

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Stein v. Omassi*, 2025 NSSC 223

**Date:** 20250627

**Docket:** Hfx 536882

**Registry:** Halifax

**Between:**

Peter Stein and Maria Stein

Applicants

and

Emmanuel Omassi and Maria Omassi Oldani

Respondents

<b>DECISION</b>
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**Judge:** The Honourable Justice Jamie Campbell

**Heard:** June 23 and 25, 2025, in Halifax, Nova Scotia

**Counsel:** Kerri-Ann Robson, for the Applicants  
Anna Giddy, for the Respondents

### **By the Court:**

[1] The Applicants, Peter Stein and Maria Stein, own land on Grant's Cove Road in Sheet Harbour. Their property abuts land owned by Emmanuel Omassi, and his mother Maria Omassi Oldani. The dispute is not about the location of the boundary. There does not appear to be substantial disagreement about that.

[2] The dispute is about whether Mr. Omassi's contractor crossed onto the Steins' property in the process of clearing an area for the construction of a fence, and in the process damaged that property. The Steins claim that the contractor destroyed trees and disturbed the soil in the area adjacent to where the fence posts were installed. They say that restoration of the land would cost somewhere around \$300,000 or maybe only \$94,000. It would involve the construction of an access road over their property because Mr. Stein says that he would not expose anyone doing work for him to the risks of going over Mr. Omassi's land, even with his consent. That road would then be returned to its natural state after the remediation work has been done.

### **The Woods**

[3] In order to understand the nature of the dispute it is important to understand the nature of the land to which the dispute relates. It runs about 160 metres along the boundary of the two properties. It is not verdant Acadian forest. It is close to the ocean with frequent strong winds and salty air. Hurricane Fiona swept through the area in September 2022 and heavily damaged the forest in that area of the province. Except for places that have been cleared, the woods along the boundary are almost impassable on foot. There appears to be heavy underbrush, tightly growing small coniferous trees and some larger fallen trees with their root systems torn out of the ground. The soil isn't deep enough to allow for anything large to grow. The trees are a mix of Balsam Fir with some Black Spruce, and most are between 1 to 4 inches in diameter. They grow to between 1 and 5 metres in height. The trees have no value other than as low-quality pulp wood.

[4] The wooded area on which the trespass is alleged to have taken place was not part of a residential property. These were not trees growing next to someone's house and nor were they part of the landscape that the owner or others would be able to observe even as part of a rugged view or admire for their inherent beauty. Their greatest value seems to be in making a point.

### **The Trespass**

[5] Mr. Omassi who manages the properties that he and his mother own, had a contractor do some clearing along the boundary line with the Steins in November and December 2023 and in August and September 2024 had the contractor install fence posts in preparation for the construction of a fence. The posts that were installed were placed between one and a half to 2 feet from the boundary line. They were all located on the Omassi property and there is no dispute about that. The Steins claim that in that process trees were cut, and rocks and the organic layer about the mineral soil were removed on their side of the boundary. They claim damages for the trespass. Mr. Omassi says that no work was done on the Steins' side of the boundary line and any disturbances to the property were there before he had the clearing done.

[6] Mr. Stein and Mr. Omassi had walked along the property line. Mr. Omassi located the survey pins and tied a line to the pins to mark the boundary. Mr. Stein told Mr. Omassi that he was not permitted to cross over onto his property for the purpose of constructing the fence. While that neighbourly courtesy might be extended between other neighbours, that was not the case here. Mr. Omassi told his contractor not to cross the boundary line. He did not lay claim to property that he did not own and did not build a fence on his neighbours' land. But he did arrange for construction of the fence so close to the boundary line that it would be extraordinarily difficult for an excavator operator to have dug post holes without doing some incidental damage over the line.

[7] Mr. Stein, like Mr. Omassi provided videos of himself walking the line and describing the encroachment and damage. Videos of this kind, attached to an affidavit as an exhibit, are not an opportunity to circumvent the strict rules that relate to the contents of affidavits. Both Mr. Stein and Mr. Omassi in the videos they made expressed opinions and made arguments, both of which are not admissible in an affidavit. If an affiant has something to say they should say it, in the affidavit and in admissible form. If a video is provided it should record what is observable on the site. Even at that, a video taken by one of the litigants is taken from a physical perspective. Trying to show the location of a property line by a series of videos is of almost no assistance at all.

[8] Neither Mr. Stein nor Mr. Omassi were present when the trespass is alleged to have taken place. Both were adamant about something that they did not see.

[9] The Steins have filed the declaration of Gregory Skelhorn dated January 16, 2025. Mr. Skelhorn is a land surveyor who was qualified to give opinion evidence

on the subject of property boundaries, including the preparation and interpretation of survey plans and the application of surveying methods to determine the location of boundaries in relation to the physical features of land. Mr. Skelhorn was not qualified to give opinion evidence about forest composition, the nature and extent of damage to forest land, or the potential causes and timing of such damages.

[10] In his report he says that his company North Star Surveying and Engineering Limited was contacted by Mr. Stein in April 2024, to determine the extent of excavation work conducted near or over the southern boundary of his property. Mr. Skelhorn reported that a site visit was conducted by a member of his staff on May 13, 2024, to observe and measure the boundary and the “location of the extent of clearing near the boundary”. The amount that was cleared was calculated to be 390 square metres “more or less”. Mr. Skelhorn reported that a varying width portion was cleared along a 146 metre length of the southern boundary. The maximum encroachment was determined to have been 6 metres. Mr. Skelhorn provided the report but did not visit the site himself.

[11] Mr. Skelhorn measured the extent of the “clearing near the boundary”. Neither he nor the person who actually went to the property were qualified to give an opinion on what constituted clearing, other than what Mr. Skelhorn believed was evident from the site itself and what he had been told by Mr. Stein. They measured an area that looked different from the rest of the area along the boundary. They could not say how long it had looked different or what had made it look different or even whether it was different because of natural or manmade causes. Neither of them could state what the land looked like or might have looked like before the clearing was done. They were able to provide an opinion about the size of an area which they determined to be the appropriate one to measure.

[12] Mr. Skelhorn could provide no evidence of trespass.

[13] Mr. Omassi adamantly denied that his contractor did any damage at all to the Steins’ property. He maintained that any disturbance was done on his side of the line and there may have been only some incidental damage caused by an excavator pushing trees that had fallen onto his land from the Steins’ property back onto that property.

[14] The best evidence with respect to the trespass came from two experts, Mr. Keith Ellwood and Mr. Devon Wilkins. Mr. Ellwood was qualified as a expert in the field of forestry and land management, capable of giving opinion evidence on the subject of forest composition, forest health and condition, the nature and extent

of damage to forested land, potential causes and timing of such damage, appropriate remediation practices, and the associated costs. Mr. Ellwood has 40 years of experience in the Nova Scotia forest industry. He was a plain-spoken matter of fact witness. He was retained by Mr. Omassi but in his opinion Mr. Omassi's contractor had done some damage on the Steins' side of the boundary, as marked by a string line. He made it abundantly clear that he was not qualified to give evidence about boundary lines.

[15] Mr. Ellwood said that he went to the property looking for evidence of recent disturbance caused by Mr. Omassi's activities on his property that may have led to damage on the Steins' property. The boundary line was clear of most trees. A few stumps had been cut 2 to 3 years before, though they may have been more recent. There were no recently cut trees along the boundary on Mr. Stein's side of the line. Most of the boundary line had been "grubbed off" with an excavator when the fence posts were installed. There was exposed mineral soil on Mr. Stein's property in a few areas, and he said those could have been caused during land clearing or post installation or from wind damage to trees on Mr. Stein's property. The organic soil mat was dragged off the soil in land clearing, some extending onto Mr. Stein's property. That means that when an excavator was pulling at a tree its roots would drag along some of the material in the form of a mat and some of that was on the Steins' property.

[16] Mr. Ellwood said that some rocks on the Steins' property had moss removed from them, exposing bare rock. That could have been done during land clearing or fence post installation. He said that there may have been trees blown down on Mr. Omassi's property and the treetops may have scoured the soil when being removed. Mr. Ellwood noted that when an area is cleared of trees the neighbouring property is more exposed to wind that may blow down the neighbour's trees.

[17] Mr. Ellwood said that in the area where there were exposed mineral soil and rocks scoured of moss cover, there was no evidence of cutting of trees. It looked to him as though the trees on Mr. Stein's property were dead and tree roots may have been cleaned up during the operations on Mr. Omassi's property.

[18] There was an area along the boundary with no tree cover as noted on the North Star Surveying survey sketch. Mr. Ellwood's opinion was that most of the area surveyed showing "clearing limits" shows natural forest clearings with no evidence of recent human disturbance by tree cutting or machine disturbance, apart from organic layer disturbance.

[19] Mr. Ellwood observed that a small buffer of a few feet from the boundary would have eliminated any disturbance on the Steins' property. That would certainly have been a good idea.

[20] Mr. Ellwood's opinion was confirmed by Mr. Devon Wilkins. Mr. Wilkins is a forest technician and co-owner of Rumcache Forest Solutions Inc. He was qualified to give opinion evidence in the same area as Mr. Ellwood. And like Mr. Ellwood he provided evidence that was clear and straight to the point.

[21] He described the area around Sheet Harbour as being part of the Atlantic Coastal Eco-district, characterized by boreal type forest conditions that limit tree growth due to the harsh coastal climate, low species diversity, poor soil conditions and a "high disturbance regime". It is a thin band extending up to 5 km inland along the coast. The high disturbance regime has been created by thousands of years of windstorms resulting in forests reaching a stage of "over maturity" at around 60 years before being blown down. It is a short and intense forest cycle that creates dense, short softwood dominated forests of Balsam Fir and White Spruce. They are salt spray resistant, thrive in low nutrient conditions and deal with harsh climates. The area in question is an excellent example of this forest type.

[22] Mr. Wilkins made observations and collected data on December 3, 2024. He commented that he had been informed that to install fence posts an excavator had been brought onto the property by Mr. Omassi. During the work some soil and trees were disturbed on the Steins' side of the string line that had been set up. He noted that given the close proximity of the fence posts to the line and the Steins' forest edge, it would have been difficult for the excavator operator to have avoided that. Like Mr. Ellwood he suggested that the mistake here was to place the fence posts too close to the boundary line.

[23] He says that in total 9 trees were noted, mapped and flagged that showed damage indicative of that practice. Because of the high density of trees growing close together they were broken into groups. Occasionally 2 or 3 saplings growing inches apart were damaged together. The sizes ranged from less than an inch in diameter to up to 4 inches in diameter and 12 feet tall. Most were within 2 metres of the string line. He noted that all the damaged trees were Balsam Fir which is the dominant species in the area.

[24] Mr. Wilkins noted that 2 sapling stumps were mapped that had been cut within the last 2 years based on their decay. It was unknown whether those were cut in the maintenance of the boundary line or during the installation of the fence.

Trees leaning along the line with no excavator damage were not mapped or noted. It was impossible to tell without bark damage whether they were a result of windstorms or excavation. Only trees with manmade visible damage were reported.

The lack of stumps present indicate that the cleared boundary line corridor likely had little to no trees growing to begin with, minimizing the amount of disturbance created. Again, this would have been standard practice to maintain the property line location, so this is not unusual.

[25] There was a line of trees cut along the boundary to mark the boundary itself. That is standard forestry practice. The last survey had been done in 2006 so that the corridor would have grown in somewhat but there would have been few if any trees growing in the area along the boundary itself.

[26] Mr. Wilkins commented on a disturbed soil patch on the Steins' side of the line, about 7 metres wide at its widest point. It measures 0.02 acres or 870 square feet. Mr. Wilkins said that Mr. Omassi had told him that there were never trees growing in that area. No recent stumps or damaged trees could be found in that patch to indicate that trees had been removed in the previous 5 years. One stump was noted but it had decayed to the point where it had been there for 10 years or so. Another rotten log was lying on the ground but based on the decay and moss around it, it had been there for 10 years as well.

[27] The only disturbance in the patch was the moss layer "above the duff layer". Compared to the moss layer in the neighbouring intact forest canopy, there was nothing covering the duff and boulders appeared loosened in the soil.

Without viewing the patch before the fence project commenced, it cannot be determined without uncertainty that the soil disturbance was created through natural blowdown disturbances or the result of an excavator backing onto this section. Unlike other disturbances noted, there are no scrape markings from excavator buckets or recent stumps to solidify what happened.

[28] Mr. Ellwood and Mr. Wilkins gave evidence as experts in forest composition, and capable of giving an opinion about the cause of damage to the forest. Mr. Stein did not observe the work being done. Mr. Omassi did not observe the work being done. Mr. Skelhorn did not observe the work being done. He was qualified to give an opinion about surveying. He could measure an area but could not comment on what caused that area to look the way did. Mr. Ellwood and Mr. Wilkins provided the most reliable evidence about the cause and extent of

disturbances on the Steins' property. The evidence of Mr. Wilkins and Mr. Ellwood established on the balance of probabilities that some damage was done to the Steins' property by Mr. Omassi's contractor. A few trees were cut down on the Steins' side of the property line and some of the moss and organic layer was moved, likely in the process of removing trees with roots attached. That establishes the tort of trespass.

## **Damages**

[29] Justice Anne Smith noted in *Forgeron v. Garner*, 2024 NSSC 80, that the tort of trespass protects a person's possession of land from wrongful interference. There is no requirement for proof of damage and the tort must be committed either intentionally or negligently.

[30] When the property is damaged as part of the trespass damages can be awarded based on the diminution of value of the property or the cost of remediation.

[31] The damage done to the Steins' property as noted by Mr. Ellwood and Mr. Wilkins was not at all extensive.

[32] Mr. Wilkins commented on the devaluation based on the damaged that he had observed. He said that no value could be derived based on a forest harvesting value or stumpage value. Wood is sold by the ton to pulp and lumber mills and owners are paid a per ton rate. Most wood harvested in the Sheet Harbour area would be low grade and sold as pulpwood. Prices are about \$40 per ton. The amount of wood cut was less than a ton. From that \$40 would be subtracted the cost of trucking the pulpwood to Port Hawkesbury where the nearest buyer would be located. Another way to value it would be to compare the amount of land affected to the total size of the property. The highest estimate of disturbed land would be 0.06 acres, which is about 1.27% of the total property area at its highest estimation.

[33] Mr. Wilkins notes that "a monetary value cannot be placed on the aesthetic and personal values associated with someone's personal woodlot, making true value difficult to determine". He provides an opinion about the costs of mitigation. He estimated that 48 trees would be required to cover a maximum area of 0.06 acres. He was not by that suggesting that 48 trees had been removed, only that 48 trees would be required to replant the area noted as the limit of clearing, in which he said there was no evidence of trees having been damaged. The more significant



costs would be the labour costs of planting the trees. That would run between \$523 and \$706. Further disturbing the soil would only create poorer growing conditions for seedlings and heavy equipment could not replicate natural soil conditions in that environment. Soil disturbance was very minimal and the best path forward he said was to work with current conditions. “Any further disturbance would simply degrade the natural soil more.” He acknowledged that Mr. Ellwood’s idea of using peat moss was a very good one.

[34] Mr. Ellwood’s opinion was that tree stumps from cutting with a saw on Mr. Steins’ property were limited to a small number of small trees. They would have been cut in the normal process of clearing the boundary. They would have no value. The mineral soil was exposed on Mr. Stein’s property but did not extend to the survey measurement recorded by Mr. Skelhorn. His survey recorded natural forest openings along with soil disturbance.

[35] Mr. Ellwood’s opinion was that repairing the damage to the soil would require replacement of the organic layer. Peat moss would be a suitable replacement.

[36] The Steins damage claim is far outside the range of the damage that Mr. Wilkins and Mr. Ellwood observed. They obtained a quote from Jerry Hawes of Hawes Trucking and Excavating, in Tangier. Mr. Hawes did not testify, and his report was withdrawn. It was entered as an exhibit by Mr. Omassi’s counsel, Ms. Anna Giddy, during cross-examination of Mr. Stein. Mr. Stein claimed that the cost of remediation would be \$302,450 based on that quote. It would involve cutting a road across his property to access the boundary area to allow for planting of trees. The cutting of trees to gain access would cost \$4,000, removing the material would be \$10,000, fill for the road would be \$100,000, the cost of the excavator would be \$16,000, and 100 loads of “loamy fill” would be \$35,000. The cost of 100 fir and spruce trees would be \$40,000, and 100 hardwood trees would be \$20,000. The cost of planting the trees would be \$12,000 and the excavator to assist in planting would be \$10,000. Hauling the trees to the site would be \$16,000. The HST on the project would be \$39,450 for the total estimated cost of \$302,450.

[37] In oral argument Ms. Robson, counsel for the Steins, modified that to \$94,000 based on a small project. The project would still require the building of a road across the Steins’ property to access the boundary area. Mr. Stein said that he was not prepared to expose himself or any contractor to the risks of gaining access to the site over the Omassi property, given the animosity between the neighbours.

[38] The evidence does not establish on the balance of probabilities that the damage done to the Steins' property was substantial. There were trees damaged but they were Balsam Fir and Black Spruce of minimal commercial value. They had virtually no aesthetic value and there was no evidence about their value based on any emotional or sentimental attachment. Their value lies in their place within the ongoing conflict. Incidental damage was done to the organic layer and moss covering the rocks when the excavator was digging too close to the boundary line. There is no evidence that a substantial area was denuded of organic material.

[39] The claim by the Steins for either \$302,000 or \$94,000 is not supported by any evidence. As Mr. Wilkins aptly observed it seems rather counterintuitive to cut down trees to build a road to get access to a place where you want to plant other trees. That is especially the case when there is easy access through the Omassi property and the Omassis are parties to the litigation.

[40] The proper measure of damages for trespass where the trespasser damages the land is the amount by which the value of the land has been depreciated by the injury. The Steins did not offer evidence as to the market value of the land before the trespass or after it. Where judgment is given based on the repairs that cost must be reasonable, practical, and fair in all the circumstances. In *Pyper v. Crausen*, [2008] OJ No. 1042, 166 ACWS (3d) 205, at para. 32 Justice Aitken of the Ontario Superior Court of Justice cited some factors that should be considered. They are,

- (1) the cost of repairs when compared to the reduction in the value of the property resulting from the trespass, (2) the time, logistics and property damage involved in implementing the restoration work, (3) the likely success of the restoration efforts, (4) the actual benefit to the plaintiff of meticulous restoration when compared to the cost to the defendant over and above the diminution in the value of the property, and (5) the use to which the plaintiff made of the property and the impact on the use occasioned by the trespass.

[41] Those factors serve to confirm that the Steins claim for the construction of a road is not supported. The cost vastly exceeds any reduction of the value of the property, if indeed there is any. The project would be counterintuitive and involve cutting down many trees to replace a few trees. The benefit to the Steins would be minimal, if there would be any at all. The boundary area can be accessed from the Omassi property but there is no road access to the part where the trespass took place. No one would walk there for recreational purposes. It was and remains virtually unusable. The damage claim appears to be based more in retribution than in remediation.

[42] The value of the few trees removed was negligible. The removal of the organic layer from parts of the boundary did not destroy a fertile area. The damage to the property itself was minimal. Yet, a trespass took place. Mr. Omassi did not lay claim to the Steins' land. He made an effort to ascertain where the boundary was and instructed his contractor not to cross over. He set the fence posts too close to the line and in doing so created the situation in which his contractor would almost inevitably do some damage to the Steins' land. He would not have anticipated significant damage and there was no significant damage. The appropriate damage award to reflect the encroachment on the Steins' land is \$1,500.

### **Costs**

[43] The Steins have been successful on the application in that a trespass has been found to have taken place. They have been awarded damages. Much of the focus of the application was on establishing the proper award of damages. Their claim was substantially outside the range of what could be reasonably considered.

[44] If the parties wish to litigate the issue of costs, they should contact the court within 30 days of the date of this decision.

Campbell, J.