

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Van de Wiel v. Werry*, 2005 NSCA 131**

**Date:** 20051019  
**Docket:** CA 235401  
**Registry:** Halifax

**Between:**

Anthony J. van de Wiel & Deborah van de Wiel

Appellants

v.

Mervin Werry & Marguerite Werry,  
Frank Benjamin & Carol Benjamin,  
Sell-Tech Coastal Realty

Respondents

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**Judge:** The Honourable Justice M. Jill Hamilton

**Appeal Heard:** September 20, 2005

**Subject:** *Civil Procedure Rules 18.15 and 13.01(a); Striking a defence for failing to attend discoveries and summary judgment.*

**Summary:** The Chambers judge struck, pursuant to *Civil Procedure Rule* 18.15, the van de Wiels' defence and entered summary judgment for the Werrys after finding the van de Wiels wilfully and deliberately failed to participate in the action started against them by the Werrys in connection with alleged latent defects and deficiencies and alleged misrepresentations relating to the house the van de Wiels sold to the Werrys. He also granted summary judgment to the Benjamins pursuant to Rule 13.01(a) with respect to the third party claim the van de Wiels commenced against them in connection with their role as real estate agents in the sale transaction.

**Issues:** (1) Did the chambers judge err in striking the van de Wiels' defence and granting summary judgment to the Werrys pursuant to **Rule** 18.15?, and

(2) Did the chambers judge err in granting summary judgment to the Benjamins pursuant to **Rule** 13.01(a)?

**Result:** Appeal dismissed. Given the particular facts of this case where the van de Wiels deliberately refused to participate in discoveries and court appearances concerning the action for three years on the basis their health was poor, yet strongly opposed the appointment of litigation guardians for themselves, the Chambers judge had no choice but to strike the van de Wiels' defence. He also did not err in concluding that there was no arguable issue to be tried in the third party claim and granting summary judgment to the Benjamins.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.**