

SUPREME COURT OF NOVA SCOTIA

Citation: Atlantic Star Forestry Ltd. v. Rogers Communications Inc.,
2014 NSSC 341

Date: 20140918
Docket: Tru. No. 410658
Registry: Truro

Between:

Atlantic Star Forestry Ltd.

Applicant

v.

Rogers Communications Inc. and Bragg Communications Respondents

Respondents

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Judge: The Honourable Justice Arthur W.D. Pickup

Heard: July 8, 2014 in Truro, Nova Scotia

Subject: Contracts; leases; real property

Summary: The applicant leased certain land from the respondent for the purpose of setting up a communications tower. The original lease dated from 1988, and had renewed several times. It provided that renewals would be "upon the same terms and conditions..." In the course of attempting to negotiate a renewal of the lease in 2012, the respondent requested the applicant's consent to a licensing agreement whereby the respondent would lease space on the tower to a third party, a practice known as co-location. No agreement was reached, but the respondent went ahead with the arrangement anyway. The applicant sought, *inter alia*, a declaration that the lease was terminated, as well as damages.

Issues: (1) Was the lease renewed?

- (2) Did the respondent breach the lease?
- (3) Did the applicant unreasonably withhold consent to the co-location?
- (4) Was the applicant entitled to damages on account of the co-location?

Result:

The respondents proposed renewal was not on "the same terms and conditions", as it included additional provisions dealing with the proposed co-location. The applicant did not accept the proposed additional terms, and the lease was not renewed. The lease had therefore terminated upon the non-renewal. The respondent was required to vacate within eight months of the order. The applicant was entitled to the rent up to the date the property was vacated. It was also entitled to general damages arising from the unauthorized co-location, though not punitive damages.

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