

SUPREME COURT OF NOVA SCOTIA
Citation: Burpee v. Bernikier , 2013 NSSC 272

Date:20130924
Docket: Hfx. No. 324881
Registry: Halifax

Between:

RAY BURPEE and DIANNE BURPEE

PLAINTIFFS/
DEFENDANTS BY
COUNTERCLAIM

v.

**ERIKA BERNIKIER, SHELDON BERNIKIER and
ST. ANDREWS VILLAGE ESTATES LIMITED,**
a body corporate

DEFENDANTS/
PLAINTIFFS BY
COUNTERCLAIM

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Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: March 4th, 5th, 6th, 7th and 25th, 2013 in Halifax, Nova Scotia

Written Decision: September 24th, 2013

Subject: Nuisance. Alleged breach of restrictive covenants.

Summary: The Burpees and the Bernikiers are neighbours. The Burpees alleged that the Bernikiers are liable in nuisance for moving a rain leader close to the boundary line of the Burpees' property and for installing a french drain which, the Burpees say, resulted in water flowing onto their land. The Burpees eventually raised the north side of their property by twelve to sixteen inches to stop the water from flowing onto their land.

The Bernikiers alleged that the raising of the Burpees' property constituted nuisance for which the Burpees are liable. In addition, St. Andrews Village Estates Limited alleged that the Burpees were in violation of certain restrictive covenants that ran with their land.

Issues: Are the Bernikers liable to the Burpees in nuisance? Are the Burpees liable to the Bernikers in nuisance? Have the Burpees breached the restrictive covenants that run with their land?

Result: The court found that the Burpees had water gathering in the area of their boundary line with the Bernikers' property but it was not satisfied that this condition was caused by a french drain installed by the Bernikers or, to any significant extent, by the relocation of the Bernikers' rain leader. As a result, the Burpees' claim in nuisance against the Bernikers was dismissed.

The court also found that the Burpees raised the level of the north side of their lot the result of which was to dam the surface water that was flowing from the Bernikers' property. The court concluded that in light of the authorities that hold that a lower proprietor owes no servitude to an upper proprietor to receive the natural drainage of surface water and may change the surface of their land without liability for the incidental effect upon their neighbours, the Bernikers' claim in nuisance must also be dismissed.

Finally, the court held that the Burpees were not in breach of the restrictive covenants relied on by St. Andrews Village Estates Limited.

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