

CANADA / JUDGMENT

Este v. Vefghi

2026 BCSC 57

COURT

Supreme Court of British Columbia

DECIDED

8 January 2026

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2026 BCSC 57 Este v. Vefghi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Este v. Vefghi,

2026 BCSC 57

Date: 20260108

Docket: S254432

Registry: Vancouver

Between:

Rosa Donna Este

Petitioner

And

Rahmat Vefghi

Respondent

Before: The Honourable Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing in person:

R.D. Este

Counsel for the Respondent:

I.C. Jones

Place and Date of Hearing:

Vancouver, B.C.

January 8, 2026

Place and Date of Judgment:

Vancouver, B.C.

January 8, 2026

- [1] THE COURT: The issue raised in this petition proceeding is whether the respondent's property located at 3151 Travers Avenue, West Vancouver, B.C. is impressed with an unregistered or implied four-foot easement along its northern boundary in favour of the petitioner's adjacent property located at 3153 Travers Avenue.
- [2] The petitioner submits that the issue cannot be properly determined without a full trial or, alternatively, cross-examination on the affidavits that were filed by the respondent opposing the relief sought in the petition. The respondent submits that there is no genuine issue requiring a trial.

Background

- [3] The background to this unfortunate dispute is as follows.
- [4] Travers Avenue is a residential road that runs generally in an east-west direction. Residential lots with houses are located on either side of Travers Avenue, to the south and to the north. The lots in question in this proceeding are located on the north side of Travers Avenue. Access to Travers Avenue is from 31st Street to the east of those lots.
- [5] The original subdivision and home construction occurred in the early 1920s.
- [6] To the north of the lots is a railway and railway right of way owned by CN Rail, formerly BC Rail.
- [7] A laneway along the southern edge of the railway right of way was established at some point in time, although there is no evidence as to when. The laneway provides vehicular access from 31st Street to three of the Travers Avenue homes to the west, namely, 3143, 3151, and 3153. The laneway is wider at 31st Street and gradually narrows until its terminus at 3153. At some point in time, the laneway was asphalted. A relatively small portion of the asphalt encroaches on 3151's lot, which, for years, has provided a wider access to 3153's parking area.

- [8] My understanding is that, at the time the laneway was established, each of then owners of the three lots was granted a licence by the railway to use its portion of the laneway and that, as the properties were sold over the years, the applicable licence was assigned to the purchaser.
- [9] In the case of 3151, the evidence shows that a licence was entered into between BC Rail and the previous owners in 1986, entitling those owners to "construct and use" the laneway. The language in the licence suggests that the laneway may not have been constructed until sometime after 1985, however I make no finding in that regard.
- [10] The petitioner purchased 3153 in 2007 but she has never resided there. She has always rented the home to tenants.
- [11] The petitioner deposed that 3153 is the only one of the three lots with topography that makes vehicular parking at the front or on the south side of the lot not possible. She deposed that the laneway was constructed solely for the purpose of providing vehicular access to 3153 and that the subsequent use and enjoyment of the laneway by the owners of 3143 and 3151 has simply been a consequential benefit to them.
- [12] Since her purchase of 3153 in 2007, the petitioner and her tenants have had wider access to 3153's parking area than would have been the case had the laneway's asphalt not encroached on 3151's lot.
- [13] The petitioner submits that it has always been the intention, acquiescence, and practice of the various owners of 3143 and 3151 throughout the years to provide "a reasonable width for private vehicular traffic to 3153."
- [14] The respondent and his wife purchased 3151 in September 2023 with the intention of demolishing the existing house and constructing a new one.
- [15] Construction of the respondent's new home began in March 2024 and was completed by August 2025. As part of the construction, the respondent constructed a new fence along the property line separating 3151 and 3153 with the intention as well of continuing the new fence along the property line between the laneway and 3151's lot. The fence as constructed so far is entirely within 3151's lot.
- [16] The petitioner maintains that there has always been sufficient room in 3153's parking area to park four vehicles, two abreast in the garage in an east/west direction and two abreast on the parking pad in a south/north direction. She maintains that, with the new fence that has been built by the respondent, parking in 3153's parking areas has become extremely difficult, particularly the access to the two-car garage. She submits that, accordingly, 3153 has and has always had the benefit of a four-foot easement along the north side of 3151's lot and seeks various orders by way of her petition in that regard.

- [17] During her submissions, the petitioner conceded that the new fence has not seriously impacted vehicular access to 3153's parking pad, only that access to the two-car garage is extremely difficult when one car is already parked there.
- [18] The petitioner's application for an injunction regarding the construction of the fence was heard on August 20, 2025 by Justice Morellato and dismissed on the basis that the petitioner had failed to demonstrate a strong prima facie case.
- [19] At the time of the injunction application, the new fence had been fully constructed between 3151 and 3153 but had not yet been constructed along the northern border of 3151, between it and the laneway. The respondent has not proceeded with that portion of the fence construction pending the outcome of the petition.
- [20] The petitioner seeks an order converting the petition to an action because she insisted that the respondent purchased 3151 with full knowledge of the existence of an implied easement and does not have "clean hands". Each of the vendor of 3151, the vendor's realtor, the respondent, and the respondent's realtor has deposed that there were never any discussions, nor were they given notice, regarding the existence of or an agreement relating to an unregistered easement of any kind.
- [21] The petitioner maintains that there was such a discussion prior to the respondent's purchase of 3151. She wishes to obtain production of all communications between the respondent and the realtors that led to the respondent's purchase of 3151 and to be able to cross-examine the respondent regarding his knowledge of the implied easement and the "long-term practice", as she describes it, followed by the historical owners of 3143 and 3151 to allow vehicular access to 3153. She argues that in order to do so, the petition must be converted to an action with a full trial.

Analysis

- [22] In the recent decision of our Court of Appeal in *Ai Kang Capital Inc. v. Xing*, 2024 BCCA 175, the Court provided guidance regarding these applications. The Court recognized at para. 37:
- [37] Judges faced with applications to convert petitions into actions now have considerable flexibility in deciding what procedures are most appropriate. They may find that the summary procedure traditionally available for the hearing of a petition is adequate; equally, they may find that the arguable issues are sufficiently pervasive and complex as to require full-scale trial procedures. However, they are not limited to choosing one option or the other. They can also choose hybrid procedures. Rules 22-1(4)(a) and (b) allow a judge to order examination or cross-examination of witnesses, either before the hearing or in court.
- []

- [23] The facts relevant to the existence or non-existence of an easement in favour of 3153 are not disputed. I accept that the laneway is the only realistic vehicular access to 3153. I am also prepared to accept, for the purpose of these applications, that the need for this access has been recognized by the historical owners of 3143 and 3151, although I have little evidence to support that finding.
- [24] However, in my view, the issue that has been raised by the petitioner is not complex and can be determined on the basis of the evidence that has already been filed, together with the case law. What the respondent knew or did not know when he purchased 3151 and his motivations for doing so are, in my view, irrelevant to the issue to be determined.
- [25] I find that a conversion of the petition to an action is neither necessary nor warranted.
- [26] Regarding the petitioner's alternative application for an order allowing her to cross-examine the respondent on his affidavits, again, I am not persuaded that any such cross-examination would be of assistance to the petitioner in her quest to establish the existence of an easement in favour of 3153.
- [27] During the course of today's hearing, I was taken by the petitioner to several authorities regarding various legal remedies, including (1) proprietary estoppel and (2) a remedy under s. 36 of the Property Law Act, R.S.B.C. 1996, c. 377. Neither of those remedies has been pleaded. Regardless, proprietary estoppel arises in circumstances where an owner of land knowingly stands by while another person incurs detriment under the belief that he or she is entitled to an interest in land: *Bland v. Bland*, 2017 BCSC 1712, at para. 44. There is no evidence that the respondent did anything upon which the petitioner relied to her detriment.
- [28] Section 36 of the Property Law Act provides for a remedy for encroachments. This is not a case where the respondent has encroached on the petitioner's property.
- [29] Fundamental to the petitioner's claim is the existence of an implied easement or easement of necessity over the respondent's property. She argues that when she purchased 3153 in 2007, she had a reasonable expectation of continued vehicular access to her parking areas.
- [30] First, regarding an implied easement by way of non-derogation of grant, the law is clear that, in order to succeed, the petitioner must prove:
- a) the continuous and apparent use of the encroachment for the benefit of 3153;
 - b) that the use of the encroachment is necessary for the reasonable enjoyment of 3153; and
 - c) the encroachment was used for such purposes at the time the petitioner purchased 3153,
- See: *Bland* at para. 37.
- [31] On the evidence before me, I am not persuaded that the four-foot encroachment claimed by the petitioner is necessary for the reasonable enjoyment of 3153. The petitioner did not provide the Court with measurements showing the distances between the new fence that

was installed by the respondent and the north side of the laneway or from the new fence to the two-car garage. However, the photographs in evidence demonstrate that there is, in my view, sufficient room for a reasonably-sized vehicle to access 3153's parking area and garage, although, perhaps, not as easily as may have been the case previously.

- [32] Regarding an implied easement by way of necessity, the test for necessity is stringent. It must be demonstrated that there is no alternative way of accessing the dominant tenement's property: *Allen v. 0990199 B.C. Ltd.*, 2018 BCSC 1465, at para. 92.
- [33] The petitioner has not demonstrated that there is no other realistic way to access the parking areas of 3153, absent the easement she claims. The evidence shows that full-sized vehicles can be parked in 3153's parking areas. Those parking areas continue to be physically accessible for vehicles, albeit perhaps, not as conveniently as had been the case previously. Indeed, the evidence shows that the width between the end of the respondent's fence and the north retaining wall of the laneway is sufficiently wide to accommodate a three-ton moving truck.
- [34] The evidence is overwhelming that the petitioner's complaint is not that the easement she claims is necessary for access, but, rather, that it would make her access more convenient.
- [35] Moreover, the petitioner has not provided any evidence that she is unable to obtain permission from CN Rail to increase the width of the space between the new fence and the north side of the laneway, thereby making her parking access even more convenient.
- [36] In short, the evidence presented by the petitioner falls woefully short of establishing her entitlement to an easement of any kind. The petitioner's case is bound to fail.
- [37] Now, as events have unfolded, this is not a hearing of the petition. Accordingly, I do not believe that I am in a position to make a final determination as would have been the case had this application been a hearing of the petition on its merits. But if it had been, I would have dismissed the petition. To be clear, my remarks in that regard are obiter.
- [38] The respondent is entitled to his costs of these two applications at Scale B.
- [39] Are there any questions?
- [40] THE PETITIONER: Justice, can I --
- [41] THE COURT: I cannot hear you.
- [42] THE PETITIONER: -- amend my petition with getting those evidences from CN and so on that you wanted to see today?
- [43] THE COURT: Well, I am not here to give you legal advice and I am not granting any leave. If you wish to take the matter further, I strongly urge you to obtain some competent legal advice.
- [44] THE PETITIONER: Okay. Thank you.

"G.C. Weatherill J."

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