

CONSERVATION EASEMENT – CASELAW

For Ontario Land Trust Alliance Gathering 2017

In the Supreme Court of British Columbia 2002

1. In British Columbia a Conservation Society is the holder of a restrictive covenant providing that:
“hereafter, no logging shall be carried out and no vegetation or plant life shall be disturbed or removed or interfered with on that part of the Servient Tenement comprised of the watershed for the community water utility presently known as Wilderness Mountain Water Corporation.”
2. The “Servient Tenement” is a large lot on which a new owner has started to build a driveway and house.
3. In 2002 the Conservation Society applies to the court for an injunction to enforce the restrictive covenant and prevent the construction.
4. However, it is established by expert evidence at trial that there are several “watersheds” on the Servient Tenement.
5. There is a dispute about whether the new construction is in a watershed that serves the “community water utility”
6. The best evidence provided at trial comes from the engineer and surveyor retained by the owner to demonstrate that the new construction is not within the specific watershed of the new reservoir.
7. In coming to its judgement the court refers to case law precedents providing that: “It is well established that restrictive covenants are strictly construed (interpreted). Ambiguity is resolved in favour of nonenforcement.”

QUESTION – If you were the judge – what would you decide and why ?

QUESTION – What could the Conservation Society have done to improve its chances of success ??

In the Supreme court of Virginia – 2016

1. Wetlands America Trust, Inc. (“WAT”) hold a conservation easement on land providing that
 “No permanent or temporary building or structure shall be built or maintained on the entirety of the Protected Property other than farm buildings or structures. ”
 Neither the term “farm buildings” nor the term “farm structures” is defined by the Easement
2. The land owner planned to construct a building on the property to operate a creamery and bakery, using the milk and wheat derived from the property. The building would also be used to store barrels of aging wine made from grapes grown on the property. In addition, the building would include a tasting room and would be open to the general public for the sampling and sale of the wine and the cheese and bakery products produced on site. Acting on these plans, the owner commenced construction of the building on the property, along with an adjoining parking lot, a new road leading to the parking lot, and a new bridge.
3. WAT seeks a declaratory judgment from the court to prevent the proposed commercial building and commercial use.

IF YOU WERE THE JUDGE:

QUESTION – Where would you look for a definition of “farm buildings” ?

QUESTION – Would you find the proposed commercial sales are permitted or prohibited in a “farm building” under the conservation easement.

QUESTION – The “rule of strict interpretation” is a legal rule or principle to the effect that where there is substantial doubt or ambiguity in the interpretation of covenants on land the covenants will be read against the party trying to enforce them.

Is this an appropriate situation in which to apply this rule ?

What would your judgement be ??

Court of Queen's Bench of Alberta – 2014

1. A Conservancy organization holds a conservation easement on foothills ranchland.
2. A dispute arises over whether or not the fencing erected by the owner of the land to contain buffalo complies with the conservation easement limitations on fencing. The Conservancy is concerned that the new higher fences will impede wildlife movements.
3. The page of the conservation easement setting out the restrictions on fencing has not been registered with the rest of the conservation easement documentation.
4. There is a dispute between the Conservancy and the owner over what had been agreed and what should have been registered.
5. The owner provides evidence that is clear and specific about his recollection on the verbal agreement with respect to fencing.
6. The Conservancy staff have no recollection of that discussion (and do not appear to have any documentation specifically on the issue of negotiations re fencing).

QUESTION – Who is the court going to believe ??

7. The Baseline Report prepared by the Conservancy staff does not specifically deal with wildlife movement through the property and the Conservancy does not have direct evidence that the new fence is impeding wildlife.
8. The owner has evidence including extensive video to demonstrate that the new fence does not impede wildlife movement.

QUESTION – What is the court going to believe ?

QUESTION – What could the Conservancy have done to improve its chances of success ??