

CANADA / JUDGMENT

Mundy v. Green

2007 BCSC 1799

COURT

Supreme Court of British Columbia

DECIDED

13 December 2007

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2007 BCSC 1799 Mundy v. Green IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mundy v. Green, 2007 BCSC 1799 Date: 20071213 Docket: S39757 Registry: Vernon Between: Patricia Anne Mundy Plaintiff And Gary Roderick Green and Janet Sharen Green Defendants Before: The Honourable Mr. Justice Cole Reasons for Judgment Counsel for the Plaintiff Nick A. Vlahos Counsel for the Defendants Sean M. Kelly Date and Place of Trial/Hearing: November 2, 2007 Vernon, B.C.

- [1] Both parties claim substantial success and ask that they be awarded costs.
- [2] The plaintiff commenced this action asking for an injunction ordering the defendants to remove the trespassing section of their home and alternative damages and costs.
- [3] The defendants denied the trespass and put the plaintiff to strict proof thereof. The defendants counterclaimed asking for an order based on quantum merit for maintaining the plaintiff's land since 1974, an order that a part of the plaintiff's property encroached upon vest with the defendants, or in the alternative an easement granted on that part of the plaintiff's property encroached on by the defendants.
- [4] At the commencement of the trial there was a consent order that there be an easement over the area of the encroachment and the easement would expire when the existing house is demolished or the existing house is damaged to the extent that the repairs would amount to 50% of the replacement cost of the house or the existing house is renovated with a value of the renovations amounting to 50% or more of the replacement cost of the house.
- [5] The parties also agreed that the defendants would prepare and file the easement plan and the parties were unable to determine the appropriate costs payable by the defendants to the plaintiff for reviewing the easement plan and I set those costs at \$200.
- [6] The remaining issue was what was fair compensation for the easement and for the trespass and I determined that the proper compensation was for the defendants to pay the plaintiff \$4,800.

- [7] The defendants say they are entitled to double costs because of their offer to settle; their offer to settle however only provided for compensation to the plaintiff in the amount of \$2,500, therefore I do not take into account the offer to settle.
- [8] The defendants also argue that since the compensation awarded was below \$2,500, the plaintiff was not entitled to any costs. In my view, it is only the Supreme Court that had jurisdiction to hear this matter.
- [9] The only evidence as to the value and the future use of this property because of the encroachment came from the plaintiff's witnesses. She hired an appraiser that provided the best use for the property as a residential dwelling and set the value at \$140,000. The surveyor was required and ordered to ascertain the exact amount of the encroachment and the effect the encroachment would have on future use of the property. The surveyor's cost was approximately \$2,000 and that of the real estate expert was approximately \$3,500. Those two opinions were necessary for the court to award what was fair and just compensation.
- [10] I am satisfied that the plaintiff has received substantial success and I am satisfied that the defendants should pay to the plaintiff costs on Scale B. The Honourable Mr. Justice F. W. Cole

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