CITATION: Grape Island Property Owners Association v. Corporation of the City of Orillia, 2025 ONSC 7185
COURT FILE NO.: CV-19-00001462-0000
DATE: 20251222

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: GRAPE ISLAND PROPERTY OWNERS ASSOCIATION INC, Plaintiff

AND:

CORPORATION OF THE CITY OF ORILLIA, Defendant

BEFORE: THE HON. MR. JUSTICE J.R. McCARTHY

COUNSEL: Christopher Du Vernet and Carlin McGoogan, for the Plaintiff

Robert Wood, for the Defendant

HEARD: November 27, 2025 by Zoom

COSTS ENDORSEMENT

[1] In reasons for judgment dated March 6, 2025, the court dismissed Grape Island Property Owners Association's ("GIPOA") claim for a remedy under the doctrine of propriety estoppel. GIPOA claimed proprietary rights on a water lot owned by the Defendant at the end of Forrest Ave ("the water lot") in the City of Orillia. GIPOA, representing the majority of property owners of Grape Island, had installed and maintained docks used to afford access to Grape Island from the mainland for some 60 years.

[2] The Defendant City seeks cost of the action on a substantial indemnity basis in the amount of $211,681.66. In the alternative, it suggests that it is entitled to costs on a partial indemnity basis in the amount of $143,519.71.

[3] For its part, the Plaintiff asserts that the parties should bear their own costs of the action. It contends that the case before the court was novel and of significant importance as it would affect future proprietary estoppel claims in municipalities throughout Ontario.

[4] I agree with the Defendant that the case was decided largely on findings of fact and that there was no novel issue for the court to determine. The question for determination was whether GIPOA had made out a case for proprietary estoppel against the municipality. The court found that it had not.

[5] This was ultimately a private dispute between GIPOA and the City over whose rights would prevail on the water lot. While the matter was no doubt of interest to other parties

and municipalities facing similar issues, its outcome turned largely on its own peculiar facts.

[6] The City was successful in resisting the Plaintiff's claim and is presumptively entitled to costs. That said, I find there to be nothing unreasonable in the position taken by GIPOA, either in advancing its claim for proprietary rights to the water lot or in the manner it conducted the litigation. The facts established that islanders made decades long, consistent, open and responsible use of the docks at the water lot in accordance with a City policy dating back to 1956.

[7] As well, when issues surrounding the use of and rights upon the water lot first arose almost ten years ago, GIPOA engaged with the City and with other stakeholders to explore a resolution. The claim for damages was abandoned well before trial. GIPOA's claim for relief was presented in an articulate and erudite fashion. The evidence presented was focused, relevant and probative of the main issues. Cross-examination sought to flesh out evidence which would weigh upon the court's determination. There was certainly a genuine issue requiring a trial.

[8] At the same time, I am unable to find any unreasonable conduct by the City in either its stance on GIPOA's claims or its conduct during the litigation. The court was left to wonder why a license of occupation was afforded to one stakeholder over another but that was not an issue for determination. Nor was there sufficient evidence to establish any bad faith on the part of the City.

[9] The issues were important for both sides. GIPOA was seeking the affirmation of its rights to a dependable, affordable and convenient mainland access point, whereas the City sought to assert its jurisdiction over a portion of its "sacred" waterfront.

[10] While there was an unaccepted offer to settle made by the City, it was effectively a non-starter; acceptance of the offer would have amounted to GIPOA bowing to an imposed regime which effectively deprived it of the benefits it enjoyed under a *status quo* lasting almost 60 years. I would exercise my discretion to disregard the costs consequences of a failure to accept an offer under rule 49.10.

[11] The principle of proportionality weighs in favour of a costs award to the City on a partial indemnity basis. The trial was lengthy and complex: it demanded extensive preparation and research; the evidence spanned several decades; there were numerous witnesses and documents, submissions were detailed and exhaustive.

[12] There is no evidence that GIPOA would not have expected to pay the costs of an unsuccessful outcome. Indeed, counsel for GIPOA did not contest the quantum sought on a partial indemnity basis. The principle of indemnity factors in as well; the taxpayers of the City should not be entirely burdened with the costs incurred by the municipality in defending the overall public interest (access to waterfront) against the far narrower, if entirely understandable, agenda of a handful of its citizens.

[13] In all of the circumstances, an award of partial indemnity costs to the successful City is warranted, reasonable, just and proportional.

[14] The Plaintiff shall pay to the Defendant costs of the action on a partial indemnity basis which I would fix at $143,519.71 inclusive of fees, disbursements and HST. Those costs are payable forthwith.

McCARTHY J.

Date: December 22, 2025