

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Forrestall v. Halifax County Condominium Corporation No. 142,
2006 NSSC 387

Date: 20061220

Docket: S.H. No. 212191

Registry: Halifax

Between:

Katherine Forrestall and Robert J. Russell

Plaintiffs

v.

Halifax County Condominium Corporation No. 142(Akins Court Condominiums),
Akins Cottage Limited,
and Halifax Regional Municipality

Defendants

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Judge: The Honourable Justice Donald M. Hall

Heard: August 29 & 30, 2006 in Halifax, Nova Scotia

Subject: Acquiring title by way of doctrine of lost modern grant and validity of an expropriation under Expropriation Act 1973

Issue: Whether plaintiffs have established the existence of rights of way under doctrine of lost modern grant and if so were they extinguished by the expropriation proceeding.

Summary: Plaintiffs were advised when they purchased the properties in question that there were no rights of way to obtain access to the rear of their properties, but claimed easements had been established by their predecessors in title under doctrine of lost modern grant prior to the City of Halifax acquiring title to the land in 1965. In 1986 the city expropriated its own land to clear title.

Result: Held that plaintiffs had failed to establish such easements, and even if they had they were extinguished by the expropriation which was held to be valid.

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