

NOVA SCOTIA COURT OF APPEAL

**Cite as: Elliott v. John Deere Ltd., 1994 NSCA 235  
Matthews, Roscoe and Pugsley, JJ.A.**

**BETWEEN:**

ALAN ELLIOTT and ALAN ELLIOTT  
for all the partners of KWELL FARM  
MACHINERY SYNDICATE, a  
discontinued partnership, and ALAN  
ELLIOTT for OGI CHAOS OPERATIONS  
LIMITED, a body corporate with head office  
at Spa Springs, Annapolis County, Nova Scotia

Appellants

- and -

JOHN DEERE LIMITED and JOHN DEERE  
FINANCE LIMITED and FRED COLEMAN  
and LLOYD CRAWFORD

Respondents

Appellant appeared  
in person

Scott C. Norton  
for the Respondents,  
John Deere Limited  
and John Deere Finance  
Limited, and  
David G. Cottenden, Q.C.  
for the Respondents,  
Fred Coleman and  
Lloyd Crawford

Appeal Heard:  
November 30, 1994

Judgment Delivered:  
November 30, 1994

**THE COURT:**

Leave to appeal is granted and the appeal is dismissed with costs as per oral reasons for judgment of Roscoe, J.A.; Matthews and Pugsley, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

**ROSCOE, J.A.:**

This is an appeal from a decision of Justice Carver who on

application of the respondents struck out the appellants' Statement of Claim against them pursuant to Rule 14.25 on the ground that it was vexatious, frivolous and an abuse of the Court's process.

The Statement of Claim, dated May 24, 1994 and amended July 18, 1994 claimed damages for misrepresentation, trespass, wrongful conversion of property, theft, negligent misstatement, and conspiracy against ten defendants. In addition to damages, the appellants sought the delivery of clear title to a John Deere farm tractor and a sum of money equal to the market value of another tractor, loader and attachments. The claims arise from two transactions in which one or more of the appellants acquired the possession of two farm vehicles in 1986 and 1988. The claim alleges that the vehicles were purchased by sales agreements. The parties named as defendants were G.N. Reagh & Sons Limited, the tractor dealership; its owners George and John Reagh and its sales agent, Fred Coleman; the tractor manufacturer John Deere Limited and its finance company, John Deere Finance Limited; the lawyer for the dealership and manufacturer, Bruce Gillis; another tractor dealership, P. & A. Farm & Garden Services Limited, and its manager, Bob Atkinson; and Lloyd Crawford, a farmer who subsequently acquired an interest in the loader.

The tractors, loader and attachments were the subject of two other lawsuits which were tried by Justice Grant in May and June, 1994 and in which decisions were rendered on July 7, 1994. Justice Grant found that the equipment had been leased, not purchased, by Mr. Elliott or his limited partnership. The decisions of Justice Grant were upheld by this Court in appeals heard on November 18, 1994. An appeal of an order of Justice Richard striking out the Statement of Claim against Bruce Gillis was also dismissed on November 18, 1994.

Justice Carver in his decision striking the Statement of Claim against John Deere Limited, John Deere Finance Limited, Lloyd Crawford and Fred

Coleman said:

" In my opinion, the subject matter of this action re the leases and the repossession of equipment has already been dealt with by this Court in two previous proceedings. In both actions S.AR. Numbers 00634 and 00759, Mr. Elliott challenged the validity of the leases and the repossession by John Deere Limited.

At the conclusion of the both trials, Justice Grant ruled these documents were leases with no right to purchase and that no such legal arrangements or agreements were in place to purchase the equipment at the end of the term.

The Plaintiff is attempting to retry the same issues and is thus similar to the case of **FEENER & R & MUNICIPALITY OF LUNENBURG** (1984), 62 N.S.R. (2d) 136."

The appellants argue that Justice Carver erred because the new Statement of Claim alleges different wrongs by different parties at times distinct from those considered by Justice Grant, and seeks damages on behalf of different plaintiffs and that not all the facts were before Justice Grant.

It is clear, despite the appellants' argument to the contrary, that the basic underlying fact alleged in the new Statement of Claim is that there were agreements to purchase the farm equipment. That issue has been clearly determined and finalized. There is no material fact pleaded, which even if assumed to be true, raises an issue upon which there has not already been an adjudication. We unanimously conclude that the issues raised by the Statement of Claim are **res judicata**.

In our view the Chambers judge applied the proper test and came to the correct conclusion. The appellants have not shown that there has been any reviewable error. While leave to appeal is granted, the appeal is dismissed with costs

in the amount of \$500. plus disbursements, to each set of respondents.

Roscoe, J.A.

Concurred in:

Matthews, J.A.

Pugsley, J.A.