



Court File No.: CV-22-88630

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued:
Délivré par voie électronique
Ottawa

B E T W E E N:

KANATA GREENSPACE PROTECTION COALITION and BARBARA RAMSAY

Applicants

- and -

CLUBLINK CORPORATION ULC

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location: Ottawa Courthouse, 161 Elgin St., 2nd Floor, Ottawa, ON K2P 2K1, on a day to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it,

with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date February 22, 2022

Issued by "Electronically issued"
Local registrar

Address of
court office

.....

TO:

ClubLink Corporation ULC
15675 Dufferin Street
King City, ON L7B 1K5

APPLICATION

1. The applicants make application for:

- (a) An Order pursuant to Rule 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 declaring that section 3(i) of Schedule “B” of instrument LT1020194 is a valid and enforceable restrictive covenant;
- (b) An Order declaring that the respondent ClubLink Corporation ULC’s proposed Zoning By-law Amendment and Draft Plan of Subdivision for 7 Campeau Drive, Kanata, Ontario K2T 0A3 dated October 8, 2019 (and subsequent versions thereof) contravene section 3(i) of Schedule “B” instrument LT1020194;
- (c) On Order pursuant Rule 14.05(3)(d) of the *Rules of Civil Procedure* declaring that the Notice of Agreement dated December 20, 1988, made between Campeau Corporation and The Corporation of the City of Kanata, including the documents incorporated by reference thereto, constitute a valid and enforceable restrictive covenant requiring that 40% of the land be left as open space for recreation and natural environmental purposes;
- (d) An Order declaring that the respondent ClubLink Corporation ULC’s proposed Zoning By-law Amendment and Draft Plan of Subdivision for 7 Campeau Drive, Kanata, Ontario K2T 0A3 dated October 8, 2019 (and subsequent versions thereof) contravene the restrictive covenant requiring that 40% of the land be left as open space for recreation and natural environmental purposes;
- (e) The costs of this proceeding, plus all applicable taxes; and
- (f) Such other and further relief as counsel may advise and this Court permit.

2. The grounds for the application are:

Parties

- (a) The applicant, Kanata Greenspace Protection Coalition (the “**Coalition**”), is a not-for-profit corporation incorporated pursuant to the *Canada Not-For-Profit Corporations Act*, S.C. 2009, c. 23 on July 11, 2019;
- (b) The Coalition represents the interests of many of the landowners in what was known as the Kanata Marchwood Lakeside Community, which now includes the Kanata Lakes neighbourhood, Country Club Estates, CCC575, Catherwood and Nelford Court;
- (c) The Coalition’s purpose is to preserve and protect Kanata’s greenspaces and promote the value of its natural environment;
- (d) The applicant, Barbara Ramsay, owns the property known municipally as 7 Nelford Court, Kanata, Ontario K2K 2L8 and is therefore a homeowner in the lands collectively known as the Kanata Marchwood Lakeside Community;
- (e) The respondent, ClubLink Corporation ULC (“**ClubLink**”), owns, operates, and develops golf courses in Canada. Its corporate head office is in King City, Ontario. ClubLink is the current owner and operator of the Kanata Golf & Country Club, 7 Campeau Drive, Kanata, Ontario K2T 0A3 (“**Golf Course Lands**”);

The Golf Course Agreements

- (f) In 1979, Campeau Corporation (“**Campeau**”) owned 1,400 acres of land in what was then the City of Kanata (“**Kanata**”), which consisted of two adjacent parcels of land, the so-called Marchwood land and Lakeside lands (“**Campeau Lands**”);

- (g) Campeau's plan at that time was to develop the Campeau Lands, including by building homes and neighborhoods, and by expanding an existing 9-hole golf course into an 18-hole golf course;
- (h) In order to obtain Kanata's support for the necessary applications for Official Plan Amendments, Campeau proposed that 40% of the Campeau Lands would be reserved as open space for recreation and natural environmental purposes, consisting of: natural environmental areas, lands to be dedicated for park purposes, a storm water management area and the proposed 18-hole golf course;
- (i) The above is referred to as the "**40% Principle**;"
- (j) Campeau and Kanata subsequently entered into an agreement dated May 26, 1981 to reserve 40% of the Campeau Lands as open space for recreation and natural environmental purposes (the "**1981 Agreement**");
- (k) The 1981 Agreement contemplated further study to determine with precision where within the Campeau Lands the open space lands for recreational and natural environmental purposes would be. Kanata and Campeau entered into a further agreement dated December 20, 1988 (the "**1988 Agreement**") identifying the lands that would be subject to the 40% Principle;
- (l) Genstar Development Company Eastern Ltd. ("**Genstar**") purchased the Golf Course Lands from Campeau in 1989;
- (m) ClubLink Capital Corporation purchased the Golf Course Lands from Genstar in 1996. Subsequent to a series of amalgamations, ClubLink is the corporate successor to ClubLink Capital Corporation;

- (n) ClubLink entered into an agreement with Kanata and Imasco Enterprises Inc. (Genstar's successor) dated November 1, 1996 whereby it assumed Campeau's obligations under the 1981 and 1988 Agreements (the "**ClubLink Assumption Agreement**");
- (o) In 2001, Kanata was dissolved and was replaced with the City of Ottawa ("**Ottawa**") pursuant to the *City of Ottawa Act, 1999*, S.O. 1999, c. 14, Sch. E. Ottawa stands in the place of Kanata, and all the assets and liabilities of Kanata, including all rights, interests, entitlements and contractual benefits and obligations became assets and liabilities of Ottawa;
- (p) The 1981 Agreement was registered on title on all the Campeau Lands;
- (q) The 1988 Agreement is registered on title of every residential lot in the Kanata Lakes neighbourhood;
- (r) The 1981 and 1988 Agreements, Golf Course Agreement and ClubLink Assumption Agreement are all registered on title of the Golf Course Lands;
- (s) ClubLink is the current owner of the Golf Course Lands;

ClubLink's Development Applications

- (t) ClubLink applied on or around October 8, 2019 for a Zoning By-law Amendment and a Draft Plan of Subdivision to permit the redevelopment of the Golf Course Lands (collectively referred to as the "**Development Applications**");
- (u) The proposed redevelopment would consist of approximately 1,480 new dwelling units being developed on the Golf Course Lands;

- (v) Ottawa failed to make a decision on the Development Applications within the time prescribed by the *Planning Act*, R.S.O. 1990, c. P.13;
- (w) ClubLink appealed the Ottawa's failure to make a decision on the Development Applications;
- (x) The appeals of the Zoning By-law Amendment and a Draft Plan of Subdivision are currently before the Ontario Lands Tribunal, and bear file numbers PL200195 and PL200196 respectively;

The Restrictive Covenant Concerning Greenspace

- (y) The restrictions originally set out at section 3 of the 1981 Agreement and incorporated into the 1988 Agreement provide that 40% of the total development area for the Kanata Marchwood Lakeside Community be left as open space for recreation and natural environmental purposes (40% Principle);
- (z) Section 7 of the 1988 Agreement states that the 1981 and 1988 Agreements “shall enure to the benefit of and be binding upon the respective successors and assigns of Campeau and the City and shall run with and bind the Current Lands for the benefit of the Kanata Marchwood Lakeside Community;”
- (aa) The 40% Principle, as enshrined in the 1981 and 1988 Agreements, is a valid and enforceable restrictive covenant:
 - i. The covenant is negative in substance and constitutes a burden on the covenantor's land;
 - ii. The covenant is one that touches and concerns the land;

- iii. The land to be benefited is defined in the 1988 Agreement and the documents incorporated by reference thereto, so as to be easily ascertainable. In the event that the Court finds the deed ambiguous, recourse to extrinsic evidence confirms the definition of the benefitted and burdened land is easily ascertainable;
- iv. Section 7 of the 1988 Agreement states that the covenant is imposed on the land for the benefit and protection of the lands constituting the Marchwood Lakeside Community;
- v. Titles to the benefitted and burdened lands are registered; and
- vi. The covenantee (the eventual landowners of the Marchwood Lakeside Community) is a person other than the covenantor (Campeau/ClubLink);

The Restrictive Covenant Concerning Stormwater Management

- (bb) On the same day that the ClubLink Assumption Agreement was registered, ClubLink also registered a further list of covenants and restrictions it agreed would run with and bind the Golf Course Lands (referred to as the “Golf Lands” in the ClubLink Assumption Agreement);
- (cc) Schedule 1 to Schedule “B” describes the “Benefitted Lands” to which the restrictive covenant is to attach. The legal description of the properties in question confirm that they are largely the lots comprising the “Current Lands;”
- (dd) The additional covenants relate to the grading and storm water management facilities on the Golf Course Lands. In particular, ClubLink agreed as follows:

3. Each and every part of the Golf Lands shall be subject to the following restrictions and covenants:

(i) [ClubLink] agrees that:

(a) it shall not alter the grading of the Golf Lands or any of the storm water management facilities on or serving the Golf Lands; and
(b) there should be no construction of any buildings, structures or other improvements on the Golf Lands which may cause surface drainage from the Golf Lands to be discharged, obstructed or otherwise altered,
in a manner that materially adversely affects [Imasco]'s or the City of Kanata's storm water management plan in respect of [Imasco's] Benefitted Lands as such plan exists as at November 1, 1996.

- (ee) The above covenant (“**SWM Covenant**”) is valid and enforceable;
- (ff) ClubLink’s proposed development (Development Applications) would materially adversely affect the City of Kanata’s (now the City of Ottawa) storm water management plan in respect of the benefitted lands, rendering it contrary to the SWM Covenant;

General

- (gg) Rules 14.05, 38, 39, 57 and 58 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194;
- (hh) S. 71 and 119(4) of the *Land Titles Act*, R.S.O. 1990, c. L.5; and
- (ii) S. 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Affidavit of Barbara Ramsay, to be sworn;
- (b) The Affidavit of Douglas Nuttall, to be sworn; and
- (c) Such further and other evidence as counsel may advise and this Court may permit.

February 22, 2022

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