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"RESULTS MATTER" – ALBERTA COURT SHOWS RESPECT FOR PRIOR MUNICIPAL DECISIONS AND PREVENTS COLLATERAL ATTACKS

By Nabeel Peermohamed and Drew Wilson

In ***Ekman v City of Brooks et al***, where we were successful, the Court emphasizes the importance of prior municipal and Court decisions in planning matters. Effectively, the Court is preventing collateral attacks on prior decisions of the Sub-Division Appeal Board and the Court of Queen's Bench. The proper venue for challenging those decisions is to respectively apply for leave or to appeal to the Alberta Court of Appeal.

In *Ekman,* the plaintiff had built several playground structures in his backyard. A neighbour complained and the City of Brooks determined the structures did not comply with the land-use bylaw. However, the City gave the plaintiff a chance to apply for a development permit which the plaintiff declined to do. The City asked the plaintiff on several occasions to take down the structures. The plaintiff refused to do so. The City then obtained an order from Justice Tilleman allowing it to enter the plaintiff's property and take down the structures themselves. However, Justice Tilleman first gave the plaintiff a deadline to apply for a development permit to the SDAB which he did. After the hearing, the SDAB provided a development permit with certain conditions. The structures did not comply with the permit and the plaintiff refused to make the structures comply. Instead, the plaintiff erected two additional structures that did not comply. As a result, the City entered the plaintiff's property and took down the structures. The plaintiff then sued the City and one of its employees for trespass, property damage, and abuse of public office.

Master Farrington heard our summary dismissal application and found there was no merit to the claims against the City or its employees. He specifically said, "results of prior Court proceedings and administrative hearings matter. A party cannot simply commence a lawsuit raising the same or similar issues hoping for different results." The plaintiff should have gone to the Alberta Court of Appeal to challenge the decisions of Justice Tilleman and the SDAB. They should not have commenced a new lawsuit against the City and its employee. Master Farrington also said, "summary judgment does not only benefit the successful party. It also ends a lawsuit for the unsuccessful party before incurring further costs in pursuing or defending a claim and before incurring costs awards at a higher level in relation to the claim."

This case is important because it demonstrates the principle of *res judicata,* as well as the deference and respect the ABQB has for its past decisions and for those made by the SDAB and municipalities. It also emphasizes the importance of following proper procedures for challenging those decisions through the ABCA appeal process rather than collateral attacks in the form of new lawsuits against the previous decision makers.

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