

Dispute Over Outhouse Clogs Up The Courts: *Armstrong v. Moore*

Costs | Land Titles Act | Land Use Regulation | Litigation | Litigation & Dispute Resolution | Municipal & Land Use Planning | Ontario | Real Estate

29 January 2020

Can the location of an outhouse grant title to a portion of the neighbour's land? This was the smelly issue facing the Court in a matter that went through a seven day trial followed by a recent trip to the Ontario Court of Appeal.

Armstrong v. Moore, 2018 ONSC 7056, involved "the kind of dispute that occasionally flares up in cottage country," in the words of Mr. Justice Calum MacLeod, who presided over the trial. The owners of the outhouse, the Armstrong's, purchased their property in 2003, but the cottage itself, which lacked the modern comforts of indoor plumbing, was probably little changed since the early 1950's. The outhouse was situated on a right of way adjacent to the Armstrong's property, on lands owned by the Moore's. The right of way -- but likely not the outhouse -- was also used by other cottage owners to access their cottages.

Things ran afoul in 2007 when the Moore's commenced renovations on their property and the outhouse, which was situated downstream from the construction, was inundated by mud and water. Matters hit the proverbial fan and litigation ensued, with the Armstrong's claiming title by adverse possession to the land on which the outhouse was situated, and each side lobbing various allegations of misconduct at each other. As Justice MacLeod described it:

Seldom do matters deteriorate to the extent they have here. The tranquility sought by the plaintiffs and long enjoyed in the community has been shattered by what appears to be disproportionate conflict, multiple lawsuits, family feuds and a decade of litigation, property damage and extra-judicial self-help. Two weeks were spent in this trial alone.

Neither side was likely happy with the trial judgment. Justice MacLeod rejected the Armstrong's claim for adverse possession because they had not proven that either they or their predecessors had the intention to exclude the Moore's from the land on which the outhouse was located. Rather, the evidence was that the Moore's had consented to the location of the outhouse over the years, such permission negating the Armstrong's claim to legal acquisition of title by adverse possession. The outhouse had apparently been moved on at least one occasion, with the Moore's permission.

As to the events emanating from the damages to the outhouse, Robert Moore was found liable in the total amount of \$7,000. His father, Howard, was found liable for "aiding, abetting and encouraging" the destruction of the outhouse in the amount of \$3,000. An additional \$5,000 in punitive damages was ordered against Howard for "encouraging vandalism" and engaging in "a process of intimidation." Accordingly, after a seven day trial, the Armstrong's received a total damage award of \$15,000. One can only imagine the actual legal costs incurred to achieve that result.

Predictably, each side appealed. On 13 January 2020, the Ontario Court of Appeal heard and dismissed the appeals, finding no issues with Justice MacLeod's assessment of the claim for adverse possession or the awards of nominal and punitive damages: *Armstrong v. Moore*, 2020 ONCA 49. As each side lost, no costs were awarded.

While litigation between neighbours is often nasty and drawn out, it must have been of great dismay to the Court's overloaded scheduling administrators to have to deal with this dispute clogging up the system. The trial took place eleven years after the mudflow damaged the outhouse and nine years since the commencement of litigation. While the Moore's were understandably opposed to the Armstrong's attempt to grab ownership of their land, it is also clear that their own conduct did little to diffuse the situation. The dispute seemed to be more about the allegations of misconduct rather than clarifying property rights. As Justice MacLeod noted, "this is not a case for adding to the literature on real estate law." Given the ultimate results, the case is perhaps best referred to as an example of the downside of spending the time in court in lieu of leisure time at the cottage.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com