

NOVA SCOTIA COURT OF APPEAL
Citation: *Wegma v. Brittain*, 2003 NSCA 5

Date: 20030116
Docket: CA 180217
Registry: Halifax

Between:

Wegma Investments Inc., a body corporate

Appellant

v.

John J. Brittain

Respondent

- and -

The Attorney General of the Province of Nova Scotia
representing the Crown in the right of the Province

Respondent

JUDGE: Saunders, J.A.

APPEAL HEARD: December 11, 2002

SUBJECT: Quieting of Titles. Interpretation of deed descriptions. Proper proof of title. Evidence. Hearsay. Surveyor's evidence of the "community view" as to the location and character of lands in dispute.

SUMMARY: The appellant corporation owns and operates the Annapolis Royal Golf & Country Club. In 1999 it surveyed and consolidated certain properties it had acquired in the 1970's and 1980's into two large parcels in order to reduce its property tax liability. A dispute arose as to ownership of a 137 acre lot for which the respondent traced his title back to a 1948 tax deed.

The appellant appealed the trial judge's decision, dismissing its application under **The Quieting of Titles Act** for a certificate of title, as well as the judge's dismissal of its claim against the respondent for damages for trespass and conversion.

HELD:

Appeal dismissed. The appellant had not established any error of law, nor any palpable and overriding error in the findings of fact, inferences drawn from facts or in the inference drawing process itself.

The respondent surveyor's "theory" was buttressed by objective findings as well as an extremely thorough investigation into the historical antecedents of the disputed lands, and abutting lands.

While technically hearsay, the respondent surveyor's testimony as to the "community view" was hardly determinative and in any event went to the weight to be given to the surveyor's evidence, rather than to its admissibility.