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9165-0937 Quebec inc. v. City of Sherbrooke 2025 QCCS 171

The plaintiffs, 9165-0937 Quebec inc. (the "owners"), owned a building in the City of Sherbrooke, Quebec, located in an industrial park owned by the City. There was no possible access to the owners' building from the motorway which it bordered and the only way to envision that it would not be landlocked would be to access it from Hector-Brien street.

Although discissions and negotiations took place between the owners and the City since 2012, when the owners purchased the building, related to the development of the owners' property, including the possibility of the City extending Hector-Brien street onto the owners' building and exchanging land with the plaintiffs, the plaintiff owners had always been informed by the defendant City that their land could not yet be developed since it was, among other things, not adjacent to a public street.

According to the City, Hector-Brien street ended at the end of the registered lot which bore the number 4 599 668. The plaintiffs asserted that the driveable surface of Hector-Brien street ended less than 2 metres from the lot line of their building and that the underground municipal services, which were installed in the street right-of-way, ended less than 4 metres from this same lot line.

The owners sought a site preparation and development permit from the City. The City the refused the request because the parcel of land was not adjacent to a public street. The owners brought a motion for a declaration that the parcel of land was adjacent to a public street. The plaintiffs argued that the portion of Hector-Brien street that is adjacent to their building must be considered a public street since it has been developed and passable since at least 2013.

The City argued that the plaintiffs' appeal was theoretical since whatever conclusion the court might reach regarding whether or not the building is adjacent to a public street, this would not have the effect of allowing them to obtain a building permit for that building. Even without taking the adjacency of the land to a public street into account, it would not be possible for the plaintiffs to obtain such a

permit because of Interim Control Bylaw 1274, which was aimed at the protection of natural environments of conservation interest.

Furthermore, the City stated that even if the concept of adjacency or the term “adjacent” was not defined, the usual definitions of these terms refer to something contiguous, or touching, or adjoining. The City added that on several occasions, the courts have ruled that the concept of adjacency implies access, direct frontage on a public street and have rejected the concept of proximity. The City stated that when land is separated from a public street by a strip of land, even if this strip belongs to the municipality, this has the consequence that it is not adjacent to this street.

Held:
Motion dismissed.

Analysis:
The Superior Court of Quebec found that the bylaw, called Regulation 1203, clearly required that the parcel of land be adjacent to a public street. The Court acknowledged that this requirement has been declared valid by the courts on numerous occasions, including the Court of Appeal, in order to give municipalities the possibility of controlling the sequence of development in their territory and of making municipal services profitable.

The Court found that the term “Public street”, as defined in Regulation 1200, means a street that belongs to the City of Sherbrooke or to a government. Any thoroughfare that was not the subject of a specific cadastral description was not a public street. The evidence showed that the public roadway extended into the parcel of land. However, the street inside of the parcel of land was not described in a cadastral plan. This meant that the only conclusion that could be found was that the street was outside of the cadastral limit of the parcel of land. Therefore, the Court declared that the owners’ parcel of land was not adjacent to the public street.

Quebec inc. v. City of Sherbrooke

Chitaroni Estate v. Coleman (Township) 2025 ONCA 424

This was an appeal of three decisions arising from a single summary judgment motion related to a disputed portion of road. The underlying issue related to a claim by the appellants for a declaration that a disputed portion of a specific road (“Road A”) connecting to a developed subdivision was either a public road, a common road, or an access road. The declaration was intended to enable a long-pending approval of a plan of subdivision. The appellants also claimed damages against the Town of Coleman for alleged public misfeasance/malfeasance in not taking certain steps to assume the disputed portion of Road A earlier.

The Township brought a motion for summary judgment which the motion judge heard in three parts, with each part resulting in a final determination. In Part 1, dated January 7, 2022, the motion judge determined that summary judgment was the appropriate process, addressed the use of partial summary judgment and dismissed the appellants’ claim for a declaration that the disputed portion of Road A is a public road. Further submissions were directed to be filed with respect to the issue of whether the damages claim required a trial.

In Part 2, dated April 20, 2023, the motion judge dismissed the appellants’ claim that the disputed portion of Road A was a common road, while permitting the access road and misfeasance claims to proceed to trial. He also sought particulars of certain allegations made by the appellants to support the claim for damages.

In Part 3, dated October 25, 2023, the motion judge made rulings with respect to specific allegations related to the access road issue and the misfeasance claim, both of which had already been ordered to proceed to trial. Some of the rulings specified that the appellants were precluded from advancing aspects of their misfeasance claim at trial. On April 17, 2024, costs were ordered in the amount of $33,000 payable to the Township.

The appeal was commenced by the appellants after the Part 3 decision was rendered.

Held:
Appeal dismissed.

Analysis:
The appellants argued that the motion judge erred in determining that this matter was appropriate for partial summary judgment, and in concluding that the disputed portion of Road A is neither a public road nor a common road. The appellants asked the Court of Appeal to set aside the motion judge's order and to remit all issues in the proceeding to trial.

The appellants argued that they were entitled to a declaration that the disputed portion of Road A was a public road based on the common law doctrine of dedication and acceptance, which applied until 2003, when the *Municipal Act, 2001* (Ontario) came into effect. The Court of Appeal found that the motion judge recognized that the parties advanced conflicting positions concerning the required elements of the acceptance branch of the test. Furthermore, however the test was formulated, the appellants claim was found to have failed because the appellants could not show acceptance by the Township or by the public, nor could it show dedication.

The Court of Appeal found that the appellants effectively sought to relitigate this issue on appeal, which is not the function of the Court of Appeal. The Court of Appeal confirmed that the motion judge correctly set out the law, considered the breadth of authorities and conflicting positions on the law that were advanced, made findings of fact fully available to him on evidence, and reasonably applied the law to those facts. The motion judge determined that the evidence did not show intention to dedicate, because the owner was unaware that he owned it, and this reflected neither error of law nor of fact.

Chitaroni Estate v. Coleman (Township)