

COURT OF APPEAL FOR ONTARIO

CITATION: Visnjic Estate v. LaSalle (Town), 2018 ONCA 803
DATE: 20181004
DOCKET: C63706

Hourigan, Miller and Trotter JJ.A.

BETWEEN

The Estate of Bogoljub Visnjic
and Milena Visnjic

Plaintiffs
(Appellants in Appeal)

and

The Corporation of the Town of LaSalle

Defendant
(Respondent in Appeal)

Luigi Di Pierdomenico, for the appellants

Patrick Brennan and Shannon Mulholland, for the respondent

Heard and released orally: October 2, 2018

On appeal from the judgment of Justice Paul R. Howard of the Superior Court of Justice, dated April 3, 2017.

REASONS FOR DECISION

[1] Pursuant to a building permit issued by the respondent, the appellants constructed a detached garage on property they owned. In constructing the building, the appellants accessed Ninth Street, an unopened road allowance. After the garage was completed the respondent took the position that the

appellants could not access the garage via Ninth Street. The respondent then blocked access to Ninth Street with concrete barriers.

[2] The appellants commenced an action seeking, among other things, an order for the removal of the barriers, an easement over the lands in issue, or, in the alternative, damages for breach of the equitable doctrine of promissory estoppel and/or negligent misrepresentation, together with punitive damages.

[3] The trial judge found that the evidence did not support any of the elements of a claim for promissory estoppel. In particular, he found that the respondent did not induce the appellants to believe that they would have a right of access over Ninth Street, the appellants did not build the garage in reliance on having a right of access, and the respondent did not take unconscionable advantage of the appellants by denying them the right to access that they expected to receive.

[4] The negligent misrepresentation claim was dismissed on the grounds that in issuing the building permit the respondent did not misrepresent that the appellants would have access to Ninth Street. Further and in the alternative, if such a representation was made, the appellants did not reasonably rely on same.

[5] The trial judge declined to award punitive damages and the claim for an easement was not pursued.

[6] In this court, the appellants submit that the respondent's building inspectors breached a duty of care in issuing the building permit, that they are

entitled to an award of punitive damages, and that the trial judge erred in his analysis of promissory estoppel and negligent misrepresentation.

[7] There is no merit in any of the submissions made by the appellants.

[8] No claim of negligence was made in the court below and, accordingly, will not be considered on appeal.

[9] We also see no error in the trial judge's analysis of promissory estoppel and negligent misrepresentation. He applied well-established law to the facts of this case. In so doing, the trial judge made factual findings that were supported by the evidence and credibility findings that were well articulated and are entitled to deference. In short, the trial judge's conclusion that the appellants did not meet their onus for either of these causes of action is unassailable.

[10] Finally, there is no basis to interfere with the trial judge's denial of the claim for punitive damages. The respondent had authority to restrict access to Ninth Street and, as the trial judge found, acted in good faith in doing so.

[11] The appeal is dismissed.

[12] The appellants shall pay the respondent its costs of the appeal in the all-inclusive amount of \$16,645.

"C.W. Hourigan J.A."

"B.W. Miller J.A."

"G.T. Trotter J.A."