

CITATION: 433583 Ontario Limited v. Metropolitan Toronto Condominium Corporation No.  
935, 2011 ONCA 156  
DATE: 20110228  
DOCKET: C49018

COURT OF APPEAL FOR ONTARIO

Winkler C.J.O., Rosenberg and Goudge JJ.A.

BETWEEN

433583 Ontario Limited

Applicant (Respondent in Appeal)

and

Metropolitan Toronto Condominium Corporation No. 935

Respondent (appellant)

Blaine Fedson, for the appellant

Jack Copelovici, for the respondent

Heard and endorsed: February 24, 2011

On appeal from the judgment of Justice Peter Jarvis of the Superior court of Justice, dated May 28, 2008.

APPEAL BOOK ENDORSEMENT

[1] The appeal is dismissed. We agree with the reasons of Jarvis J. To deal with the issues raised by the appellant, we are satisfied that there was an evidentiary basis for finding that all the conditions for proprietary estoppel were made out. In particular, a

review of the record establishes that the unconscionability requirement was made out having regard to the course of dealings involving the respondent's predecessor in title.

[2] As to the *Planning Act*, R.S.O. 1990, c. P.13, we are satisfied that s. 50(14) of that Act is a complete answer, assuming without deciding, that the *Planning Act* applies to an easement created by court order.

[3] Finally it appears that the parties have not been able to agree on the terms and conditions of the easement. Counsel for the respondent stated before us that the respondent was prepared to abide by the terms and conditions in the 1987 Agreement with the addition of a condition that the easement not be used by construction equipment. If there is any lack of clarity in the 1987 terms and conditions as amended by these reasons concerning construction equipment, that matter is remitted to the application judge.

[4] Accordingly, the appeal is dismissed with costs fixed at \$10,000 inclusive of disbursements and applicable taxes.