

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

B E T W E E N:

AWARE SIMCOE: ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

CORPORATION OF THE COUNTY OF SIMCOE
and TECUMSETH ESTATES INC.

Respondents

COSTS SUBMISSIONS OF THE RESPONDENT TECUMSETH ESTATES INC.

INTRODUCTION

The facts are well known to the Court and will not be belabored. Once advised that a tree cutting permit was required, Tecumseth Estates Inc. (“Tecumseth”) proceeded with an application in a diligent and appropriate manner. The process was rigorous, time consuming (two years) and expensive. Tecumseth retained appropriate expert consultants whose work was reviewed by appropriate governmental agencies who all concluded that the application was appropriate. None of the appropriate governmental agencies objected to the permit on the basis of any environmental significance for the subject property. Nor has the property been recognized as such in the Township’s zoning bylaw .

Due to procedural difficulties beyond Tecumseth’s control, a Stop Were Order was issued by the County of Simcoe (“County”) which necessitated an appeal by Tecumseth. This appeal triggered the process which was subsequently attacked by AWARE Simcoe: Environmental and Social Solutions Inc. (“AWARE”) in this proceeding.

COSTS SHOULD FOLLOW THE EVENT

There is no aspect of this case which would lead to an exception to the general principle that costs should follow the event. AWARE has argued that without the interim

injunction the substance of the Judicial Review will become moot. Therefore, there is unlikely to be a further disposition by the Court in this matter. Therefore, the Court should deal with the costs of this motion in any event of the cause.

DUTIES OF PARTIES TO THE COURT

The mere fact that AWARE claims to be a public interest group ought not to shield it from an award of costs, particularly on the facts of this case. The societal interests in permitting protest or dissent from decisions of public authorities ought not to extend to shielding AWARE in these particular circumstances.

With respect to the societal interest in permitting protest or dissent, the process adopted by the County to hear Tecumseth's appeal of the Stop Work Order was open and transparent. Expanded notice of the hearing was provided beyond the requirements of the relevant Bylaw. All interested parties were provided the opportunity to make presentations and provide evidence to County Council.

Fourteen objecting parties availed themselves of that opportunity (including AWARE, its members or other members of the public of like interest) and they filed a total of 673 pages of evidence.

The best entities to determine the public interest with respect to the protection of the environment are the duly elected members of County Council and the appropriate public authorities charged with protection of the environment.

Despite the overwhelming scientific evidence of a lack of environmental significance for the subject lands, AWARE relied on unfortunate errors by the County which were technical (and not substantive) (and were all beyond the control of Tecumseth), as objections to the Decision for which judicial review was sought.

In the face of overwhelming scientific evidence contrary to its position, AWARE engaged the processes and resources of this Court, at great expense to Tecumseth. In doing so, AWARE provided not a shred of credible expert evidence in support of its position on the substance of the matter: that it considered the subject lands were of great environmental significance.

The Court deserved better, and Tecumseth should not have been put to the expense of this motion.

COMPLEXITY OF THE MOTION

It is submitted that virtually any motion for an interim injunction is inherently complex, and certainly this motion was. The exercise by the Court of what were previously referred to as prerogative remedies involves a balancing of a series of complex tests in order to determine whether an extraordinary remedy is justified.

In order to properly assist the Court with respect to the underlying facts, Tecumseth was required to retrace the entire history of the process. It engaged its planning, forestry and environmental experts in the preparation of its material and provided a comprehensive 17 page affidavit referencing 27 relevant exhibits incorporating over 180 pages of relevant material.

BEHAVIOR OF AWARE

It is submitted that, given the total lack of evidence in support of its substantive position, commencement of the Judicial Review in a particular the interim injunction motion was frivolous and perhaps vexatious. The background behavior is relevant to the conduct of the Motion. Evidence obtained through trespass was utilized in AWARE's material. It invented a term "the Beeton Woods" to provide an air of environmental significance for the subject lands which it simply does not possess. It sought to crowd – source financial support for its motion utilizing a website relying on the "Beeton Woods" nomenclature and on material obtained through trespass. When a request was made by Tecumseth for removal of the offending material, that request was ignored.

Its self-proclaimed role as a public interest organization does not justify such behavior.

CONCLUSION

Tecumseth requests that the Court award costs in its favour against AWARE on a substantial indemnity basis.

All of which is respectfully submitted,

Date: October 5, 2015



Ian J. Rowe

BARRISTON LLP

Barristers & Solicitors
90 Mulcaster Street
Barrie, Ontario

Ian J Rowe (LSUC) (17581F)

irowe@barristonlaw.com

Tel: (705) 721-3377

Fax: (705) 726-4025

Lawyers for the Respondent, Tecumseth Estates
Inc.

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Court File No. 15-0922-DC

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Proceeding commenced at
BARRIE

COSTS SUBMISSIONS

BARRISTON LLP

Barristers & Solicitors
90 Mulcaster Street
Barrie ON L4M 4Y5

Ian J. Rowe

Tel: (705) 721-3377
Fax: (705) 721-4025

LSUC #17581F

Solicitors for the Respondent, Tecumseth Estates Inc.