BLG Successfully Moves for Summary Judgment in Claim Against Municipality

July 14, 2016

On July 8, 2016 Reasons for Judgment were released in *2149629 Ontario Inc. v. The Regional Municipality of York*, 2016 ONSC 4510.

The plaintiff's claim related to a development charge pre-payment agreement it entered into with the Regional Municipality of York (the "Pre-Payment Agreement") pursuant to the *Development Charges Act, 1997*, SO 1997, c 27. The Pre-Payment Agreement permitted the plaintiff to pre-pay development charges for a new residential subdivision in the Township of King in accordance with the Region's 2007 development charge by-law, instead of the new 2012 development charge by-law, provided the plaintiff registered its plan of subdivision by December 17, 2012.

The plaintiff was required to satisfy certain conditions imposed by the lower-tier municipality (the Township of King (the "Township")) and the upper-tier municipality (the Region) before registration could occur.

The plaintiff failed to meet the Pre-Payment Agreement's registration deadline, due in part to its failure to satisfy a dewatering condition imposed by the Region. The plaintiff's failure to meet the deadline resulted in increased development charges of $560,051 payable by the plaintiff for the development. The plaintiff initiated a civil action against the Region claiming damages for the increased development charges. The plaintiff alleged, among other things, that the Region had been negligent when dealing with the plaintiff.

The Region brought a summary judgement motion in advance of examinations for discovery and was successful in dismissing the plaintiff's action in its entirety.

In particular, the Court held:

- There was no evidence advanced by the plaintiff to establish the appropriate standard of care. In any event, there was no basis to find negligence against the Region regardless of the applicable standard of care.
- The plaintiff knew or ought to have known of the dewatering condition prior to November 2012.
- There was no agency relationship between the Region and the Township.

- The Region took extraordinary steps to provide assistance to the plaintiff.
- The Region dealt with the plaintiff in good faith and made best efforts to assist the plaintiff in meeting the dewatering condition (exemplified by the speed at which the Region's hydrogeologist reviewed the dewatering plan when it was submitted).
- Relief from forfeiture did not apply as the payment of the enhanced development charges was not a penalty; rather, the plaintiff failed to qualify for a benefit that was offered by the Region.
- The Region had fulfilled all of its contractual obligations under the Pre-Payment Agreement and "put forward its best efforts to assist" the plaintiff in meeting the dewatering condition.

This decision also provides a helpful analysis on the legal nature of the relationship between upper-tier and lower-tier municipalities.

By

Aimee Collier

Expertise

Municipal Liability

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.