

Court of Queen's Bench of Alberta

Citation: Dery v Forgie, 2020 ABQB 559

Date: 20200924
Docket: 2003 13220
Registry: Edmonton

Between:

Angele M. Dery and Clement J. Dery

Applicants

- and -

Barry R. Forgie, June-Ann Forgie, Kenneth Paul Rodberg, Henry R. Fletcher, Dolores C. Fletcher, Lambros Vasilakes, Olga Vasilakos, Elizabeth Woronuk, Kevin Harper, Mark Evans, Wendy Evans, Jeffrey Watts, Amy Watts, Louzeia J. Stitt, John D. Cutting, Kelly Rombough, Lorie Rombough, Dawn Marie Scott, Cathy Bryant, Jeff Bryant, Fernand Ronald Beaudoin, Stella Gabrielle Beaudoin, Gary Burke, Melvin A. Wood, Tina M. Wood, Ida Muriel Hemmerling, Jody Bolton, Daniel Anderson, Neil Jacobs, Attiya Jacobs, Harrison Applin, Richard Hannah, Colleen Hannah, Darren K. Jones, Marion Jean Gausvik, Brenda Shewaga, Russell Macintyre, Barbara Macintyre, John Phelan, Marilyn Phelan, Lisa Monita, John Vincent Bradshaw, Sandra Bradshaw, Alvin G. Twardy, Guenther Wally Lees, Russell H. Penny, Elsie D. Penny, Piyush Mittal, Riya Mital, Kenneth Joseph Jakubec, Margaret Magdalena Jakubec, Richard Kulchyski, Tadg Sean McGillicuddy, John Bredo, Barbara Bredo, Clifford Ziegler, Lori Bredo-Ziegler, Vijendran Mudlier, Susanne Andrea Ambron, Michael Horst Ambron, Andrew Jeffrey Ellis, Thomas Clark, Marilyn Clark, Sandra Hornbrook, Norman Vaudan, Margaret Vaudan, Tamara Weeks, Petar Tolevsky, Deborah Ann Morrison, Ernest Daigle, Cecile St. Pierre, Jeffery Stolte, Charles Stolte, Remi G. St. Pierre, Bettejane Legg-St. Pierre, Rick St. Laurent, Jewel St. Laurent, Steve Vasilakos, Leslie Sidney Legg, John Vasilakos, Eva Vasilakos, Robert Daigle, Lorena Daigle, Dennis Vaillant, Joanne Vaillant, Kim Davis, Sandy Davis, Andrew Donald Kelly, Audrey Kelly, Larry Williams, Jameson Wylie, Lindsay Wylie, Christie Melissa Pearson, Allan Florentino, Alexander Pearson, Laurence W. Jevne, Bonnita A. Jevne, John Hayes, Linda Ensley, Sheila McLaughlin, Shirley M. Zomber, Nancy Gigena, Matthew Gigena, Ashley Gigena, Michael S. Young, Jeffery Dale Sundmark, Joanne Claire Sundmark, Cyril Patrick Sparrowe, Leah Marie Sparrowe, Fred Graves, Jennifer Graves, Douglas Price, Judy Stewart, Arthur Cunningham, Joanne Cunningham, Laine Davis, Erin Davis, Karen McDowell,

Maurice C. Carriere, Claudette S. Collins-Carriere, Elaine P. Collins-Neeland, Thomas R. Clark, Kristopher Thomas Clark, Ameen Aboughoushe, Samia Aboughoushe, Wendy Suzanne Huff, David Gordon Huff, Helen Elvira McInerney, Lana Smith, Lisa Melnyk, Ron Pratt, Margaret Pratt, Geoffrey Owen Oberg, Caroline Laura Neeland-Oberg, Vern Odegaard, Mae Odegaard, Barry Smith, Sara Smith, Justin Boutilier, Terri Peddle, Raymond Wallbridge, Lisa Wallbridge, Don Welsh, Holmann Wong, Raymond Wong, Roberta Dingwall, Devon Harold Patrick Gravel, Steven Farrell, Brandy Farrell, Kacy Rice, Sandy Scott, Brenda Witt, Richard Ellis, Judith Ellis, Wallace Anhorn, Heather Anhorn, Joshua Murdock, Maurice Bullock, Lorraine Bullock, Peter Clifford Clark, Peter Anthony Clark, Elvira Ann Clark, Santina Pullano, Salvatore Pullano, Shane D'Aoust, Danna Scheider, Cosmos Electric Ltd., John Vasilakos, Kevin Watt, Cheryl Watt, Earl Hemphill, Barbara G. Chalinor, James R. C. Hayes, Russell Lee, Roseann Lee, Brenna Maradyn, Adam Hartzke, Jo-Ann Lee Lover, Jo-Ann Caryl Lover, Allan Richard Lover, Dawn Boileau, Marc Rene Despins, Maurice Victor Joseph Despins, Claudia Ramirez, Jerry Strembiski, Jeanette Strembiski, Allen Brent, Candice Brent, Trudy Delia Harrington, Lynn Z. Palmer, Carol D. Palmer, Darrell Michael Masse, Sandra Irene Masse, Terence Michael Morgans, Reg T. Pointe, Hilma Hirt, Harold Richard Hirt, Mark Berry, Lana Berry, Gail Giesbrecht, Thomas A. Graham, Monique M. Graham, Hugh Russell Purdy, Karen Wyonne Purdy, Bryan Betteridge, Marlene Betteridge, Siobhain Mcardle, Thomas Duiker, Carol Anne Duiker, Trent Stampe, Lori Stampe, Curtis William Duffy, Jackie Lynn Papineau, Frank M. Kormos, Mabel T. Kormos, Jarrod Brent, Tammy Brent, Paul Tustin, Pamela Corbett, Arthur George Paradis, Donna Jean Paradis, Dwayne Jasman, and Philip Michailides

Respondents

**Endorsement
of
W.S. Schlosser, Master of the Court of Queen's Bench of Alberta**

[1] This is an application to discharge a restrictive covenant to the limited extent that it conflicts with Bylaw 171-11 of the Summer Village of Yellowstone affecting set-back of the Applicants' garage.

[2] The Applicants' garage, which is attached to their home is 27 cm too close to the road, insofar as the requirements of the restrictive covenant are concerned. The garage complies with the land use provisions of the Municipal Bylaw and a compliance letter has been obtained. The Applicants wish to have the restrictive covenant discharged on this property to the extent that it conflicts with the Municipal Bylaw.

[3] All of the land owners subject to the restrictive covenant were served with notice of this application. A number of them appeared in court. Some wanted the entire restrictive covenant to be discharged (D. Jasma, K. Harper and N. Egigia). Others thought that a revision and reconciliation with the current Bylaw would be in order (E. Clark). There was no real impediment raised to the specific and narrow variance being sought on the application.

[4] I am satisfied that *Potts v McCann*, 2002 ABQB 734, and, *Moyen (Re)*, 2018 ABQB 1023, (esp para 12) support discharging the restrictive covenant to the very limited extent sought in the application. I am mindful of the comments of the other concerned landowners but an overall revision of the restrictive covenant or a discharge of the covenant altogether is not a remedy that is available today given the very narrow scope of the application presently before the Court.

Heard on the 22nd day of September, 2020.

Dated at Edmonton, Alberta this 23rd day of September, 2020.

W.S. Schlosser
M.C.Q.B.A.

Appearances:

Pierre Asselin
for the Applicants

E. Clark
Self-represented

D. Jasma
Self-represented

K. Harper
Self-represented

N. Egigia
Self-represented