

NOVA SCOTIA COURT OF APPEAL
Citation: *Naugle v. Cleary*, 2016 NSCA 56

Date: 20160706
Docket: CA 440268
Registry: Halifax

Between:

Bryan Naugle

Appellant

v.

Thomas G. Cleary, as Trustee of the Woodlands of Jeremiah Cleary
and the Attorney General for the Province of Nova Scotia

Respondents

Judge: The Honourable Justice Elizabeth Van den Eynden
Appeal Heard: January 21, 2016, in Halifax, Nova Scotia
Subject: Real property; quieting of title; use of estate inventory/extrinsic evidence; *Civil Procedure Rule 55.13*
Summary: Appeal from decision of Justice Jamie Campbell (2015 NSSC 90) wherein he quieted the title to competing ownership claims to real property and issued a certificate of title to the respondent trustee. The trial judge was of the view that the competing chains of title were close in quality, with the trustee's title being no worse "*and perhaps just a bit better than that of Bryan Naugle.*" In drawing this conclusion, the trial judge placed considerable weight on extrinsic evidence (estate inventory). Whether he erred in doing so is the central issue under appeal. The Court also clarified the limits placed on a party calling direct evidence from their own expert under *Civil Procedure Rule 55.13*.

Issues: (1) Did the trial judge err in giving too much weight to the inventory of the Estate of Andrew Cleary when assessing the strength of the competing chains of title?

(2) Did the trial judge err in limiting the direct evidence of the appellant's expert?

Result: Appeal allowed and new trial ordered. The Court will accept further costs submissions in writing unless the issue is resolved between the parties.

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 16 pages.