

**Date: 20020118**  
**Docket: S. T. No. 08869**

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**[Cite as: Lavin v. Lessard, 2002 NSSC 016]**

**BETWEEN:**

**RAY JOSEPH LAVIN and CAROLYN JOAN LAVIN**

**PLAINTIFFS**

**- and -**

**REGENT LESSARD and LISE LACHANCE**

**DEFENDANTS**

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**D E C I S I O N**

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**HEARD BEFORE:**      **The Honourable Justice Walter R. E. Goodfellow in the  
Supreme Court of Nova Scotia at Truro, Nova Scotia on  
January 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, 2002**

**DECISION:**            **January 4<sup>th</sup>, 2002 (Orally)**

**WRITTEN RELEASE  
OF ORAL:**

**January 18<sup>th</sup>, 2002**

**COUNSEL:**

**Peter Lederman, Solicitor for the Plaintiff  
Regent Lessard and Lise LaChance-Self-Represented**

**GOODFELLOW, J.: (Orally)**

**RELIEF SOUGHT**

[1] Ray Joseph Lavin and Carolyn Joan Lavin issued an Originating Notice the 25<sup>th</sup> of September, 2000 seeking:

(a) a declaration that the common boundary line between the Lavin lot and the Lessard/LaChance lot is in fact the line as established by Ray Lavin; and

(b) special damages for the value of timber cut by the Defendant Lessard on the Lavin lot, and for the diminution in value of the Lavin lot caused by such cutting and they also seek punitive and exemplary damages.

**FINDINGS**

[2] Not surprisingly the extent to which there existed an open cultivated area on the south side of Lake Road north of and between the Lessard and LaChance house (formerly Kazi) is open to dispute and disagreement. Ernie Langille seemed reluctant to acknowledge any open non-treed area while Mr. Kazi would have the Court accept literally all this area at least from the Brook near Lake Road easterly to his eastern boundary abutting the property of Kimberly-Clark on a line extending roughly parallel to the Lake Road running through the rear of his home. This is the area Dr. Kazi covered in his direct examination with his hand on a number of occasions.

[3] In cross-examination he was more restricted and once referred to the area as his lawn.

[4] I conclude there existed an open cultivated area north of the Kazi home running from a point somewhere well east of the Brook to the Kimberly-Clark line. That there existed an open cultivated area is well established by the evidence including the evidence of Mr. Weatherbie that he helped some years ago to cut hay in this area and also that some of this area was plowed by Victor Langille. I find Mr. Weatherbie's recollection that the area extended "close" to the Brook is subject to interpretation as he says it was a long time ago. There is also the evidence of Keith Cole.

[5] I conclude and find that at the time Mr. Kazi obtained his deed there existed a limited open former cultivated area north of the home Dr. Kazi constructed starting somewhere well to the east of the Brook near Lake Road extending easterly to the new Kimberly-Clark boundary.

### **LAVIN PROPERTY 13 ACRE LOT**

- [6] There is before the Court an abstract of title. Ray Joseph Lavin and Carolyn Joan Lavin received a warranty deed June 11, 1997 recorded June 12, 1997 from Ernest Cecil Langille who in turn received a warranty deed November 28, 1985 recorded December 10, 1985 from Eleanor Jean Langille and Ernest Cecil Langille to himself. There was a warranty deed August 1979 from Leta Frances Langille to Eleanor and Ernest. Leta Frances Langille received a deed from all the heirs of Victor E. Langille who died in 1963. This deed was recorded in 1978 and there is an unrecorded deed the 15<sup>th</sup> of January, 1943 from Herman A. Forsythe, Lake Road et ux May to Aubrey Millett, land described as 13 acres more or less and Aubrey Millett by an unrecorded deed conveyed this 13 acres more or less to Victor Langille. Forsythe obtained the property in 1917 from an Olive Patriquin who in turn acquired the property from James Tattrie and Elizabeth Tattrie in 1907.
- [7] The Lavin predecessor in title Ernie Langille listed the property for sale. In early 1997 Vital Lessard, brother of Regent Lessard, tried to purchase this property from Ernie Langille. Vital Lessard gave evidence that there was a “for sale” sign on the property near the Lake Road and he was in contact with the two real estate agents. They and Ernest Langille made it clear the precise boundaries were not clear and the actual eventual sale to Lavins’ contained the following written in provision.

12. This agreement is further subject to the following terms and conditions:

(a) Legal costs to be at the purchasers expense,

(b) Property purchased on As Is, Where Is condition, vendor not warranting survey deed description as he has not obtained a survey of the property.

- [8] Ernie Langille tried to get a survey done, however, Vital Lessard made his inquiry in January and when Ernie Langille had a surveyor look at the property, a pin was established at the Lake Road but weather and the description made it difficult to ascertain the boundaries and cost was a factor as Vital Lessard said nobody wanted to get a survey. I do find that Vital Lessard was probably directed by Ernie Langille to the line shown on the Rayworth plan and marked in part “along remains of wire fence and old

blazed line”. Unfortunately, Lessard and LaChance subsequently convinced themselves that this was the eastern boundary of the Kazi property. They were encouraged to do so by Dr. Kazi who did in fairness tell them very clearly that he had not had his property surveyed.

- [9] Very clearly when Regent Lessard purchased land from Dr. Kazi, he was fully aware of the fact Ernie Langille had “for sale” 13 acres of land that was likely included in what he thought Dr. Kazi was selling to him.
- [10] It is the position of Regent Lessard and Lise LaChance that this 13 acre lot does not exist or lies to the west of their alleged boundary being the western boundary claimed by Lavin and said by them to be bounded by lands of Lowden. Rayworth designates the Lowden land as “ownership unclear”. The evidence of several witnesses references this lot as the Lowden designated on the N. S. Housing Municipal Affairs map as 20093266 and a portion in the rear of 2093233.
- [11] The 13 acre lot more or less described in the unrecorded deed in 1943 to Mr. Millett might as Regent Lessard suggests encompass a jog or a piece (which I think was measured at being approximately .6 acres) on the north side of the Lake Road, however, I find no evidence Millett or his successors in title including Ernie Langille has taken that position. They treated the land as being exclusively on the south of the Lake Road.
- [12] Mr. Weatherbie said in his direct evidence that he never heard of the Millett property, however, in cross-examination he acknowledged hearing a rumour that Millett owned land off Lake Road. Mr. Weatherbie is a mild mannered person who minds his own business and when pressed could provide nothing about the land in question except the open area because he considered everything else relating to property in the area family business and not his.
- [13] I accept the evidence of Ernie Langille that he paid taxes on the 13 acre lot from approximately 1979 to 1997 and that his family paid taxes on it from 1962. The tax bill of 1<sup>st</sup> of June, 1997 clearly refers to 13 acres of land, Lake Road as Acreage Forest 13 times rate base of .25/AC.
- [14] The Court has also available and accepts on this point the evidence of Ernest C. Blackburn, N.S.L.S. and his report of May 22, 2001.

**WESTERN BOUNDARY OF 13 ACRE LOT - RAY AND CAROLYN LAVIN**

- [15] This is a crucial finding of fact. Mr. Lessard takes the position his land extends to the west of the land marked “ownership unclear” on the Rayworth plan. The Lavins take the position the eastern boundary of “ownership

- unclear” is their western boundary abutted by the Lowden property which in their view is mistakenly designated “ownership unclear”.
- [16] I have found as a fact the existence of the Millett lot called the 13 acre lot. While I have some reservations of part of the evidence of Ernie Langille, I accept that his western boundary abutted the Lowden property, in other words, the property conveyed to the Lavins’ has a common boundary on the west, the eastern boundary of “ownership unclear”, that is, the eastern boundary of the Lowden property.
- [17] I was particularly impressed with the evidence of Austin Langille, brother of Ernie Langille and son of Victor Langille. Austin Langille fixed the position of the mailbox. I accept the evidence of Austin Langille that there existed a fence where Mr. Lavin found some old blue blazing that pre-dated his re-blazing. I accept Mr. Lavin’s evidence in this regard as well. Regent Lessard erroneously attaches weight to the Rayworth plan which indicates Mr. Rayworth found no traces. It must be born in mind, Mr. Rayworth did no work on the property until late 2000 and his plan is dated July 2001 by which time the old blazed trees that Austin Langille referred and some of which Mr. Lavin found had been cut by Regent Lessard or possibly Mr. Kazi.
- [18] Austin Langille impressed me as being concerned for Mr. Lessard in that the line advanced by Mr. Lavin went through the Lessard-LaChance home and he did sign a declaration for Regent Lessard. I find at that time and before signing the declaration, Austin Langille clearly said to Regent Lessard, the fence designated along the eastern boundary of the “ownership unclear” Lowden boundary was not the fence meaning Lessard’s boundary and knowing this Lessard had Austin Langille proceed to sign the declaration. I agree with Mr. Lessard as he described himself later in his own testimony as sneaky and a sly fox.
- [19] Because Austin Langille signed a sworn declaration, I have applied a standard of proof beyond a reasonable doubt in concluding Lessard was told by and knew Austin Langille did not when signing the declaration consider the eastern boundary of the Lowden property to be Lessard’s western boundary but clearly where he had referenced the mailbox, fence and old blue blazing.
- [20] Frank Craig knows the area well and described the blue line which he stated started in the area of the mailbox and referenced or observed remnants of fencing in the area described by Mr. Lavin. He described the 13 acre lot as not being west of his. Mr. Lessard showed him a subdivision plan which ran

off 500 feet to each side which would place part of his property along the road to the west. I have reservations as to the accuracy of this representing his actual frontage and its starting point. Depending on the accuracy of the evidence he gave of his property not being west of the 13 acre lot may be technically incorrect, however, his evidence of the lay of the land is consistent with the eastern boundary of the Lowden land being the western boundary of the Millett now Lavin 13 acre lot.

[21] I do note also that Mr. Rayworth in producing his plan made no title search of abutting lands.

[22] It is to be noted that the Rayworth plan is dated the 24<sup>th</sup> of July, 2001 and while not in evidence, Ms. LaChance advised the Court he started his survey in October 2000. It is not surprising by this time the evidence of the old blue blazing had been eradicated by cutting, as I said probably by Lessard and possibly also by Kazi. His plan refers to Crown Grants and contains a number of notes including Note 1.

Note 1: This plan was made to better define the ownership claims of Regent Lessard and Lise LaChance. A full legal survey was not conducted of all the boundaries insofar as monumentation and marking of boundaries is concerned.

[23] The Court has the benefit of the evidence and report of Ernest C. Blackburn, N.S.L.S. It is noted that Mr. Blackburn was initially sought out by Mr. Lessard but did not follow up. Mr. Blackburn attended at the property and did not minimize the difficulty of locating the eastern boundary of the Lavin land, the western boundary of the Lessard-LaChance land. He made a sensible, reasonable proposal of settlement which Lessard either agreed and reneged upon and certainly in the final analysis declined and Lessard decided to go for broke and extended his claim to what I have found to be the eastern boundary of the Lowden land and the western boundary of the Lavin land. In his report which is the result of attendances on the disputed property, etc. and a review of deeds including adjacent properties, Mr. Blackburn concludes:

The description for the Lessard property, east of Lavin property, calls for James Tattrie as the western adjoiner and the description for the Reed Lowden property (L.I.M.S. No. 20093266), west of the Lavin property calls for Victor Langille as the eastern adjoiner. This in my opinion confirms that the Lavin property is located between the Lessard property on the east and the Lowden property

on the west and is the southern portion of the original James Tattrie property, across the Lake Road from the Craig property (L.I.M.S. No. 20093316).

## **CREDIBILITY**

- [24] I found Regent Lessard to be lacking in credibility. He described himself as a sneaky, sly fox. He acknowledged he set a “trap” by describing his western boundary as the red line. Such was a deliberate false misrepresentation made by Lessard to Blackburn the surveyor he originally intended to engage and the deception was advanced to others.
- [25] When Mr. Lavin made it clear to Mr. Lessard where Mr. Lavin considered the eastern boundary to be on the blue line, I find Mr. Lessard undertook not to cut beyond the blue line and to obtain a survey. He breached his undertakings and I find he never intended to keep them.
- [26] I specifically accept the evidence of Mr. Lavin. In late May or the first few days of June 1999 before Lessard and LaChance finalized their purchase of the Kazi home, Lavin indicated his selective cutting and advised Lessard not to cross his blazed boundary at which time Lessard offered his services to cut wood.
- [27] Where there is a conflict with the evidence of Lessard, I accept the contrary evidence and in particular I have a strong preference for the evidence of people such as Mr. Lavin, Austin Langille and Mr. Patriquin.
- [28] Lessard/LaChance deluded themselves into believing the eastern boundary of Lowden property was the Lessard-LaChance (Kazi) western boundary. Mr. Kazi, when his plans changed with the death of his wife in 1981, knew the uncertainty of his land size and of his western boundary. Dr. Kazi made it clear to Lessard that he did not have the property surveyed and Dr. Kazi’s lawyer reported April 5, 1976 “if the original 80 acre lot was indeed 80 acres and if the Lake Road divides the 80 acre lot equally then the lot should be 40 acres. However there is no way from the description of the lot you are purchasing that it can be definitely stated that the lot contains 40 acres”. In his direct evidence, Mr. Kazi conveyed confidence he has as stated in his letter to Mr. Lessard dated April 6, 1997, 42 to 45 acres which was weakened and reduced in the words he used in cross examination and his demeanour conveyed that he didn’t really know how much land he had and I think suspected it was considerably less than he was attempting to convince himself of.

- [29] Mr. Lessard's reliance on the highway plan was misplaced, he saw only what he wanted to see. Both surveyors who gave evidence put the highway plan in its proper perspective.
- [30] Mr. Lessard attended on the surveyor Mr. Blackburn January 14, 2000. He provided Mr. Lessard with deeds and material from which Mr. Blackburn drew sketches which show the Lavin property 13 acres by deed and contains the comment SEVERAL OLD BLAZES where Mr. Lavin in fact says he found old blue blazes. It's not completely in line but it's in the area. When this was put to Mr. Lessard his only response is he didn't know where Mr. Blackburn got this information. It might be that it came to Mr. Blackburn through Ernie Langille's declaration.

### **EVIDENCE OF WALTER RAYWORTH**

- [31] I allowed Lessard and LaChance to call and have Mr. Rayworth give expert evidence even though they had not provided any report. Mr. Rayworth's evidence was not helpful to Lessard and LaChance. He acknowledges the difficulties that were encountered with older deeds in rural areas where descriptions are often created without survey. I have already referenced his view on the highway plan. He acknowledged the plan he prepared was a representation of the area under dispute and when asked in cross examination if he had any reason to disagree with the report of Ken Blackburn, N.S.L.S., he said "not on the basis of the deed descriptions".

### **EASTERN BOUNDARY OF LAVIN PROPERTY**

- [32] I accept the evidence of Mr. Lavin, Austin Langille, Mr. Patriquin and find confirmation in Ernie Langille's evidence that the eastern boundary of the Lavin land was at some time marked by blue blazes and fencing. I am satisfied the Lavins have met comfortably the onus upon those to establish on a balance of probabilities that their eastern boundary is generally as indicated by Mr. Lavin. They have title of record to this property and also the evidence establishes possessory title going back to prior to 1943. Successive predecessors in title rendered the kind of acts one would expect of ownership of rural land, for example, payment of taxes, blazed land, fencing, some hunting, etc.
- [33] I also find, as a fact, Mr. Lessard was told and knew of the eastern boundary claim before he purchased the property from Kazi, and fixed with that knowledge, he should have had a survey before completing his purchase.



- [34] I do also find that a limited portion possession entitled to Lavin and through his predecessors has been extinguished by Kazi in the building of a home and a utilization of a limited area immediately in the vicinity of the structure.
- [35] If Mr. Lavin insisted, I would have found establishment of the eastern boundary as indicated by his blue line with a slight adjustment from the Lake Road to the Kazi (Lessard/LaChance) home.
- [36] Through his counsel, he continues to take a most reasonable position and I accept his willingness to have a declaration that the land he is entitled to is namely a 330 foot parallel eastern boundary to give his land a rectangular shape. I would ask that Mr. Lavin have a sketch of the plan prepared to attach to the order for the purpose of registration.

### **ISSUE OF DAMAGES**

- [37] The claim for special damages of \$9,602.00 is well established and essentially admitted. Initially I was going to discount this by an amount of \$25.00 per cord to account for the cost of cutting, however, Lavin's actual loss is the \$9,602.00 as he intended to use these logs for building through his own selective cutting. The loss to him in my determination is at least \$9,602.00.

### **PREJUDGMENT INTEREST**

- [38] The cutting by Lessard was over a period of time. In the circumstances the Judicature Act mandated prejudgment interest will be limited to five percent of \$9,602.00 for two years, the sum of \$960.20.

### **COSTS**

- [39] The requests on costs is for disbursements of \$944.00 and \$3,000.00 actual party and party costs. I find both to be extremely reasonable. In determining costs on a property matter, the Court often has to simply relate it to another type of action with respect to the amount involved and the requests for costs of \$3,000.00 would put this at something under \$15,000.00 at Scale 5 and I think it's probably at least that. In addition to that, other factors the Court would have considered if Mr. Lavin had not taken such a reasonable position would be that there was an opportunity to settle this. There was an offer for

settlement. It did not reach the formalities of CPR 41A, but all offers to settle should be open to the Court for consideration. *Annand v. Cox Enterprises Ltd.* (1992), 111 N.S.R. (2d) 196 and in many cases of this nature , I have gone as high as \$30,000.00 in cases such as *Wyatt v. Franklin* (1993), 123 N.S.R. (2d) 347. There is also the consideration that the Defendants are self-represented. The fact that parties represent themselves does not itself give rise to costs, *Gilfoy et al v. Kelloway et al* (2000), 184 N.S.R. (2d) 226. It's the consequences of people being self represented. I have no doubt in saying the consequences of being self represented precluded this matter from being settled, precluded any objectivity and certainly added at least a day to what should have been only a two day trial. Overwhelmingly, the request for costs is reasonable and costs are taxed and allowed, including disbursements, in the amount of \$3,944.00. The total judgment against Lessard and LaChance will be in the amount of \$14,506.20 and an order will go forth.

J.