
Court of Appeal for Saskatchewan
Docket: CACV4339

Citation: *Melville (City) v Keller,*
2025 SKCA 14
Date: 2025-02-05

Between:

The City of Melville

Appellant
(Applicant)

And

Jordan Keller

Respondent
(Respondent)

Before: Jackson, Caldwell and Kalmakoff JJ.A.

Disposition: Appeal dismissed (orally)

Written reasons by: The Court

On appeal from: 2024 SKKB 25, Yorkton
Appeal heard: February 5, 2025

Counsel: Milad Alishahi and Shawna Sparrow for the Appellant
Randy Kachur, K.C., for the Respondent

The Court (oral decision)

I. Introduction

[1] This is an appeal by the City of Melville [City] from a Chambers decision reported as *Melville (City) v Keller*, 2024 SKKB 25 [Decision]. The Decision addresses several issues, only one of which remains in contention: whether the City is entitled to an order regarding the existence of an easement over the SE Sec 04 Twp 23 Range 06 West of the 2nd Plan No. 102280801 [Southeast Quarter]. The City also appeals from the costs order made against it.

[2] No purpose would be served by extensively reviewing the background. The evidence and the parties' arguments are thoroughly canvassed in the *Decision*. It is sufficient to note that the City asked the Court of King's Bench to grant a declaration that an easement existed on the Southeast Quarter in favour of the City since 1963. The City cannot produce the written document that they say created the easement. That evidence includes a caveat that was filed in 1963 against the Southeast Quarter claiming an interest under an unregistered easement agreement, dated August 23, 1962, between two individuals who were the registered owners of the land at that time and the City. The Chambers judge found that the evidence was insufficient to allow her to declare that the City had an easement on the Southeast Quarter as of 1962 or 1963.

[3] The City argues that the Chambers judge erred by (a) misapprehending the evidence regarding the existence of the requested easement, (b) misapplying *Moore v Mollard*, [1986] 4 WWR 424, (c) concluding that the City's requested declaratory relief was not available pursuant to s. 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1, (d) misapplying the principle of indefeasibility when concluding that the respondent, Jordan Keller, took ownership of the Southeast Quarter free and clear of the requested easement, and (e) ordering costs against it pursuant to Schedule I "B-General" Column 3 of *The King's Bench Rules*.

[4] The Court finds that the Chambers judge did not make any of the errors that the City alleges. Indeed, the Court cannot meaningfully add to the analysis of the Chambers judge and adopts her reasoning as its own. Further, her conclusions regarding the issues of the existence of the easement and its terms amount to findings of fact and, as such, are subject to review only for palpable and overriding error. Simply put, the Chambers judge was not able to hold an easement existed without knowing its scope and its terms. There can be no error with that.

[5] As mentioned, the City sought a declaration that an easement existed on the Southeast Quarter since 1963. Not only would this be a declaration with unknown retrospective effect, but the proposed easement would cover the whole of the Southeast Quarter, with certain small exceptions, when the evidence suggests that any easement could only extend to a much smaller part of the land in question. Further, and perhaps most importantly, the terms of the purported easement remain sufficiently unclear such that the City could only ask this Court to “grant a declaratory order pursuant to s. 109 of *The Land Titles Act* that the ... Caveat registered on the Southeast Quarter in favour of the City is *reflective of an easement* in place since 1963” (emphasis added). The imprecision of this description and the potential mischief it could cause are antithetical to the proper running of the land titles system.

[6] The City also appeals the costs order made against it in the Court of King’s Bench. The evolving nature and complexity of the City’s position, and the need for several additional appearances in the Court of King’s Bench as a result of that evolution, lead this Court to conclude there is no basis to interfere with the *Decision*.

[7] The appeal is dismissed with costs to Mr. Keller, which are fixed at \$4,000.

“Jackson J.A.”

Jackson J.A.

“Caldwell J.A.”

Caldwell J.A.

“Kalmakoff J.A.”

Kalmakoff J.A.