

*Case Name:*

**Keeble v. Couperthwaite Estate**

**Between**

**Heather Keeble, plaintiff, and  
The Estate of Margaret Couperthwaite, by its Executor  
Marion Jeremy, Advice Contracting Limited, Ray Donald  
George Rahm and Eunice Emily Rahm, defendants**

[2005] O.J. No. 6099

Court File No. 60783/01

Ontario Superior Court of Justice

**R.P. Boissonneault J.**

Heard: May 10, 2005.

Judgment: September 9, 2005.

(16 paras.)

**Counsel:**

Timothy P. Boland, Solicitor for the Plaintiff.

Bruce S. Dawe, Solicitor for Marion Jeremy, Executor of the Estates of Margaret Couperthwaite and Harry Couperthwaite, and Martin P. Forget, Solicitor for Ray Rahm, Eunice Rahm and Advice Contracting Limited.

---

**1 R.P. BOISSONNEAULT J.:**-- This is a motion by Ray Donald George Rahm, Eunice Emily Rahm and Advice Contracting Limited for:

1. Summary judgment dismissing the plaintiff's claim against them;
2. In the alternative, an order dismissing the plaintiff's claim for delay.

**2** This action arises out of a single motor vehicle accident, which occurred on October 4, 1995 on Concession Road 14 in the Township of Scugog. The plaintiff, Heather Keeble, was operating her

vehicle when she alleges she came upon a cow in the middle of the road, swerved to avoid the cow and lost control, crashing her vehicle into the ditch.

**3** The defendants, Ray Donald George Rahm and Eunice Emily Rahm, own property known as 935 Scugog, Line 14, in the Township of Scugog, which is approximately .7 kilometres west of the accident scene (hereinafter "935 Scugog"). They also own property at 830 Scugog located approximately 1000 feet from the accident location (hereinafter "830 Scugog"). At the time of the accident, 830 Scugog was rented to the co-defendant, Advice Contracting Ltd.

**4** The prior defendants, Margaret Couperthwaite and Harry Couperthwaite, deceased, owned the property known as 685 Mountain Road in Scugog, which was immediately north of the accident location.

**5** Ms. Keeble commenced this action seeking damages for the injuries she claimed she suffered as a result of this accident. By her statement of claim, she alleges that either the Rahms or the Couperthwaites owned or harboured the cow in question and were negligent in failing to properly secure the cow and thus liable for the accident. The cow in question was never identified nor its owner ever determined.

**6** At the time of the accident, 935 Scugog was fully secured by a wire fence. The cattle were kept away from the road near the rear of the property. No cattle from that premises went missing shortly prior to, or on the date of Ms. Keeble's accident. Advice Contracting did not keep any cattle on 830 Scugog.

**7** Two days prior to the accident, cattle, red and brown in colour, escaped from the Couperthwaite property. Cows escaped the Couperthwaite's property 3 to 4 times per year.

**8** The accident was witnessed by Gord Martin and Michael Williams who were working in the area. Mr. Martin reported seeing a reddish brown cow on the top of the hill near the accident location. There has been no evidence to suggest the cow in question belonged to the Rahms or escaped from one of their properties.

**9** The central question is whether a genuine issue exists that the cow the plaintiff swerved avoid was caused by or under the control of the applicant and negligently allowed to escape to roadway causing the accident.

**10** The evidence on this motion does not satisfy me that there is an issue of fact that requires trial for the resolution of this alleged issue. Advice Contracting kept no cows on the lands it rented from the Rahms. Though the Rahms kept cows on their farm, there is no evidence that the cow in question belonged to the Rahms. There is no physical evidence of a point of exit from which a cow could have escaped from their property.

**11** The only evidence against the Rahms is that they owned a farm on which they kept cows in the quasi vicinity of the accident. Further, there is evidence that the cow may have escaped from another farm when similar problems had occurred a few days before along with evidence of fence disrepair on this farm.

**12** There is a need for the plaintiff to demonstrate some evidence providing a link between the cow and the Rahms and Advice. The plaintiff never produced such evidence, and has not done so in response to this motion. At best, the plaintiff, in her responding material, alleges that she does not know who owned the cow on the road, and that there were a number of cattle farmers in the area, and it could have been anyone's animal.

**13** She further alleges that the cow was brown such as Rahms' and that cattle at times escaped from good fences, such as the Rahms. These allegations are far too weak to support the existence of an issue to be tried.

**14** At best, the supporting evidence can only say that the cow could have been owned by the Rahms. I add, however, that it could also have been owned by several other farmers in the area.

**15** On these facts, I conclude that there is no genuine issue for trial against the defendants Rahm and Active Contracting and an order shall issue dismissing the plaintiff's action against these defendants. Having so held, it is unnecessary to deal with the request to dismiss for delay.

**16** Costs to the applicants.

R.P. BOISSONNEAULT J.

cp/s/qw/qlqs