

Claim No: 316069

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Doherty v. Havill's Mini & Mobile Homes, 2009 NSSM 51

BETWEEN:

HARRY S. DOHERTY

Claimant

- and -

HAVILL'S MINI & MOBILE HOMES

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 20, 2009

Decision rendered on October 21, 2009

APPEARANCES

For the Claimant self-represented

For the Defendant Earl Wambolt,
Accountant Manager for
Woodlawn Trailer Court Ltd.

BY THE COURT:

- [1] The Claimant seeks damages against the owner of the trailer park in which he lives.
- [2] While it was unclear at the outset whether he had properly served the named Defendant, the matter was defended by Mr. Wambolt representing the related company which manages the park, and it was established that the named Defendant has actual knowledge of the claim.
- [3] The Claimant seeks approximately \$3,500.00 as a result of damage which he claims was done to the roof of his mini-home by a tree, which he believes was an obvious danger. It appears that over the years, the tree branches shaded his roof, leading to a build up of moss growing over the shingles. Then in 2003, during Hurricane Juan a large branch came off the tree and did some physical damage to the roof.
- [4] Sometime later, the entire tree was removed, as a result of which the Claimant says that the moss dried out under the direct sun, giving rise to further damage to the roof.
- [5] The damages he claims are all based on estimates for an entirely new roof job.
- [6] On the available facts, the tree in question appears to have been a healthy, normal tree that was in place without any protest by the Claimant for nine years between 1994, when he moved into this park, and 2003 when Hurricane Juan hit. The Claimant testified that other trees in the

park were removed during that time, but this tree was allowed to stand because a neighbour was fond of it. In the words of the Claimant, the trailer park “gave her” the tree.

- [7] It is well known that Hurricane Juan caused significant devastation to trees in its path. The fact that it took a limb or two off the tree in question, doing some damage to the Claimant’s home, is not surprising.
- [8] The owner of land upon which a tree is growing can be held legally responsible if the tree does damage to someone else’s property, but only where there is a known or at least foreseeable danger. In other words, damage would have to have been a foreseeable outcome. Here there is no evidence that anyone could have predicted that this tree would cause damage. The tree was healthy. There is no reason for the law to say that the owner ought to have cut down an attractive, healthy tree, because a once-in-a-century storm might take a large limb down and cause property damage.
- [9] Most people who suffered storm damage from fallen trees made insurance claims. Unfortunately, the Claimant says he did not have storm insurance.
- [10] Even so, the storm damage here was slight. The Claimant himself did some patchwork repairs and the roof has held tight for six years. The main complaint of the Claimant is that the roof needs replacing because of the moss that grew, then dried, damaging the shingles.
- [11] I find no merit in this claim. The country is full of trees that overhang roofs. Usually it is considered desirable, as they create shade and visual interest.

If the tree was damaging the Claimant's roof, he had a duty to inform the park that he wanted something done. There is no evidence that he ever made such a claim, either before or after Juan.

[12] Furthermore, the roof that the Claimant seeks to replace is at least 15 years old, if not older, and is at the end of its useful life and would have to be replaced simply because of the passage of time. There is no convincing evidence that the deterioration of the shingles was caused by the tree, or indeed by anything for which the Defendant is responsible.

[13] I am not unsympathetic to the Claimant's financial plight, as he claims not to be able to afford a new roof, but that is no basis upon which to compel the Defendant to compensate him. There is simply no solid evidence that the Defendant failed in any legal duty to him, and the case must be dismissed.

Eric K. Slone, Adjudicator