

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
SUSAN DALE GOULD	- and -	CLINTON J. EDMONDS and BARBARA EDMONDS
(Appellant)		(Respondents)
CA 172340	Halifax, N.S.	Freeman, J.A.

[Cite as: Gould v. Edmonds 2001 NSCA 184]

APPEAL HEARD: December 4, 2001

JUDGMENT DELIVERED: December 19, 2001

SUBJECT: Real Property; Boundaries; Limitation of Actions Act; Mutual Mistake; Trespass.

SUMMARY: The parties owned adjoining residential properties at Seabright, Halifax County, on the shore of St. Margaret's Bay. The appellant failed to seek permission of the respondents before attempting to bury a utility cable across an overgrown corner of their property. In the resulting dispute the common boundary came into issue. The respondents claimed to a survey line established in 1964 when the owner of the two lots received subdivision approval. The lots were not subdivided by conveyance until 1975 when the then owner of both lots conveyed the more westerly lot to the appellant's predecessor in title. At that time the owner pointed out a boundary line marked on the ground by the edge of the lawn area where he had mowed the grass. That line, referred to as the "occupation line" was several feet east of the survey line. It was accepted as the boundary by the respondents' predecessors in title, and the appellant and her predecessors in title, from 1976 until the respondents purchased the more easterly lot in 1997. In 1976 the former owner conveyed the more easterly lot to a predecessor in title to the respondents, who immediately changed the location of the driveway to cross a deeded right-of-way rather than the end of his house lot. He reported to the owner of the other lot, who was cooperating in the project, that he might have "clipped" the corner of his house lot. No remedial action was taken and the driveway provided access to the western lot until the respondents attempted to block it in 1999. After the dispute began in 1998 the appellant

had the boundary surveyed and rediscovered the 1964 survey line, which corresponded with the descriptions in all of the deeds. The disputed area lay between the occupation boundary line and included a long, narrow triangle of lawn which had been mowed by the appellant and the predecessors, the end of the driveway and a parking area used by the appellant and her predecessors. The appellant brought action, claiming a declaration that the appellant's claim to the disputed area had been extinguished pursuant to the **Limitation of Actions Act**. The respondents counterclaimed for damages for trespass resulting from the attempted burial of the utility line. The trial judge found the appellant and the former owners called by her had been mistaken as to the boundary and held she had failed to prove adverse possession. He dismissed her action with costs, allowing the respondents \$1,000 damages on the counter claim.

ISSUE: Did the appellant prove adverse possession to a standard necessary to extinguish the respondents' claim pursuant to the **Limitation of Actions Act**?

RESULT: The appeal was allowed with costs. The trial judge did not apply the doctrine of mutual mistake, which in the circumstances of the present case only required the appellant to prove acts of exclusive possession consistent with the ownership of a seasonal dwelling. The respondents' claims to the disputed area were declared extinguished and the appellant was granted a permanent injunction requiring them not to interfere with her enjoyment of her property. The \$1,000 damages on the counterclaim were confirmed. The appellant was awarded \$5,000 general damages for loss of enjoyment of her property caused by unnecessarily aggressive behavior by the respondents. Trial costs of \$8,500 plus disbursements were reversed. Costs on appeal were fixed at \$3,500 and disbursements plus \$2,000 and disbursements for an interlocutory order for an injunction and a stay.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 28 pages.