

COURT OF APPEAL FOR ONTARIO

CITATION: Furr v. Duhamel, 2019 ONCA 824

DATE: 20191016

DOCKET: C65321

Hoy A.C.J.O., van Rensburg and Roberts JJ.A.

BETWEEN

Steven Furr and Kathleen Lundgren

Applicants (Respondents)

and

Michel Duhamel, Emmy Verdun, and Jack Hughes, and The Kings Landing Co-Tenancy Committee

Respondents (Respondents)

and

Paulette Martel

Intervener (Appellant)

Bruce F. Simpson, for the appellant

Eric Appotive and Allison Russell, for the respondents

Heard and released orally: October 11, 2019

On appeal from the judgment of Justice Robert Beaudoin of the Superior Court of Justice, dated April 4, 2018, with reasons reported at 2018 ONSC 1780.

REASONS FOR DECISION

[1] The appellant appeals the judgment of the application judge determining that the fencing and retaining wall along Greenfield Avenue, in Ottawa, are “Shared Property” within the meaning of the Co-Tenancy Agreement, dated December 15, 1998, that governs a townhouse development known as “Kings Landing”.

[2] The matter before the application judge was one of contractual interpretation. Contractual interpretation involves issues of mixed fact and law. The application judge’s interpretation is therefore entitled to deference, absent a palpable and overriding error. Occasionally, an extricable question of law arises out of the interpretation of a contract. Deference is not owed on such questions.

[3] In our view, the appellant seeks to re-argue the interpretation of the Co-Tenancy Agreement. The application judge carefully considered the factual matrix. In her factum and in oral argument today, the appellant has not identified any palpable and overriding error. Nor has she identified any extricable question of law. The application judge correctly articulated and applied the principles governing the interpretation of a contract. Contrary to the appellant’s submission, he read the contract as a whole.

[4] Accordingly, the appeal is dismissed. The respondents are entitled to their costs of the appeal, as agreed, fixed in the amount of \$20,500, including HST and disbursements.

“Alexandra Hoy A.C.J.O.”
“K. van Rensburg J.A.”

“L.B. Roberts J.A.”