CITATION: 9409394 Canada Inc. v. Ghislain Lascelles, 2026 ONSC 819
COURT FILE NO.: CV 2025-31
DATE: February 24, 2026

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
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	)	
9409394 Canada Inc.	)	
	)	Judith Wilcox
	)	
– and –	)	
	)	
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	)	
Ghislain Lascelles	)	Denyse Boulet
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	)	
	)	**HEARD:** February 4, 2026

REASONS FOR DECISION

JUSTICE M. FLAHERTY

[1] This application involves a dispute between owners of adjacent properties. At issue is a strip of land that is part of the respondent's property, but has been used by the applicant (and by previous owners of the applicant's property) as a driveway.

[2] The application raises two main questions:

a. Has the applicant established adverse possession over this disputed strip of land?

b. In the alternative, has the applicant established an equitable entitlement by way of proprietary estoppel?

[3] For the reasons that follow, the application is granted. The applicant has established an entitlement to the disputed land based on proprietary estoppel.

Overview

[4] Most of the facts are not in dispute. The respondent has owned his property since 1981. His lands are vacant and were vacant during the material times.

[5] The applicant purchased the property on November 17, 2015. The property enjoys a registered easement over a corridor of the respondent's land, which the applicant is using as a driveway. The existence of the easement is not contested.

[6] The dispute concerns a strip of land that is adjacent to the registered easement, and which (together with the easement) is being used by the applicant as a driveway. The driveway, which is about 18 feet wide, straddles the easement and the disputed strip of land.

[7] The easement is an approximately 15-foot-wide corridor, about 10 feet of which is being used for the driveway. The remaining width of the easement is covered in grass and serves as a buffer between the applicant's driveway and a third neighbour's property. The portion of the driveway lying on the disputed strip of land is about 8-feet-wide.

[8] From at least July 1993 to December 2024, the driveway to the applicant's property functioned as a single surface, the entirety of which was covered in gravel and (later) in interlocking brick. Until December 2024, there was no visible boundary distinguishing the easement from the disputed strip of land.

[9] The applicant provided the following evidence about the use of the disputed strip of land:

a. Brenda Giroux affirmed that she and her husband owned the applicant's property from July 29, 1993 to January 24, 2003. A single driveway (which included both the right of way and the disputed strip) was in place when they purchased the home. At the time of purchase, the full driveway was covered in gravel and asphalt. Approximately a year later, Ms. Giroux and her husband paid for interlocking brick to be installed over the entire surface of the driveway. Her evidence is that she did not seek permission from the respondent to use the full driveway.

b. Robert Dawson affirmed that he owned the applicant's property between January 24, 2003 and July 31, 2006. He provided a photo of the driveway taken during this time, which shows that it was a single surface, with interlocking brick across the entire width.

c. Ms. Tiley, assistant to counsel for the applicant, affirmed that she contacted Marc-André Labelle, who occupied the property from July 31, 2006 to November 17, 2015. Mr. Labelle was the common law spouse of Marie Laurette Christine Labelle, who owned the property during this time, but is now deceased. According to Ms. Tiley, Mr. Labelle confirmed that they used the entire driveway from 2006 to 2015.

d. Mr. Boisvert is the director of the applicant corporation. He affirmed that the applicant acquired the property on November 17, 2015 and that it has openly and

> continuously used and maintained the entire driveway since that tine. In 2016, the applicant repaired interlocking bricks on the driveway. It did so without notifying or consulting the respondent.

[10] The applicant's evidence about the use of the disputed land between July 31, 2006 and 2015 is hearsay. I do not need to determine whether that evidence can be relied upon. This is because counsel for respondent did not dispute that the owners of the applicant's property had actual possession of the disputed strip of land from 2000 to 2010 or that their use was open and continuous.

[11] On November 30, 2024, the applicant listed its property for sale. Between December 20 and 24, 2024, the respondent asserted ownership of the disputed strip of land by installing a fence that runs down the center of the applicant's driveway, effectively dividing its width in two. The installation of fence also damaged some of the interlocking bricks.

Has the Applicant Established Adverse Possession?

[12] The title of an owner to land is extinguished by the adverse possession of another person for a period of ten years: see *Real Property Limitations Act*, R.S.O. 1990, c. L.15, s. 4. Property in Land Titles system cannot be acquired by adverse possession, unless the right arose from a valid adverse claim that existed at the time of first registration of the property in the system: *Cardoso v. Benjamin*, 2021 ONSC 13, at para. 14.

[13] The respondent's property was registered in the Land Titles system on August 22, 2010. The parties agree that, for the purposes of the adverse possession claim, the material period is from August 22, 2000, to August 22, 2010.

[14] A party seeking to establish adverse possession has the burden of proving: a) actual exclusive possession of the property by the adverse possessor; b) possession with the intention of excluding the true owner; and c) effective exclusion of the true owner from possession. The party advancing the claim must show that the possession was "open, notorious, constant, continuous, peaceful and exclusive of the right of the true owner": *Masidon Investments Ltd. v. Ham* (1984), 45 O.R. (2d) 563 (C.A.), at p. 567, leave to appeal refused, [1984] S.C.C.A. No. 232 (S.C.C.) and *Hodkin v. Bigley*, 1998 CanLII 6259 (Ont. C.A.) at para 7. Whether this test is met is a question of fact, determined based on the circumstances of each case.

[15] As noted, the respondent does not dispute that the owners of the applicant's property had actual possession of the disputed strip of land from 2000 to 2010 or that their use was open and continuous. The respondent's position is that the applicant has not met the third criterion of the test: the respondent was not effectively excluded because the possession was not inconsistent with his intended use of the land.

[16] The applicant submits that, as this is a case of mutual mistake, the criterion of inconsistent use does not apply. The court should infer that the previous owners of the applicant's property intended to exclude all others from the disputed strip of land.

[17] In *Pepper v. Brooker*, 2017 ONCA 532, 139 O.R. (3d) 67, the Court of Appeal explained that inconsistent use is a facet of the test for adverse possession. However, in cases of mutual mistake, where both parties mistakenly believe that the claimant owns the disputed land, the inconsistent use criterion does not apply. Where there is mutual mistake, the court may reasonably infer that the claimants intended to exclude all others, including the owner of the property. However, an adverse possession claimant must still show effective exclusion from the property, even in cases of mutual mistake.

[18] The applicant argues that the inconsistent use criterion does not apply in cases of honest unilateral mistake, where the possessor honestly believed that he or she was the rightful owner of the property: *Cunningham v. Zebarth Estate* (1998), 71 O.T.C. 317 (Ont. Gen. Div.); *Osman v Heath*, 2016 ONSC 4812.

[19] Is this a case of mutual mistake or of honest unilateral mistake? I cannot reach that conclusion based on the evidence before me. Brenda Giroux and Robert Dawson (two previous owners of the applicant's property) affirmed that they knew they did not own the driveway, but believed the easement applied to its entire width. However, there is no evidence from Mr. Labelle (or even from Ms. Tiley) about the Labelles' understanding of the width of the easement from 2006 to 2010. Mistaken belief cannot be inferred from the fact that the Labelles used the full driveway

[20] Certainly, there was no mistaken belief on the respondent's part. From his affidavit, it is clear that he understood the extent of the easement, and he knew the driveway on the applicant's property extended beyond the registered easement. Thus, as this is not a case of mutual or honest unilateral mistake, the applicant must show that the use of the disputed land was inconsistent with the respondent's intended use.

[21] Whether a use is inconsistent is assessed based on the nature of the land and, in particular, the respondent's intended use of the land during the limitation period: *Fletcher v. Storoschuk et al.* (1981), 35 O.R. (2d) 722 (C.A.)); *Keefer v. Arillotta* (1976), 13 O.R. (2d) 680 (C.A.); and *Masidon.*

[22] The parties agree that the respondent's intended use of the land from 2000 to 2010 was to keep the property vacant. The most instructive cases, therefore, are those involving claims of adverse possession in relation to vacant lands. The respondent relies on *Masidon*. I have also considered *Fletcher*, an Ontario Court of Appeal decision cited in *Masidon*. On this issue, the applicant relies on *Georgco Diversified Inc. v. Lakeburn Land Capital Cor*p., [1993] O.J. No. 987. (Gen. Div.)

[23] The Court of Appeal's jurisprudence establishes that it is difficult for claimants to show that their use is inconsistent with an owner's vacant lands. In *Fletcher*, Justice Wilson explained (at p. 691):

> A possessory title cannot, however, be acquired against him by depriving him of uses of his property that he never intended or desired to make of it. If the

> owner has little use for the land, much may be done on it by others without demonstrating a possession inconsistent with the owner's title.
>
> […] The test is not whether the respondents exceeded their rights under the right of way but whether they precluded the owner from making the use of the property that he wanted to make of it.

[24] *Fletcher* concerned a disputed strip of land between two properties. The owner's intended use was as a buffer zone between the neighbour's property and the fenced-in field on which the owner grazed cattle. The neighbour, who claimed adverse possession, had planted trees along the strip of land, removed weeds, and planted buckwheat. The Court of Appeal held that this use was not inconsistent with the owner's intended use; it posed no challenge to the owner's use of it as a buffer zone.

[25] Similarly, in *Masidon*, the appellant claimed adverse possession based on his operation of a private airport on the respondent's property. The airport consisted of two grass runways. Constructing and maintaining these runways involved modifying the land, by ditching, grading, adding fill, cutting the grass, and adding fertilizer. The appellant also constructed a small building on the respondent's property for use as a hanger. The Court of Appeal found that the runways and appellant's use of the land was not exclusive or inconsistent with the respondent's intended use, which was to hold the property as vacant land. In that case, there were no attempts to exclude the respondent by fencing or other means. In addition, the facilities on the property were kept to a minimum, with no attempt to make them permanent.

[26] *Georgco* seems to take a different approach. In that case, the plaintiffs had occupied vacant lands over an extended period of time. They incorporated the vacant lands into their backyards and boarded the area with fences. The defendant was found to have "no intended use" for the land. The court held that the plaintiffs' use of the disputed lands was inconsistent with the land being vacant. To put it differently, the court held that lands are not vacant if they are used in some way.

[27] I am bound by the findings of the Court of Appeal in *Masidon* and *Fletcher*. These cases hold that using and even modifying or building on property is not inconsistent with its use as vacant lands. I accept that when a vacant property is used, it is technically no longer vacant. However, this is not the essential point. On the criterion of intended use, the issue is not whether the land is, in fact, vacant. Rather, the issue is whether the applicant is interfering with the respondent's ability to use the land for its intended purpose as vacant lands.

[28] In this case, the use of the disputed strip of land as a driveway did not interfere with the respondent's ability to make no use of the land. For this reason, the applicant's claim in adverse possession must fail.

Is the Applicant Entitled to Relief Based on Proprietary Estoppel?

[29] To establish proprietary estoppel, the applicant must show: a) that the respondent encouraged the applicant; b) detrimental reliance by the applicant to the knowledge of the respondent owner; and c) that the owner now seeks to take unconscionable advantage of the

applicant by reneging on an earlier promise: *Cowper-Smith v. Morgan*, 2017 SCC 61, [2017] 2 S.C.R. 754, at paras. 15 and 19.

[30] An owner's encouragement may be by way of words or conduct: *433583 Ontario Ltd. v. Metropolitan Toronto Condominium Corp. No. 935*, 2008 CarswellOnt 3101 (S.C), at para. 23, aff'd 2011 ONCA 156. The applicant states that the respondent's conduct amounted to encouragement. The driveway has been in place since at least 1993. For more than 30 years, the respondent was silent and did not assert his ownership over the disputed strip, although he knew it was being used. I accept that the respondent's silence in these circumstances reasonably led the applicant to believe that he would not insist on his strict legal rights to the disputed strip of land.

[31] The applicant relied on this to its detriment: it purchased a home with the reasonable understanding that it could be accessed by a driveway that was about 18 feet wide. Additionally, the applicant maintained the strip of land and made improvements to the driveway, including repairing the interlocking brick.

[32] Next, I must consider whether the respondent's assertion of his right to the disputed property in December 2024 takes unconscionable advantage of the applicant. As a starting point, the respondent is the legal owner of the strip of land and property rights are not interfered with lightly. A property owner's decision to withdraw permission for his neighbour to use his property is not necessarily unconscionable.

[33] That said, the full driveway has been in place for over 30 years. As noted, the applicant has used and maintained the full driveway and has made improvements to its surface. The driveway is essential to the applicant's ability to access and enjoy the property. Without a reasonable means of entry, its enjoyment of the property is significantly impeded.

[34] Without notice or consultation, the respondent erected a fence dividing the driveway in two, limiting access to the applicant's home to a portion of the driveway that is about 8-feet-wide. The fence in the middle of the driveway is unsightly. Moreover, the narrowed driveway makes access to the applicant's property difficult and hazardous, particularly for larger vehicles such as ambulances and delivery trucks.

[35] I find that, after more than 30 years of silence and after allowing the applicant and its predecessors to use and improve the driveway, it is unconscionable to allow the respondent to deny the applicant the benefit of the full driveway in this way.

Disposition

[36] For these reasons, I find that the applicant has established an entitlement to the disputed land based on proprietary estoppel. The respondent must remove the fence forthwith and, by no later than April 15, 2026, he must repair the interlocking brick that was damaged when the fence was erected. The applicant's claim for general damages is dismissed as there was no evidence of non-monetary losses.

[37] At the hearing, the parties expressed different views about remedy if the applicant were successful, specifically, whether the disputed land should vest to the applicant or be the subject of

an easement. If the parties are unable to resolve that issue, they may appear before me to make further submissions.

[38] Finally, if the parties are unable to agree on costs, they may make brief written submissions of no more than three pages, double spaced, 12-point font, exclusive of cost outlines. The applicant's costs submissions are to be served and filed within 14 days. The respondent's submissions are to be served and filed within 30 days. There will be no reply submissions without leave.

The Honourable Justice M. Flaherty

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