

NOVA SCOTIA COURT OF APPEAL

Citation: *Purdy v. Bishop*, 2017 NSCA 84

Date: 20171128

Docket: CA 453201

Registry: Halifax

Between:

Bruce and Frances Purdy

Appellants

v.

Evelyn Bishop, Carole Black, Johanne Buchanan, Glenn Dodge, Richard Duchesne, Barbara Hines, Scott MacDonald, Careen McNeil, Ken Murray, Jennifer Quesnel, Lynn Ryan, Fernand Tardif

Respondents

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: June 5, 2017, in Halifax, Nova Scotia

Subject: Deeds. Interpretation. Creation of easement (right-of-way).

Summary: The respondent cottage owners claimed an easement across the Purdy property to the beach on the Northumberland Strait. Although the cottage owners had generic rights-of-way granted in their deeds, they did not sue on this basis. Nor was any evidence led explaining the nature and extent of these rights-of-way. Rather, they claimed a right-of-way was granted to them in the 1996 deed to the Purdys from a common predecessor in title. The application judge agreed. The Purdys appealed.

Issues:

- (1) Did the application judge err in his interpretation of the deed to the Purdys which reserved a right-of-way?
- (2) Did the judge err in failing to apply the rule that a reservation should be interpreted in favour of the person from whose title it detracts?
- (3) Did the judge incorrectly rely upon pre-contractual discussion between the Purdys and their predecessor in title?

Result:

Appeal allowed. The reservation in the deed to the Purdys reserved a right-of-way for the grantor, but not all the cottagers. The interpretative rule and the pre-contractual discussions favoured the Purdys. Their predecessor in title did not say he was intending to reserve a right-of-way for the cottagers. Rather, he assumed they already had such rights. Any rights-of-way the cottagers may have were not created by the 1996 Purdy deed. The Court specifically did not comment on any rights-of-way that may arise from the cottagers' deeds.

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 8 pages.