

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161118

Docket: A-304-15

Citation: 2016 FCA 288

**CORAM: PELLETIER J.A.
STRATAS J.A.
WEBB J.A.**

BETWEEN:

**BRIAN GIROUX, WILLIAM HATT,
WINFRED RISSER, JACK B. ALLEN,
TOGETHER AS THE WEST 65 30 SCALLOP
QUOTA GROUP ASSOCIATION**

Appellants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on November 9, 2016.

Judgment delivered at Ottawa, Ontario, on November 18, 2016.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**STRATAS J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] The appellants in this matter are Messrs. Brian Giroux, William Hatt, Winfred Risser, and Jack B. Allen who, together, form the West 65 30 Scallop Quota Group Association (the West 65 30 Scallop Fishers). They traditionally fish for scallop in Scallop Fishing Area (SFA) 29 except for the western portion of that area (West 29) which was closed to scallop fishing. Over

time, West 29 was opened to scallop fishing. Initially the scallop fishers from SFA 28, which includes the Bay of Fundy (the Full Bay Fishers), were authorized to fish for scallops intermittently in West 29. Subsequently, the West 65 30 Scallop Fishers were also authorized to fish in these waters. There is rivalry between these two groups of fishers, one of the consequences of which has been the bringing of the application which gives rise to this appeal.

[2] The West 65 30 Scallop Fishers brought an application for judicial review of one or more fishing licenses issued by the Minister of Fisheries and Oceans (the Minister) to one or more of the Full Bay Fishers, alleging that the Minister had exceeded his jurisdiction by extending, using licence conditions, the waters in which the Full Bay Fishers could take scallops. As I understand it, the argument was that, having authorized the Full Bay Fishers to fish in SFA 28, the Minister could not extend the geographical scope of the licenses into West 29 by way of conditions attached to the SFA 28 licenses.

[3] In reasons reported at 2015 FC 683, the Federal Court dismissed the West 65 30 Scallop Fishers' application. It found that "the licenses issued to the Full Bay Fleet are for SFA 28 and SFA 29 West. The licence conditions contained within the licences simply state the geographic boundaries within each SFA where the Full Bay Fleet may fish": see para. 11.

[4] The West 65 30 Scallop Fishers now appeal to this Court. Before us, their argument has evolved somewhat. They allege that the form of licence issued to the Full Bay Fishers (Ex. D to the Affidavit of Brian Giroux, sworn April 30, 2014) (the Full Bay Licence) is defective in that it only contains conditions and does not include words which grant permission to fish at all, let

alone in West 29. This argument is based upon a comparison between the Full Bay licence and the form of licence attached to the Affidavit of Stefan Leslie, a fisheries official, which contains the following words:

Subject to any variation orders... and subject to the conditions in this licence condition fishing is only authorized in that portion of Scallop Fishing Area 29...

[5] Counsel for the West 65 30 Scallop Fishers argued that the effect of the absence of these words in the Full Bay Licenses is akin to the absence of a charging provision in a mortgage. A document which is called a mortgage and is intended to be a mortgage nonetheless has no effect as a mortgage because the owner has not charged his interest in the land. In the case of fishing licences, a document which is called a fishing licence and is intended to be a fishing licence is ineffective because it does not in express terms authorize the fishers to do that which is otherwise prohibited, namely fishing for scallops.

[6] I am unable to accept this argument. At the very top of the Full Bay Fishers' licence, under the heading Registration(s) and/or Fishing Licence(s), the following words appear:

This document authorizes the registration card holder and/or licence holder to engage in fishing and related activities on the Atlantic Coast of Canada subject to the provisions of the Fisheries Act and Regulations made thereunder.

[7] Then, opposite the licensee's number, and the species for which the licence is granted, there is a heading entitled Areas, below which are listed the following areas: 28A, 28B, 28C, 28D, 29A, 29B, 29C, 29D and 29E. It is common ground that West 29 is among the listed areas. Under the heading Fishing Seasons and Areas, at para. 2(B), the following appears:

Subject to 2(A) and 2(C), and Item 17 fishing for sea scallops is authorized only in those portions of Scallop Fishing Area 29 as defined in the Atlantic Fishery regulations...

[8] Given these clear terms, I conclude that the Full Bay licence which was appended to the Affidavit of Mr. Giroux contains all the words necessary to authorize a fisher to carry on the activity of scallop fishing in the areas and during the times permitted by the licence or as a result of any applicable regulation. There is no formal defect which, assuming for the sake of argument that the mortgage analogy is correct, would render licences issued in that form invalid.

[9] For these reasons, I would dismiss this appeal with costs.

"J.D. Denis Pelletier"

J.A.

"I agree
David Stratas J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-304-15

STYLE OF CAUSE: BRIAN GIROUX, WILLIAM HATT, WINFRED RISSER, JACK B. ALLEN, TOGETHER AS THE WEST 65 30 SCALLOP QUOTA GROUP ASSOCIATION v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: NOVEMBER 9, 2016

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: STRATAS J.A.
WEBB J.A.

DATED: NOVEMBER 18, 2016

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