

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Parnell v. Collicutt, 2007 NSSC 256

Date: 20070829

Docket: S.Bw. No. 237167

Registry: Halifax

Between: Elizabeth Parnell, Spruce Cove Wildlife Rehabilitation
Centre, and Tracey Roberts

Plaintiffs

v.

Lester D. Collicutt, Lester D. Collicutt Ventures Limited,
Shawn Bernard Martin, and Darla Joyce Johnson

Defendants

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Judge: The Honourable Justice Gerald R P Moir

Heard: 28, 29, and 30 March 2007 at Halifax

Subjects: Breach of contract; uses of right-of-way; obstruction of right of way; other claims.

Summary: Mr. Martin promised to stop ATVs from coming down a woods road that led from Johnson and Collicutt lands over Parnell lands to a road. He could not perform. Collicutt allows ATVs to pass over the road to come to his land. Parnell obstructed the roadway, including putting a chain across it.

Issue: Whether Mr. Martin was in breach? Was ATV traffic a permitted use under the right-of-way over Parnell's land, in light of the *Off-highway Vehicles Act*? Whether the gate was a substantial interference with the right-of-way? Disposition of other claims.

Result: Damages for breach of contract by Mr. Martin in the amount of \$5,000. The statute does not diminish rights under a right-of-way and the grant was very broad. The chain was not a *bona fide* attempt to put up a gate and, in any event, it caused substantial interference because of Johnson's and Collicutt's disabilities. Injunction and damages of \$20,000. Other claims dismissed including Parnell's allegations of fraud.

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