

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *MacDuff v. 3209292 Nova Scotia Ltd.*, 2013 NSCA 31

**Date:** 20130305

**Docket:** CA 371089

**Registry:** Halifax

**Between:**

James Leslie MacDuff and Robert Coles MacDuff

Appellants

v.

3209292 Nova Scotia Limited

Respondent

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**JUDGE:** The Honourable Justice Peter M.S. Bryson

**APPEAL HEARD:** January 30, 2013

**SUBJECT:** **Real Property. Title. Interpretation of Deeds and Documents. Boundaries. Declaration of Interest in Land. Fresh Evidence.**

**SUMMARY:** Parties disputed ownership of an island. Trial judge found respondent had a better chain of title to the island and granted a declaration that the appellants had no interest in the Island. Appellants alleged judge erred in his interpretation of deeds and other documents and that he misinterpreted survey evidence. Appellants sought to introduce various documents as “fresh evidence”.

**ISSUES:**

- (1) Should the “fresh evidence” be admitted?
- (2) Did the judge misconstrue deeds in the parties’ chains of title?
- (3) Did the judge misconstrue survey evidence?

**RESULT:**

Appeal dismissed. Trial judge did not err in law when interpreting the deeds in each party's chain of title. He did not err by preferring deed descriptions to extraneous evidence such as a Sheriff's advertisement of land for sale. He made no palpable and overriding error when accepting the respondent's surveyor's opinion that the island was included in respondent's deed descriptions.

Nor did trial judge err in rejecting opinion of appellants' surveyor whose survey did not accord with source documents in appellant's chain of title. Appellants' survey showed much larger lot of land than their deed descriptions.

Fresh evidence not admitted as not meeting the criteria in *R. v. Palmer*, [1980] 1 S.C.R. 759. The evidence either predated the trial and was available and/or was not relevant.

**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 14 pages.**