. There is no evidence that Mr. Foley used that tradename in any personal capacity. Despite the registration, I find that Mr. Foley did not actually conduct any business personally under that tradename. I accept his evidence that it was always used in connection with the business of 3300364 Nova Scotia Limited and no one else.

[19] I decline to pierce the corporate veil.

[20] A corporation can only act through its employees and agents. I cannot accept Mr. Fraser’s position that the acts done by Mr. Foley were done in his personal capacity. All of the acts which Mr. Fraser points out were done in relation to the business of 3300364 Nova Scotia Limited.

[21] For all of the above reasons I dismiss the claim.

[22] Given my decision, it is not necessary to make any ruling on the allegations of damages claimed as to the damages claimed. If 3300364 Nova Scotia Limited had been added as a party I could and would have done so, but since it was not I have no jurisdiction.

Dated at Yarmouth this 21th day of November, 2022.

Andrew S. Nickerson K.C., Adjudicator