

COURT OF APPEAL FOR ONTARIO

CITATION: Chahal v. Caledon (Town), 2023 ONCA 188

DATE: 20230316

DOCKET: C70514

Roberts, Nordheimer and Thorburn JJ.A.

BETWEEN

Pritpal Chahal and Gurpreet Chahal

Applicants (Appellants)

and

The Corporation of the Town of Caledon

Respondent (Respondent)

Bernie Romano and Jordan Nussbaum, for the appellants

Sylvain Rouleau and Chantal deSereville, for the respondent

Heard: March 15, 2023

On appeal from the judgment of Justice Judy A. Fowler Byrne of the Superior Court of Justice, dated March 16, 2022, with reasons reported at 2022 ONSC 1666.

REASONS FOR DECISION

[1] The Chahals appeal from the decision of the application judge who dismissed their application for a declaration that their current use of the lands that they own in the Town of Caledon are a legal non-conforming use, pursuant to s. 34(9) of the *Planning Act*, R.S.O. 1990, c. P.13, and thus the appellants are not required to obey Orders to Comply issued by the respondent, the Corporation of

the Town of Caledon. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. We now provide those reasons.

[2] As detailed in the reasons of the application judge, the appellants' lands have a history of being used as a commercial trucking and transportation enterprise involving the parking of transport tractors and trailers and related outside storage. The evidence was that this was the use to which the lands were put by the two previous owners of the lands. The application judge found that this prior use was a legal non-conforming use.

[3] However, the application judge found that the use to which the appellants are putting the lands had changed to the point where its use was completely different than the previous legal non-conforming use. She found that the appellants were using the lands for other purposes, including to store derelict vehicles, a fuelling station, a repair facility, and as a general dumping ground for vehicles, parts, and construction waste.

[4] The appellants are, in essence, challenging the application judge's factual findings. They complain that the application judge preferred photographic evidence over the evidence given by Mr. Chahal. The appellants also complain that the application judge relied on inadmissible hearsay evidence respecting complaints from other residents regarding the use to which the lands were being put. Finally, the appellants say that they were caught by surprise by the application judge's

finding that they had abandoned the prior legal non-conforming use as this issue was not raised by the respondent.

[5] We do not accept the appellants' submissions. It was up to the application judge to decide the facts of the case. It is not for this court to re-find those facts, absent the demonstration of a palpable and overriding error which is not shown here. We would note that the photographic evidence was arguably the best evidence of how the lands had been used in the past. Mr. Chahal had no direct knowledge of those uses. In any event, it was open to the application judge to decide the facts as she did based on the record that was before her.

[6] We also do not accept that there was no proper evidence before the application judge regarding the complaints from other residents. The respondent was entitled to lead evidence of property complaints that it had received. Those complaints are not inadmissible hearsay as suggested by the appellants. They are factual matters drawn from the records of the respondent kept in the ordinary course of its business. Those complaints were admissible, in the circumstances of this proceeding, to prove the impact on other residents known to the respondent with respect to the appellants' use of their lands.

[7] The appellants bore the onus of establishing that their use of the lands was a legal non-conforming use. The application judge found, in careful and thorough reasons, that the appellants had failed to establish such a use. The appellants

have failed to demonstrate any error in the application judge's analysis or conclusion. We reject the suggestion that they were caught by surprise on the abandonment issue. That issue was central to the relief that the appellants sought, namely, that their current use of the lands was the continuation of an existing legal non-conforming use. They cannot reasonably complain that the application judge addressed that aspect as part of determining the relief that they sought. Finally, we also reject the appellants' contention that the application judge ought to have awarded them alternative relief, namely, that they could continue to use the lands if they restricted that use to the prior legal non-conforming use. The appellants did not seek that, or any other, alternative relief. The application judge was not required to consider alternative relief that the appellants did not raise. In any event, as the appellants conceded, the application judge did not have to consider that issue given her determination that the appellants had abandoned the prior legal non-conforming use of the property with which we have agreed.

[8] The appeal is dismissed. The respondent is entitled to its costs of the appeal fixed in the agreed amount of \$15,000, inclusive of disbursements and HST.

"L.B. Roberts J.A."

"I.V.B. Nordheimer J.A."

"J.A. Thorburn J.A."