

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation:** *Avon Heights Ltd. v. Lombard*, 2023 NSSM 61

**Date:** 20230811  
**Docket:** 517011  
**Registry:** Digby

Between:

Avon Heights Development Limited

*Claimant*

- and -

Kevin Lombard

*Defendant*

<p><b>DECISION</b></p>
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**Adjudicator:** Eric K. Slone

**Heard:** Via zoom on August 3, 2023, in Halifax, Nova Scotia

**Appearances:** For the Claimant, Ronald S. Giffin, president

For the Defendant, self-represented

**By the Court:**

[1] The Claimant company is a vehicle through which Ronald Giffin carries on some development business. Mr. Giffin is a Professional Engineer and at one time more than 40 years ago he was a licenced surveyor. He resides in Kentville, Nova Scotia.

[2] The Defendant Kevin Lombard carries on business as a professional surveyor through his company Nova Geomatics Inc., in Weymouth, Digby County, Nova Scotia.

[3] The Claimant owns a property (“the property”) in Bridgetown East in Annapolis County. Mr. Giffin is in a boundary dispute with a neighbour. He insists that the western boundary of the property is about 16 feet farther west from what the neighbour contends. In other words, there is a 16-foot by about 280-foot strip of disputed land.

[4] Mr. Giffin has been trying to get a survey that backs up his position for several years. After using four different surveyors who have all disagreed with his position, he hired the Defendant.

[5] Mr. Giffin hoped to obtain a survey that he could rely upon in proposed litigation with the neighbour.

[6] Mr. Lombard was leery about taking on the project, because he knows that Mr. Giffin was in disputes with other appraisers whose findings he did not agree with. He explained to Mr. Giffin that he would be using photogrammetry<sup>1</sup> performed by a specialized company, in order to reconcile historic aerial photographs and other evidence. He asked for and received a \$5,000.00 deposit toward his work and expenses.

[7] Ultimately, after paying \$3,450.00 to Thompson Conn for the photogrammetry and putting in some hours of work himself, including a site visit,

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<sup>1</sup>Photogrammetry is the art and science of extracting 3D information from photographs. The process involves taking overlapping photographs of an object, structure, or space, and converting them into 2D or 3D digital models.

Mr. Lombard advised Mr. Giffin that his conclusion was no different from the previous surveyors, all of whom did not agree with Mr. Giffin's view of his boundary. Mr. Giffin remains adamant that he is right and is suspicious of the five appraisers who disagree with him. He believes that they are either in collusion, or simply unwilling to disagree with another surveyor's conclusions.

[8] Mr. Giffin has brought this claim seeking a refund of his \$5,000.00 deposit plus \$1,500.00 in punitive damages. His theory of the case is that Mr. Lombard and his company have failed to deliver a survey that they were paid to deliver. He claims to have experienced a great deal of distress as a result of Mr. Lombard's conduct,

[9] Dealing first with the punitive damages claim, it has been observed in other cases that punitive damages are not recoverable in this court. In *Lukacs v. Dell Canada Inc.*, 2017 NSSM 6 (CanLII), adjudicator Richardson noted:

**Is the Claimant Entitled to Punitive Damages?**

[31] The short answer to this question is "no." The Small Claims Court is a statutory court. It can do only what the legislation creating it gives it power to do. This court can award special damages (i.e. out of pocket loss) to a limit of \$25,000.00 and general damages to a limit of \$100.00. Punitive damages are not general damages. They are not special damages. So this court has no jurisdiction to make such an award. Even if it did, I was not satisfied that Dell's conduct came anywhere near the type of conduct required to justify an award of punitive damages. This was simply a dispute over whether a settlement agreement had been reached and, if so, its terms.

[10] I find myself in the same position as the adjudicator in *Lukacs*. Even if punitive damages were recoverable in this court, there is no factual basis for them. Mr. Giffin is obviously stressed and frustrated, but this is a routine commercial dispute and there is no egregious conduct by the Defendant that would attract any such damages.

[11] Mr. Giffin says that he either wants a survey from the Defendant, or a refund of his deposit. That is not strictly true. He wants a survey that upholds his position. Mr. Lombard is not prepared to do that. A survey that sets the boundary line 16 feet to the east of where he thinks it should be, would be pointless.

[12] I find that Mr. Lombard took the deposit on the understanding that he would hire someone to perform the photogrammetry and otherwise work toward a survey. I find that the money has been spent and accounted for. This was not a fixed-price contract for a survey. Once Mr. Giffin made it clear that he was not going to place the line where Mr. Giffin thought it should be, his work was essentially complete. Completing a plan of survey would have been an empty formality.

[13] I want to be clear that I am not deciding where the line is. That is not the question before me. It is possible that Mr. Giffin is right and five licenced surveyors are all wrong. However, I find that Mr. Lombard did the work that he agreed to do and does not owe any money, or further duties, to the Claimant. I see no basis to question Mr. Lombard's professionalism. I accept Mr. Lombard's evidence that the value of the time he has spent on this project actually exceeds the amount that he received from the Claimant.

[14] Accordingly, the claim is unfounded.

**Order**

[15] In the result, the claim is dismissed.

Eric K. Slone, Small Claims Court Adjudicator