



Volume XVIII Number 5

September 2023

Easements

Parking Rights on Neighbouring Property: Better by Easement or Contract?

By

Amanda Carpenter, Lawyer

amanda@defranlaw.com

In *Primont (Castelmont) Inc. v. Friuli Benevolent Corporation*, the prospective purchaser of a property filed a court application seeking a declaration that the reciprocal easements registered on title expressly granting "vehicular and pedestrian access and egress" to neighbouring properties did not give its neighbours parking rights on the property. By definition, easements are typically registered on title and must bind one parcel and benefit another, such as the right to drive over part of a neighbour's driveway to enter your own.

Owners of the neighbouring properties were interested in the application as they wanted the court to confirm the reciprocal easements also gave them the right to use parking spots on the property for their own businesses. In these cases, owners whose businesses were using the parking spots on the property for purchase preferred parking rights to be conferred by way of an easement registered on title. This was because easements are an interest in land tied to the property and bind subsequent purchasers of that property, thus continuing to be in effect should the ownership of the land change. Moreover, easements last indefinitely. In fact, the potential purchaser brought this court application because they were unable to secure a release of the reciprocal easements registered against the property. They also wanted confirmation that the easement could be restricted to one right of way crossing of the property which could be relocated anywhere should the land be redeveloped.

The court considered the documents used to develop the property initially, such as the zoning bylaws and site plan agreements. They also looked carefully at the language of the easements registered on title that stated the reciprocal easements were "for the purposes of vehicular and pedestrian access and egress" and which did not include any reference to parking rights. Confirming the easements were to be interpreted in accordance with this initial language, the court decided the easements provided only rights of way for purposes of access and egress but not any parking rights. The court also declared that a right such as parking could only be inferred from that which is expressly granted if necessary for use of the easement. In other words, parking had to be necessary for access and egress, which it was not.

The court decided that the right to park on neighbouring land was a contractual right dealt with by way of the site plan agreements between the owners of the neighbouring properties when the property was initially



developed. Furthermore, based on the language of the easements registered on title, the court decided that should the potential purchaser redevelop the property, the easements providing for access and egress could not be limited to one right of way crossing the property as the language of the easement did not contain such a restriction.

This case provides a fascinating insight into the dynamics of easement interpretation and is a good example of how desirable it can be to have rights granted by way of an easement. The decision also highlights the importance of knowing and understanding the easements that you have registered on title to your property. At De Francesca Law, we can assist you in navigating the complexities of title to ensure that you fully understand the easements that you have and that your easement rights are protected.

