

SUPREME COURT OF NOVA SCOTIA
Citation: Morrison v. Muise, 2010 NSSC 163

Date: 20100414
Docket: PtH No. 249924
Registry: Port Hawkesbury

Between:

Beatrice Morrison

Plaintiff

v.

Mary M. Muise

Defendant

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Judge: The Honourable Justice Frank Edwards

Heard: April 12, 13 and 14, 2010, in Port Hawkesbury, Nova Scotia

Final Written Submissions: May 4, 2010

Written Decision: May 18, 2010

Subject: Adverse possession; non-suit motion; CPR 51.06

Facts: Plaintiff claimed adverse possession of Defendant's property. On third day of trial, Plaintiff closed her case and tendered her exhibits. Defendant's Counsel made a non-suit motion.

Issue: Whether there was evidence upon which a properly instructed jury could find for the Plaintiff.

Result: Non-suit motion granted. Taken at its face value, the Plaintiff's evidence was not sufficient to satisfy test set out in CPR 51.06. In particular, the Plaintiff called no evidence from which a

properly instructed jury could conclude that she and her predecessors had occupied the disputed property for a continuous 20 year period.

Law canvassed regarding adverse possession and non-suit motions.

Cases Noticed: *Wentzell v. Spindle* (1987), 81 NSR (2d) 200 (C.A.)
MacDonell v. M&M Development Limited (1998), 165 N.S.R. (2d) 115 (C.A.)
Petten v. E.Y.E. Marine Consultants, [1995], N.J. No. 197
J.W. Cowie Engineering Limited v. Allan et al (1982), 52 N.S.R. (2d) 321 (C.A.)
Figueira v. Garfield Container Transport Inc., [2006] F.C.J. No. 1005
Spicer v. Bowater Mersey Paper Co. [2004] N.S.J. No. 104 (C.A.); *Palmer v. Nova Scotia* (Attorney General), [1988] N.S.J. No. 536; *Board of Trustees of Common Lands v. Tanner*, [2005] N.S.J. No. 367; *Fralick v. Dauphinee*, [2002] N.S.J. No. 646; and *Conrad v. Nova Scotia (Attorney General)*, [1994] N.S.J. No. 564 (C.A.).
Teis v. Ancaster (Town) (1997), 35 O.R. (3d) 216 (C.A.)
Tobias et al v. Nolan, [1985] N.S.J. No. 539
Ezbeidy v. Phalen, [1957] N.S.J. No. 12
Lynch v. Nova Scotia (Attorney General), [1985] N.S.J. No. 456
Scheinfeldt v. Nova Scotia, [2001] N.S.J. No. 146
Muise v. Sampson, 1999 NSCA 125
Taylor v. Willigar and Skidmore [1979] N.S.J. 548 (NSCA) (Q.L.)
Bellafontaine v. N.S. (Attorney General) [1992] NSJ No. 252
Pipes v. Moshell [1992] NSJ (217) (SC)
Hartling v. Mason 1999 CanLII 2804 (N.S.C.A.)

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