

COURT OF APPEAL FOR ONTARIO

CITATION: Grape Island Property Owners Association Inc. v. Orillia (City), 2026
ONCA 63
DATE: 20260130
DOCKET: COA-25-CV-0339

Huscroft, Zarnett and Thorburn JJ.A.

BETWEEN

Grape Island Property Owners Association Inc.

Plaintiff (Appellant)

and

Corporation of the City of Orillia

Defendant (Respondent)

Christopher Du Vernet and Carlin McGoogan, for the appellant

Robert Wood, for the respondent

Heard: January 26, 2026

On appeal from the judgment of Justice John R. McCarthy of the Superior Court of Justice, dated March 6, 2025, with reasons reported at 2025 ONSC 1480.

REASONS FOR DECISION

[1] In 1956, the City of Orillia adopted a resolution that gave property owners on Grape Island permission to install a seasonal dock on a City-owned water lot on Lake Simcoe (the “1956 Policy”). The appellant, a corporation representing the interests of those property owners, did so, essentially without restriction, between

1956-2016. From 1962 onwards, the appellant also installed a second dock on the water lot each season, even though it had never been given explicit permission from the City to do so. In 2016, the City ended this practice, limiting the appellant to one dock at the water lot.

[2] In 2017, the appellant applied for a licence of occupation relating to the water lot but the license was not granted. The City continued to allow the appellant to install a dock and to use it throughout the season, but established significant restrictions on the dock and its use.

[3] In 2019, the appellant brought an action in proprietary estoppel claiming that it had acquired an easement over the water lot through the City's acquiescence. In 2020, the appellant advised the City that it would be restricting the use of its dock to its members. The City responded by repealing the 1956 Policy. It installed a City-owned dock for public use at the water lot and prohibited the appellant from installing its own dock.

[4] The trial judge dismissed the action, finding that the requirements of proprietary estoppel set out by the Supreme Court in *Cowper-Smith v. Morgan*, 2017 SCC 61, [2017] 2 S.C.R. 754 were not met.

[5] The appellant raises several issues on this appeal. We dismissed the appeal without calling on the respondents. These are the reasons for our decision.

[6] The trial judge found that the 1956 Policy was not contractual in nature and did not purport to transfer or convey any interest in the City's property. The City had never made an unambiguous promise or assurance that the City would never enforce strict compliance with the terms of the 1956 Policy, vary it, or revoke it entirely.

[7] The trial judge found, further, that the appellant understood the nature of its arrangement with the City and knew that it had no rights in the water lot. In the appellant's own words, all that it had was a "hope" that the City would continue to take no issue with its use of the water lot.

[8] These findings are amply supported in the record. There is no palpable and overriding error that would permit this court to interfere with them on appeal. The trial judge's findings are entitled to deference and are determinative of the proprietary estoppel claim. The City's failure to take action earlier to enforce the 1956 Policy did not have the effect of overcoming the need for a clear and unambiguous promise or assurance that could give rise to a proprietary estoppel. There is no need to address the alternative analysis in the trial judge's decision, including his reliance on this court's decision in *Kosicki v. Toronto (City)*, 2023 ONCA 450, 167 O.R. (3d) 401. We note that that decision was overtaken by the Supreme Court's decision, 2025 SCC 28, but whether the alternative analysis was right or wrong is not important to the outcome in this case and we make no comment on it.

[9] The appeal is dismissed. The respondent is entitled to costs fixed at \$35,000, all inclusive.

“Grant Huscroft J.A.”

“B. Zarnett J.A.”

“Thorburn J.A.”