

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Robinson v. Cronk*, 2018 NSSM 41

Claim No: SCK 468095

BETWEEN:

JENNIFER D. ROBINSON

**Claimant/
Defendant by
Counterclaim**

-and –

BARBARA CRONK and ROCKWELL CRONK

**Defendants/
Claimants by
Counterclaim**

Jennifer D. Robinson – Self Represented.

John MacMillan represented the Defendants.

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

DECISION

(1) The Claimant and Defendants are next door neighbours and property owners in Ellershouse, Nova Scotia. Ms. Robinson lives at 261 Ellershouse Road, while Barbara and Rockwell Cronk live at 251 Ellershouse Road. The relationship between the parties is acrimonious. This matter is a chapter in a long-standing dispute. There was considerable evidence called and introduced regarding the events leading to this claim. Given my findings regarding jurisdiction, it is not necessary to review that evidence.

(2) On April 25, 2017, the Cronks engaged the services of Cyrille Michaud who operates a business known as Access Tree Services Ltd., to fell a large tree on their property. It landed partly on the Cronks' property. The other half either landed on the property owned by Ms. Robinson or the high water mark of the river bordering both

properties. It is clear the tree fell on Ms. Robinson's side of the property. Ms. Robinson hired a third party to cut up the felled tree and haul it away. According to the Cronks, Ms. Robinson entered upon their property to remove it. There are photographs and a survey plan of the property in evidence. Subsequently, Mr. Michaud and his crew were spotted by the river cutting up trees. I have also heard evidence from Ms. Robinson, Mrs. Cronk and Mr. Michaud. Ms. Robinson alleges trespass and seeks damages to remove the log. She also seeks her survey costs. The Cronks counterclaim in trespass and seek \$15,870 to install a retaining wall alleging the bank was weakened by the removal of the log.

(3) Having heard all of the evidence, I have dismissed the claim and counterclaim.

(4) Sections 9 and 10 of the *Small Claims Court Act* state as follows:

Jurisdiction

9 A person may make a claim under this Act

(a) seeking a monetary award in respect of a matter or thing arising under a contract or a tort where the claim does not exceed twenty-five thousand dollars inclusive of any claim for general damages but exclusive of interest;...

Exclusions from jurisdiction

10 Notwithstanding Section 9, no claim may be made under this Act

(a) for the recovery of land or an estate or interest therein;...

(5) If it is necessary for this Court to find and establish the location of the boundaries on any side of a parcel of land, then the Small Claims Court lacks jurisdiction. The claim and counterclaim require the Court to determine the physical location of the high water mark on the ground in order to ascertain if there had been a trespass. Anything below the high water mark of a water course is the property of Her Majesty the Queen in Right of the Province, pursuant to s. 103 and s. 3(be) of the *Environment Act*. Such a declaration is a claim for an interest in land and within the exclusive jurisdiction of the Supreme Court of Nova Scotia.

(6) It is not clear from the photographs in evidence where the high water mark should be located. Ms. Robinson testified she was advised by a provincial conservation officer the high water mark is two feet above the edge of the river. The conservation officer did not give evidence. Mr. MacMillan submitted a helpful memorandum of law. It is clear the definition of a high water mark is difficult to locate and define without the assistance of an expert. Ms. Robinson hired a surveyor to prepare a survey plan. It is unfortunate the surveyor did not give evidence as, perhaps, he may have been able to identify the boundary with certainty to the satisfaction of the parties. Without such a finding, trespass cannot be proven in either case.

(7) The claim of Ms. Robinson is dismissed.

(8) It is likewise unclear from the evidence where the fallen tree stump was moved by Ms. Robinson or her contractors. It appears from the sketches in evidence the felled log and debris were also located near or below the high water mark. Accordingly, the evidence is not sufficient to establish the counterclaim in trespass either. The

counterclaim is dismissed.

(9) Had either party been successful, I would not have awarded the amount sought by either of them. Ms. Robinson would have been awarded the costs of the survey including any witness fees had the surveyor attended Court.

(10) In the alternative, had I found in favour of the Cronks, then I reject any notion the riverbank was weakened by the removal of the felled tree. Mr. Michaud's claim and description defied common sense. If the fallen tree remained on the side of the river, then when the river rose and caused it to rush, any wood left there would have floated away and taken any supporting earth and vegetation with it. At most, the effect of Ms. Robinson's removal of the log was to remove an impediment to access to the river bank, for herself and others that use it. It is arguable she may have improved the situation.

(11) The counterclaim would have been limited to nominal damages of \$1.00.

Conclusion

(12) Based on the foregoing, the claim and counterclaim are dismissed with each party bearing their own costs.

(13) An order shall be issued accordingly.

Dated at Halifax, NS,
on July 13th, 2018;

Gregg W. Knudsen, Adjudicator

Original:	Court File
Copy:	Claimant (s)
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