

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Finanders v. Finanders, 2005 NSSC 145

Date: 20050602

Docket: S.H. No. 181682

Registry: Halifax

Between:

Gregory Finanders

Plaintiff

v.

Robert Lewis Finanders and Cynthia Faye Finanders

Defendant

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Judge: The Honourable Justice Frank Edwards

Heard: and May 19, 2005, in Sydney, Nova Scotia

Subject: *Partition Act* - action for order of sale and distribution of the proceeds.

Facts: Plaintiff and Defendants had purchased 2 1/4 acre lakefront property in which Plaintiff held 1/2 interest as tenant-in-common with his brother and brother's wife. Intent had been to subdivide property so each could build a cottage on his half. Unfortunately, property could not be subdivided.

Defendant and wife built cottage with Plaintiff's assistance. In 1996-97, a dispute arose concerning use of the cottage and Plaintiff has not had access since.

Result: Plaintiff's action allowed in part -- order for sale with 75 percent of proceeds to Defendant and 25 percent to Plaintiff. Plaintiff's claim for reimbursement for his construction labour and for occupation rent since 1997 dismissed.

Plaintiff awarded costs of \$2,500.00 plus disbursements.

Cases Noted: *Davis v. Davis*, [1954] 1 D.L.R. 827
 Moss v. Zorn [1991] N.W.T.R. 141
 Mastron v. Cotton [1926] 1 O.L.R. 767
 Lasby v. Crewson, [1891] O.J. No. 76, (O.H.C.J..)
 Handley v. Archibald, (1899), 30 S.C.R. 130

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