

Introduction

Fulton recently acted for the Regional District of North Okanagan (“RDNO”) in litigation concerning a dispute involving public lands and Provincial foreshore licenses. The resulting decision, which dismissed all claims against the RDNO, solidifies local governments’ discretionary decision-making authority regarding lands acquired for a public purpose.

Background

The plaintiffs were residential property owners in Vernon. The plaintiffs’ property was separated from Kalamalka Lake by a corridor of land that is now known as the “Okanagan Rail Trail.” At the time the plaintiffs purchased the property, the Kelowna Pacific Railway owned the Okanagan Rail Trail corridor. The plaintiffs had a crossing agreement with the Railway, which allowed them to access the foreshore of the Lake. The plaintiffs also obtained a foreshore license from the Province, which permitted them to construct and use a dock on the foreshore of the lake for a term of ten years.

The RDNO acquired the Okanagan Rail Trail corridor and converted it to public use. The Board resolved that it would not support any applications for private dock licenses on Kalamalka Lake. The plaintiffs attempted to renew their Provincial foreshore license and were told that the RDNO would not support their renewal application. In December 2017, the plaintiffs obtained legal counsel and wrote to the RDNO arguing that they were entitled to the RDNO’s support for their renewal application, citing the principle of proprietary estoppel. In April 2021, the Province notified the plaintiffs that their dock was in trespass.

Court’s Decision

The plaintiffs commenced this action at the Supreme Court of British Columbia in May 2021. They relied on the principle of proprietary estoppel and sought a declaratory easement along the Okanagan Rail Trail. The plaintiffs further argued that the RDNO had assured them that, despite any future acquisition of the Rail Trail corridor, it would support their application for renewal of the foreshore license.

The RDNO argued that the plaintiffs’ claims were statute barred: the applicable limitation period was two years and the latest that period would have begun running was the December 2017 letter from their lawyer. In the alternative, the RDNO submitted that the plaintiffs’ claim in proprietary estoppel must fail because they had not established that the RDNO had made any assurances to the plaintiffs. In the further alternative, the RDNO submitted that if an assurance was given, the plaintiffs’ reliance on that assurance was not reasonable.

The plaintiffs argued that the limitation period had not expired because the RDNO had never provided a definitive answer to their December 2017 letter. The Court rejected this argument and held that the plaintiffs were aware of the RDNO’s position in December 2017, and so the two-year limitation period ended in December 2019.

The Court went on to canvass the elements of proprietary estoppel, being: 1) an assurance from the RDNO; 2) reasonable reliance by the plaintiffs; and 3) the plaintiffs suffering a detriment as a result of their reliance. On the first element, the Court held that there was insufficient evidence to support the plaintiffs’ assertion that they had received assurances from the RDNO that it would

support any future foreshore license renewal application. Rather, the plaintiffs' evidence spoke only to their *belief* or *understanding* of an assurance. They had not proven that anyone with authority at the RDNO had actually made any specific statement to them.

On the second element, the Court held that any expectation by the plaintiffs of their continued use of the dock past the ten-year term of the license was unreasonable. Given that the Province, not the RDNO, is responsible for the granting of foreshore licenses, the assurance that the plaintiffs would retain entitlement to their dock was not something within the RDNO's control. As a result, the Court held that the plaintiffs' expectations were incapable of supporting a claim in proprietary estoppel.

In light of the Court's earlier conclusions, the Court did not address the third element of proprietary estoppel. The plaintiffs' claims were dismissed.

Takeaways

This decision helps to clarify the application of limitation periods and proprietary estoppel as against local governments.

The Court's rejection of the plaintiffs' limitation argument – that the limitation period had not yet started because the RDNO had never definitively closed the door on supporting their license renewal – will be welcomed by local governments. Had this argument succeeded, it would have prevented local governments from relying on limitation periods in many cases, since it is always possible for a future board or council to reconsider a previous decision.

As for proprietary estoppel, this decision underscores that local governments will rarely be liable for assurances given by individuals who lack the legal authority to bind them. Further, for reliance to be reasonable, the subject of the assurance must be within the control of the local government.

This case also further supports local governments' discretionary decision-making authority regarding lands acquired for a public purpose.

When communicating with members of the public in contentious situations, the following tips can help to mitigate a local government's risk:

- Consider seeking legal advice before committing to a position;
- Ensure to convey the local government's position with utmost clarity, preferably in writing; and
- Ensure that staff do not make representations on topics that are properly matters for the local government's board or council.

Questions? Contact a member of our experienced Local Government Law Team:



Denise
McCabe



Sam
Dabner



Tyson
McNeil-Hay



Jessica
Vliegenthart



Devin
Buchanan



Chelsey
Mack



Casey
Neis



Kendra
Murray



Angelica
Kovac



Caleigh
Treissman