Cite as: L & R Equities Ltd. v. Conn, 1990 NSSC 139

1987 S. H. No. 62184

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

L & R EQUITIES LIMITED and NOVA EQUITIES INCORPORATED, bodies corporate

PLAINTIFFS

- and -

JOHN D. CONN, Nova Scotia Land Surveyor, carrying on business under the firm name and style of Conn, Lord and Humphreys, Land Surveyors

DEFENDANT

HEARD: at Halifax, Nova Scotia before the Honourable MR. JUSTICE ROBERT MACDONALD, Trial Division, on November 14th, 1990 (in Chambers)

DECISION: November 14th, 1990 (orally at conclusion of hearing)

COUNSEL: Charles D. Lienaux, for the plaintiffs
Barbara S. Penick, for the defendant

1987 S. H. No. 62184

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

L & R EQUITIES LIMITED and NOVA EQUITIES INCORPORATED, bodies corporate

PLAINTIFFS

- and -

JOHN D. CONN, Nova Scotia Land Surveyor, carrying on business under the firm name and style of Conn, Lord and Humphreys, Land Surveyors

DEFENDANT

MACDONALD, J.: (Orally)

This application is for a ruling under rule 18.09 of the **Civil Procedure Rules** as regards the defendant giving, as requested in the notice, "complete and proper answers" to the plaintiff with respect to the location of the plaintiff's eastern boundary line which, I understand, is the whole matter in dispute.

Rule 18.09(1) and (3) state:

> "**Scope of Examination**
> 18.09. (1) Unless it is otherwise ordered, a person, being examined upon an examination for discovery, shall answer any question within his knowledge or means of knowledge regarding any matter, not privileged, that is relevant to the subject matter of the proceeding, even though it is not within the scope of the pleadings.
>
> ...
>
> (3) When any person examined for discovery omits to answer or answers insufficiently, the court may grant an order requiring him to answer or to answer further and give such other directions as are just."

I believe before such an order is granted, it must be clearly shown that the person being interrogated clearly evaded answering a question, or his answer is clearly insufficient. In chief examination of witnesses and cross-examination of witnesses, a great deal depends upon how a question is posed as to what answer will be given to a question. The precision required in the formation of a question in order to obtain an appropriate answer depends, to some extent, on the subject matter of the interrogation. Questions involving certain subjects require a considerable degree of precision, while others may be asked and answered in an offhand and rather general manner.

Certainly, when you are involved with property lines, precision is quite necessary, as is shown here by a considerable number of documents. They go from "A" to I believe "R", and perhaps a couple more that were filed today.

The question before me appears to be whether or not this witness, Conn, was evasive or not.

I have heard argument by both counsel and I have to decide, to a considerable extent from the exhibit "R", referred to as the "amended answers to interrogatories", and I have to keep in mind also that there was discovery (on two occasions, I am told) of this particular witness.

At discovery, generally speaking, I would say that the interrogator should be able to form his questions with an exactness, that if the answers are evasive, this could be readily and clearly seen; or that the answers are insufficient as related to the question. If this criteria is met, the courts should have little trouble determining whether an answer is evasive and, therefore, insufficient.

The interrogator certainly should have, I would think, a good deal of knowledge as to what questions he

is going to ask, because he is the person who asked for the discovery and he knows what he is after. If he doesn't get the right answers, as is alleged here, or if he doesn't get what he considers the proper answers, this may be because he hasn't asked the proper questions.

In any event, I find that the relief asked for by the solicitor for the plaintiffs, as related back to the answers to the interrogatories and discoveries, does not give me the evidence and information I would need to declare that Mr. Conn, the defendant here, omitted to answer, or answered insufficiently, the questions which were put to him.

I, therefore, am going to dismiss the application. Costs will be in the cause, as it will be the final examination of the witnesses in this case which will determine this whole matter, and it is the proper place where the evidence can be heard before the court that will try this case.

J.

Halifax, Nova Scotia

November 14th, 1990