

CANADA / JUDGMENT

Becker v. Walgate

2025 ONCA 696

COURT

Court of Appeal for Ontario

DECIDED

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Becker v. Walgate

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COA-24-CV-0355, M55802

Judges

Huscroft, Grant; George, Jonathon C.; Favreau, Lise G.

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Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Becker v. Walgate, 2025 ONCA 696

DATE: 20251015

DOCKET: M55802 (COA-24-CV-0355)

Huscroft, George and Favreau JJ.A.

BETWEEN

Martha Leeanne Becker and Jason John Becker

Applicants (Appellants)

and

Walter Eddy Walgate

Respondent (Respondent)

Scott C. Hutchison, Jeffrey D. Ayotte and David Postel, for the appellants

Izaak de Rijcke and Robert Fenn, for the respondent

Heard: June 5, 2025

On appeal from the order of Justice Howard Leibovich of the Superior Court of Justice, dated February 21, 2024.

Favreau J.A.:

A. introduction [1] The appellants, Martha Leeanne Becker and Jason John Becker, and the respondent, Walter Eddy Walgate, own adjoining properties on Jack Lake in the Kawarthas. They have been involved in a protracted dispute over the line between their properties. Because of the shape of the shoreline, this dispute affects the respective lengths of their water frontage. There are approximately 100 feet of water frontage in dispute.

[2] In a decision dated April 11, 2019, Corkery J. of the Superior Court granted a declaration that the lot line between the two properties ended at its intersection with the Normal Controlled High Water Level (“NCHWL”) of Jack Lake. Given the shape of the respective properties, this had the effect of giving the Beckers increased water frontage. In 2020, this court allowed an appeal from that decision and found that the lot line terminates at the intersection with the water’s edge of Jack Lake at the time of the Crown patent in 1902. This court remitted the matter back to the Superior Court to determine the location of the water’s edge in 1902 and two subsidiary issues.

[3] In 2023, before the Superior Court had a chance to decide the remitted issues, the Beckers commenced a second application. The second application asks for a declaration that there is a 15-degree bend in the lot line from the point where the line meets the NCHWL to the point where the line meets the 1902 water’s edge. Given the configuration of the lots, this 15-degree bend would mean that the disputed shoreline is part of the Beckers’ property rather than Mr. Walgate’s property.

- [4] The Beckers then brought a motion to have the second application consolidated with the hearing of the issues remitted back to the Superior Court by this court's 2020 order. Mr. Walgate brought a cross-motion to dismiss the second application on the basis that it is inconsistent with this court's 2020 order. The motion judge granted Mr. Walgate's motion, finding that the second application was a collateral attack and "clearly an attempt ... to circumvent the order of the Court of Appeal and expand the scope of the new hearing."
- [5] The Beckers raise two issues before this court. First, they argue that the motion judge erred in dismissing their second application because the terms of this court's 2020 order do not preclude them from arguing that there is a bend in the lot line. Second, in the alternative, they bring a motion under rr. 59.06 and 61.16(6.1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, to vary this court's 2020 order. The variation they seek would allow them to raise the bend issue as part of the issues this court remitted back to the Superior Court.
- [6] I would dismiss the appeal. Although the literal wording of this court's order does not preclude the Beckers from raising an issue regarding the shape of the lot line, the order must be read and understood in the context of the history of the proceedings between the parties. It is evident that, in directing the Superior Court to determine the location of the 1902 water's edge and the two subsidiary issues, this court intended that the direction in the 2020 order would finally determine the lot line and its termination point.
- [7] I would also dismiss the motion to vary this court's 2020 order. The scope for varying an order is narrow. The appellants have not established that the 2020 order includes the type of error that is appropriately corrected pursuant to rr. 59.06 and 61.16(6.1) of the Rules of Civil Procedure, or that there is any other valid basis for varying it.

B. Background 1) Jack Lake and the parties' lots [8] The parties own adjacent properties on lots created by Registered Plan 33 on Jack Lake. Jack Lake is a reservoir lake within the Trent-Severn Waterway. Mr. Walgate owns a parcel of Lot 41. The Beckers own a parcel of Lot 42, which is immediately to the west of Lot 41.

- [9] To understand the dispute between the parties and, in turn, this court's 2020 order, it is necessary to briefly address the history of Jack Lake and how Lots 41 and 42 were created.
- [10] Prior to 1902, there was a "lumberman's dam" on Jack Lake.
- [11] In 1902, the Crown transferred a 152-acre parcel of Crown land. The parcel included Lots 41 and 42. The 1902 Crown patent did not make any distinction between the high water or low water mark, but it created a reservation for use of the navigable waters flowing through any part of the parcel.
- [12] In 1910, the federal government decided to use Jack Lake for water storage. It replaced the lumberman's dam with a dam with two sluices, which caused additional flooding above that of the lumberman's dam.

- [13] In 1958, Plan 33 was registered and subdivided the land into lots, including Lots 41 and 42. A survey done at that time shows a line between Lots 41 and 42 that stops at the limit of Jack Lake, which is indicated as the “High Water Mark”. As this court has previously described the dividing line between the two parcels, it “skews the water’s edge and strikes the lake at an oblique angle.”
- [14] Since 1958, there have been further subdivisions of Lots 41 and 42, but the boundary between the parties’ properties remains the same. Surveys of Lot 41 conducted in 1978 and 1989 describe the water boundary as the “High Water Mark”. Surveys of Lot 42 dated 1987, 1991 and 2002 describe the water boundary as the “Normal Controlled High Water Level Contour of Elevation 106.33 (feet)”. The 1987 and 1991 plans also state that “The Original High Water Mark of Jack Lake cannot be determined with any certainty”.
- 2) First application before the Superior Court [15] In 2015, the Beckers brought an application in the Superior Court seeking a declaration that the lot line between Lots 41 and 42 terminates at its intersection with the NCHWL. For his part, Mr. Walgate sought an order that the lot line terminates at its intersection with the water’s edge of Jack Lake at the time of the Crown patent in 1902.
- [16] The application proceeded as a trial over several days. The evidence at trial included the testimony of two experts called by the parties.
- [17] The Beckers called Shawn O’Connor. Mr. O’Connor’s opinion was that the end of the lot line was at the NCHWL. Mr. Walgate called Paul Miller as an expert. His opinion was that the line between the lots ended at the water’s edge at the time of the Crown patent in 1902.
- [18] The application judge accepted Mr. O’Connor’s evidence and granted a judgment in the Beckers’ favour. The judgment included a declaration that the line between the lots ends at the NCHWL, which is worded as follows:

THIS COURT ORDERS AND DECLARES that the line between Lots 41 and 42, Registered Plan 33, in the Township of Methuen being the line between the most westerly parcel of Lot 41, described in PIN 28260–0315 (LT) and the most easterly parcel of Lot 42, described in PIN 28260–0314 (LT) terminates at the intersection of that line with the water level of Jack Lake at a contour elevation of 106.33 (assumed datum).

- 3) Court of Appeal decision [19] This court allowed Mr. Walgate’s appeal. The court found that the application judge erred in finding that the NCHWL was the “High Water Mark” referred to in Plan 33 and, thus, the boundary of the lots. Instead, the court held that the boundary was the water’s edge at the time of the 1902 Crown patent. On this basis, the court remitted the matter back to the Superior Court for the purpose of determining the location of the water’s edge in 1902. The court further directed that the Superior Court was to determine the effects of erosion or accretion, if any, on that boundary since the time of the Crown patent, and any riparian rights.

[20] The order directing the new trial includes the following terms:

3. THIS COURT ORDERS that the determination of the water's edge of Jack Lake, at the time of the Crown Patent, and the effects of erosion or accretion on that boundary, if any, will determine the terminus of the lot line between Lots 41 and 42.
4. THIS COURT ORDERS that the Jack Lake Land Company intended to retain no land or title between the water boundary of Jack Lake on Registered Plan No. 33 and the water's edge of Jack Lake at the time of the Crown Patent.
5. THIS COURT ORDERS that the issues of:
 - a) the water's edge of Jack Lake at the time of the Crown Patent,
 - b) the effect of erosion or accretion on the water boundary of Jack Lake since the time of the Crown Patent, if any; and,
 - c) the determination of any riparian rights that may arise;

are all returned to the Superior Court of Justice for determination and that the matter is to be heard by a judge other than the trial judge. [Emphasis added.]

- 4) Ballantyne Report and 2023 application [21] After this court released its decision, the Beckers obtained another expert report prepared by Brian Ballantyne. Mr. Ballantyne agreed with Mr. Walgate's expert regarding the location of the water's edge in 1902. He also agreed that there was no erosion or accretion that would affect the water's edge. However, he expressed the opinion that there should be a 15-degree bend in the lot line between the NCHWL and the 1902 water's edge. He gave several reasons in support of this position. The net effect is that he would include the shoreline in dispute and the land under one of the Beckers' floating docks as part of the Beckers' property on Lot 42.

[22] The Beckers raised this report before the judge who was case managing the matter. He made a direction requiring the Beckers to either bring a motion to this court to vary its order defining the scope of the trial or to start a new application and seek to consolidate it with the trial directed by this court.

[23] Ultimately, the Beckers chose to start a new application seeking an order that there is a 15-degree clockwise bend in the boundary between Lots 41 and 42, starting at its intersection with the NCHWL and ending at the 1902 lake level. The notice of application, filed in 2023, also requests that their original application and the new application be consolidated.

[24] The Beckers then brought a motion to have both applications heard together. Mr. Walgate brought a cross-motion to dismiss the Beckers' new application.

[25] The motion judge granted Mr. Walgate's motion, holding that the 2023 application was a collateral attack on this court's 2020 order:

The dispute between the parties started in 2015. It is now nine years later and the plaintiffs wish to advance a new legal argument based on new evidence that has never been raised before. Had the Court of Appeal simply ordered a new hearing, then the plaintiffs would be perfectly within their rights. However, that is not what the Court of Appeal did. Rather, they directed how that new hearing should be conducted and how a new trial judge should resolve the dispute between the two parties. The order from the Court of Appeal ord[e]red a trial back in this court on narrow and limited issues ...

The Beckers['] second application is clearly an attempt by them to circumvent the order of the Court of Appeal and expand the scope of the new hearing. Allowing the second application to proceed would, in essence, be varying the Court of Appeal's order. This Court does not have the power to do so. Any jurisdiction to vary or amend the order from the Court of Appeal for Ontario lies with the Court of Appeal or the Supreme Court of Canada. The Beckers were given the option at the case conference to bring a motion to the Court of Appeal. They declined to do so. That was a mistake. This Court has no jurisdiction to broaden the scope of what has been ordered by the Court of Appeal.

[26] The Beckers appeal the motion judge's order dismissing their second application. In the alternative, they bring a motion to vary this court's order to permit them to argue that there is a 15-degree bend in the lot line in accordance with Mr. Ballantyne's report. I address these issues in turn.

C. did the motion judge err in dismissing the Beckers' second application? [27] The Beckers submit that the motion judge erred in finding that their proposed application is a collateral attack on this court's previous order. They essentially make three arguments in support of this position. First, they submit that this court's order does not preclude them from advancing the argument that there is a bend in the line between the lots. Second, relying on r. 1.04 of the Rules of Civil Procedure, they submit that the court should not take an overly technical approach to interpreting this court's 2020 order. Third, they submit that they should not be disadvantaged by deficiencies or errors in the work of their first expert, Mr. O'Connor.

[28] I see no merit to the Beckers' arguments. Although the motion judge characterized the Beckers' new application as a collateral attack on this court's 2020 order, I would characterize it more broadly as an abuse of process.

[29] The rule against collateral attacks prevents a party from challenging the validity of a binding order in the wrong forum: *Wilson v. The Queen*, [1983] 2 S.C.R. 594, at p. 599; *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 72; and *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, at para. 60. The rule is meant to protect the integrity of the justice system by stopping attempts to circumvent the consequences of an order: *Garland*, at para. 72.

- [30] The doctrine of collateral attack is not applicable in this case. The Beckers are not trying to attack or circumvent this court's 2020 order. There is no indication that they seek to avoid participating in a trial of the issues identified by this court. Rather, they are trying to add an issue for trial by supplementing the order.
- [31] In *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 22, the Supreme Court of Canada explained that the doctrine of collateral attack is a particular application of the broader doctrine of abuse of process. As I explain below, I have concluded that the doctrine of abuse of process is applicable here rather than the doctrine of collateral attack.
- [32] I first note that, in their reply factum, the Beckers suggest that abuse of process is a new issue that is not properly before the court. I disagree. As already addressed, the doctrine of collateral attack is part of the broader doctrine of abuse of process. In any event, in their original factum, the Beckers addressed the doctrine of abuse of process themselves, relying on its flexibility to argue that this is an appropriate case where the court should use its discretion to allow them to proceed with the second application and advance the bend theory.
- [33] The doctrine of abuse of process applies in a variety of legal contexts: *C.U.P.E.*, at para. 36; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at para. 39. Unlike the doctrines of *res judicata* or issue estoppel, abuse of process is characterized by its flexibility and is not encumbered by specific requirements: *C.U.P.E.*, at para. 42; *Behn*, at para. 40; and *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at para. 35. Ultimately, it serves to prevent the pursuit of litigation that would "violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice": *C.U.P.E.*, at para. 37.
- [34] Amongst other matters, the doctrine of abuse of process serves to prevent the relitigation of issues that have already been decided: *C.U.P.E.*, at para. 37. It can also apply to issues that could have been determined in prior proceedings: *Aba-Alkhail v. University of Ottawa*, 2013 ONCA 633, 363 D.L.R. (4th) 470, at para. 12, leave to appeal refused, [2013] S.C.C.A. No. 491; *Winter v. Sherman Estate*, 2018 ONCA 703, 42 E.T.R. (4th) 181, at para. 7, leave to appeal refused, [2019] S.C.C.A. No. 438; *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 67, leave to appeal refused, [2019] S.C.C.A. No. 284; and *Quinn v. British Columbia*, 2018 BCCA 320, 425 D.L.R. (4th) 642, at para. 84, leave to appeal refused, [2018] S.C.C.A. No. 463.
- [35] As the Supreme Court explained in *C.U.P.E.*, at para. 43, "[T]he primary focus of the doctrine of abuse of process is the integrity of the adjudicative functions of courts ... [T]he focus is less on the interest of parties and more on the integrity of judicial decision making as a branch of the administration of justice." The doctrine of abuse of process "engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into

disrepute”: Saskatchewan (Environment) v. Métis Nation – Saskatchewan, 2025 SCC 4, 500 D.L.R. (4th) 279, at para. 33; see also C.U.P.E., at para. 37; Behn, at para. 39; and Abrametz, at para. 33.

- [36] Ultimately the court’s decision to dismiss a proceeding as an abuse of process is discretionary: C.U.P.E., at para. 53; Métis Nation, at para. 32. There are circumstances in which the court should not exercise its discretion to dismiss a proceeding as an abuse of process. These circumstances include where the stakes were too low in the original proceeding “to generate a full and robust response”, where new evidence is discovered, or where there was a tainted or unfair process in the original proceeding: C.U.P.E., at para. 53.
- [37] In this case, the Beckers’ second application is an abuse of process because it raises an issue that could and should have been raised on the original application.
- [38] The Beckers brought the original application to seek a determination that the line between Lots 41 and 42 ended at the NCHWL. Mr. Walgate countered with his position that the end point of the line between the lots was at the water’s edge in 1902, which today would be somewhere in the water beyond the NCHWL. The object of the proceedings was to determine who owned the approximately 100 feet of water frontage in dispute. If the Beckers were correct, the frontage would be part of their lot. If Mr. Walgate was correct, the frontage would be part of his lot.
- [39] The bend theory is an alternative theory the Beckers advance in support of their position that the frontage in dispute is part of their lot. This theory is responsive to Mr. Walgate’s position on the original application that the lot line extends beyond the NCHWL. If this court’s 2020 order had allowed the appeal and identified the end of the lot line beyond the NCHWL, rather than sending the matter to trial, there is no doubt that it would be an abuse of process for the Beckers to now start a new proceeding to advance the bend theory. This would have been a clear example of litigation by instalment: *Winter v. Sherman*, 2017 ONSC 5492, at para. 50, *aff’d* 2018 ONCA 703, 42 E.T.R. (4th) 181, leave to appeal refused, [2019] S.C.C.A. No. 438; *Becker v. Toronto (City)*, 2020 ONCA 607, 452 D.L.R. (4th) 679, at paras. 39-40; and *Las Vegas Strip Ltd. v. Toronto (City)* (1996), 30 O.R. (3d) 286 (Gen. Div.), at pp. 297-298, *aff’d* (1997), 32 O.R. (3d) 651 (C.A.).
- [40] The issue in this case is whether this court’s referral of the matter back to trial on specific issues makes a difference. I do not see how it does. The Beckers could have and should have advanced the bend theory in the original application. Once Mr. Walgate took the position that the lot line extended beyond the NCHWL to the 1902 water’s edge, it was open to the Beckers to argue that, if the lot line extended beyond the NCHWL, there was a bend in the line starting at the NCHWL. If the Beckers wanted to raise a different theory regarding the shape of the lot line, they should have done so on the original application. It is an abuse of process for the Beckers to advance the bend theory at this late stage in the litigation they initiated ten years ago. Parties are not entitled to “lie in the weeds’ for strategic reasons and then to spring a new theory at the last moment”: *The Catalyst*, at para. 66.

- [41] The Beckers argue that they should not be prevented from advancing the bend theory because this court's 2020 order does not explicitly state that the only issues for trial are the three issues identified in the order. I do not agree. Interpreting a court order requires attention to the text of the order, the reasons for decision, the circumstances under which the order was made and the proceedings that led to the order: *Chippewas of Saugeen First Nation v. South Bruce Peninsula (Town)*, 2024 ONCA 884, 502 D.L.R. (4th) 261, at para. 168, leave to appeal refused, [2025] S.C.C.A. No. 40. Reading the 2020 order in the context of this court's reasons for judgment and the litigation as a whole, the three issues referred back to trial were evidently meant to finally determine the dispute between the parties. From the outset, the purpose of the litigation was to determine the lot line, which in turn was meant to determine who owns the water frontage in dispute. This is obvious from the court's direction in 2020, at para. 64 of the reasons and at para. 3 of the order: "The determination of the water's edge of Jack Lake, at the time of Crown patent, and the effects of erosion or accretion on that boundary, if any, will determine the terminus of the lot line between Lots 41 and 42" (emphasis added).
- [42] It is evident from this direction that, based on the record and positions of the parties up to that point, this court expected that the lot line would project out beyond the NCHWL in a straight line up to the water's edge of Jack Lake in 1902, at the time of the Crown patent. In other words, introducing a new issue about the shape of the line is inconsistent with this court's order that the issues it expressly remitted "will determine the terminus of the lot line" (emphasis added).
- [43] The Beckers rely, by analogy, on r. 1.04(1) of the Rules of Civil Procedure in support of their position that this court should not take an overly technical approach in interpreting the 2020 order. Rule 1.04(1) does not assist the Beckers. Rule 1.04(1) provides that the rules "shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits." The issue before the motion judge and this court does not give rise to concerns over the interpretation or application of the Rules of Civil Procedure. Instead, the issues in this case are the proper interpretation of the 2020 order and the application of the doctrine of abuse of process.
- [44] The Beckers further argue that they should not have to suffer the consequences of omissions by their original expert, Mr. O'Connor. In making this argument, they rely on case law where the court has stated that a party should not be prejudiced by their lawyer's inadvertence: *Akagi v. Synergy Group (2000) Inc.*, 2014 ONCA 731, at para. 6, citing *Marché D'Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*, 2007 ONCA 695, 286 D.L.R. (4th) 487, at para. 28. This case is not analogous to a situation where a lawyer may have made a mistake that can be readily rectified with little prejudice to the opposing party. The Beckers' failure to advance their alternative theory at trial, due to alleged shortcomings in their own expert evidence, is not a mistake that can be rectified with little prejudice to Mr. Walgate. More importantly, the proper approach to this issue, as addressed above, is through the lens of the doctrine of abuse of process.

- [45] I am satisfied that allowing the Beckers to advance the bend theory at this stage of the proceedings would be an abuse of process. I am also satisfied that this is not a case in which the court should exercise its discretion to allow the Beckers' second application to proceed. There is no new evidence that could not have been obtained in the context of the first application, no allegation that the first proceeding was tainted, nor is this a case where the administration of justice would be better served by allowing the Beckers to raise the bend theory at this juncture: C.U.P.E., at paras. 52-53.
- [46] On the contrary, allowing the Beckers to raise the bend theory at this stage undermines the principle of finality and would be manifestly unfair to Mr. Walgate. This court directed the trial of narrow and specific issues. That direction was based on the understanding that these narrow issues would finally decide the boundary between the parties' properties. The Beckers' new theory, as evidenced through Mr. Ballantyne's report, raises the prospect of a whole gamut of additional expert evidence and potential impacts on adjoining properties. This litigation has been going on for over ten years. The need for finality is clear.
- [47] I would therefore dismiss this appeal on the basis that the Beckers' second application is an abuse of process.

D. should this court vary its 2020 order? [48] As an alternative to overturning the motion judge's order dismissing their second application, the Beckers bring a motion pursuant to rr. 59.06 and 61.16(6.1) of the Rules of Civil Procedure to vary this court's 2020 order. They ask that the 2020 order be varied to add the issue of whether there is a bend in the lot line as an issue for trial. I would dismiss the motion.

- [49] Rule 61.16(6.1) provides that an order of this court may not be varied, subject to rr. 37.14 and 59.06. Rule 37.14 has no application to this case. Rule 59.06 provides that:

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.

- (2) A party who seeks to,
- (a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;
 - (b) suspend the operation of an order;
 - (c) carry an order into operation; or
 - (d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed. [Emphasis added.]

- [50] This court has stated that its authority under r. 59.06 to reconsider a decision is limited and will be exercised sparingly and only where it is clearly in the interests of justice to do so: *Trillium Motor World Ltd. v. Cassels Brock & Blackwell LLP*, 2017 ONCA 840, at para. 6; *Bowen v. JC Clark Ltd.*, 2023 ONCA 181, at para. 8, leave to appeal refused, [2023] S.C.C.A. No. 197.
- [51] The Beckers rely on this court's power to vary an order: (1) when facts are discovered after the original order was made or (2) if a party seeks to obtain relief other than was originally awarded.
- [52] On the first issue, the Beckers submit that they discovered the bend theory only after this court directed a new trial. I see no merit to this argument. The bend theory is a not a new fact. Rather, it is a new theory based on new expert evidence. This court has held that an expert's opinion on previously known facts does not come within r. 59.06(2)(a) because it is "evidence that was clearly available for the initial hearing": *Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530, 116 O.R. (3d) 641, at paras. 37-38, aff'd 2015 SCC 17, [2015] 2 S.C.R. 79; see also *Tsaoussis (Litigation guardian of) v. Baetz* (1998), 41 O.R. (3d) 257 (C.A.), at pp. 272-274, leave to appeal refused, [1998] S.C.C.A. No. 518. In his report, Mr. Ballantyne states he "surveyed nothing", instead relying on evidence from the trial and technical literature on surveying.
- [53] On the second issue, the Beckers submit that they are seeking to obtain "other relief" than granted in the 2020 order, and that on the plain wording of r. 59.06(2)(d) the court should vary the 2020 order. I do not see how this court's power to grant "other relief" applies in this case. It is a narrow provision. As this court stated in *Bowen*, at para. 10, "Rule 59.06 cannot be read as being so broad as to apply to any request by a moving party for a different order than that made by the court. If that were sufficient to invoke rule 59.06(2)(d), finality of judgments would be illusory." This power is not meant to allow a party to reopen an appeal based on a new theory of the case, as the Beckers are trying to do here: *Midland Resources Holding Limited v. Shtaif*, 2018 ONCA 33, at para. 9.
- [54] The Beckers argue that, in this case, the concern over ensuring the finality of a decision does not arise because the court has remitted the matter back to trial. I do not agree. As discussed in the section addressing the issue of abuse of process, the principle of finality is relevant and militates strongly against allowing the Beckers to pursue the bend theory.
- [55] It is not in the interests of justice to vary this court's 2020 order for the purpose of allowing the Beckers to advance the bend theory. This is not one of those rare cases where the court should vary its own order.

E. disposition [56] I would dismiss the appeal and the motion.

- [57] As agreed between the parties, I would award \$25,000, all inclusive, in costs to the respondent.

Released: October 15, 2025 “G.H.”

“L. Favreau J.A.”

“I agree. Grant Huscroft J.A.”

“I agree. J. George J.A.”

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