

Conservation Review Board
Commission des biens culturels



ISSUE DATE: December 20, 2018

CASE NO(S): CRB1810
CRB1814
CRB1815
CRB1816
CRB1817

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: Yu Ching Tiao
Objectors: Lin Li-Chuan, 1709492 Ontario Limited, 960387 Ontario Limited
Subject: Notice of Intention to Designate (Alexandrina Block)
Property Address: 281 College Street
Legal Description: Plan 631, Lots 1-5
Municipality: City of Toronto
CRB Case No.: CRB1810
CRB Case Name: Li-Chuan v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: 960387 Ontario Limited
Objectors: Lin Li-Chuan, 1709492 Ontario Limited, 960387 Ontario Limited
Subject: Notice of Intention to Designate (Alexandrina Block)
Property Address: 283 College Street
Legal Description: Plan 631, Lots 1-5
Municipality: City of Toronto
CRB Case No.: CRB1814
CRB Case Name: Li-Chuan v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: Dennis Cheung, Linda Cheung
 Objectors: Lin Li-Chuan, 1709492 Ontario Limited, 960387 Ontario Limited
 Subject: Notice of Intention to Designate (Alexandrina Block)
 Property Address: 285 College Street
 Legal Description: Plan 631, Lots 1-5
 Municipality: City of Toronto
 CRB Case No.: CRB1815
 CRB Case Name: Li-Chuan v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: Lin Li-Chuan
 Objectors: Lin Li-Chuan, 1709492 Ontario Limited, 960387 Ontario Limited
 Subject: Notice of Intention to Designate (Alexandrina Block)
 Property Address: 287 College Street
 Legal Description: Plan 631, Lots 1-5
 Municipality: City of Toronto
 CRB Case No.: CRB1816
 CRB Case Name: Li-Chuan v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner: 1709492 Ontario Limited
 Objectors: Lin Li-Chuan, 1709492 Ontario Limited, 960387 Ontario Limited
 Subject: Notice of Intention to Designate (Alexandrina Block)
 Property Address: 289 College Street
 Legal Description: Plan 631, Lots 1-5
 Municipality: City of Toronto
 CRB Case No.: CRB1817
 CRB Case Name: Li-Chuan v. Toronto (City)

Heard: October 30, 2018 in Toronto, Ontario and in

writing

APPEARANCES:**Parties****Representative**

City of Toronto

Amanda Hill

1709492 Ontario Limited (in writing)

Mike Domovitch

ORDER OF THE BOARD DELIVERED BY DANIEL NELSON AND LAURIE SMITH

REASONS**Overview**

[1] This is a procedural order of the Conservation Review Board (“Review Board”) arising from a pre-hearing conference (“PHC”) held on October 30, 2018 and from written submissions provided by the parties thereafter. The proceeding concerns objections by Lin Li-Chuan, 1709492 Ontario Limited and 960387 Ontario Limited (“Objectors”) to Notices of Intention to Designate issued by the City of Toronto (“City”) in respect of properties at 281, 283, 285, 287 and 289 College Street, Toronto (“Properties”).

[2] The Review Board orders that Lin Li-Chuan and 960387 Ontario Limited be removed as parties from the proceedings, for the reasons set out below.

[3] The Review Board orders that 1709492 Ontario Limited (“remaining Objector”) and the City provide the Case Coordinator with their availability for a continuation of the PHC early in 2019, for the reasons set out below.

Background

[4] The Review Board gave the parties written notice that the first PHC in these proceedings would be held by telephone conference call (“TCC”) on October 30, 2018. All parties confirmed their availability for that date. However, the City was the only party to attend the PHC TCC.

[5] At the PHC, the City asked that the proceedings in respect of all five properties be dismissed on the basis that: the Objectors had not raised any valid reasons for objections; and none of the Objectors had attended the PHC TCC or contacted the City to request consent to adjourn the PHC. The City agreed to provide written submissions in support of its request.

[6] Immediately following the PHC, Mike Domovitch, the representative for the objector 1709492 Ontario Limited advised in writing that he had forgotten to attend the PHC but wished to continue as a party to the proceedings.

[7] The Review Board issued a written direction to the parties:

- directing the objectors Lin Li-Chuan and 960387 Ontario Limited to advise the Review Board in writing by no later than November 13, 2018 whether they intended to continue as objectors, failing which the Review Board could remove them as objectors under Rule 15 of the *Rules of Practice and Procedure*; and
- directing the City to provide written submissions in support of its request for dismissal by no later than November 16, 2018.

Discussion, Analysis and Findings

Removal of Certain Parties

[8] The Review Board did not receive any response from the objectors Lin Li-Chuan and 960387 Ontario Limited. Rule 15 of the *Rules of Practice and Procedure* gives the Review Board broad authority to make orders governing the conduct of a proceeding, and in particular, where as here, a party has not complied with a direction of the Review Board. As Lin Li-Chuan and 960387 Ontario Limited did not attend the first PHC and have not responded to the Review Board's direction to confirm their intent to continue as objectors, the Review Board orders that they are removed as parties from all five proceedings.

Submissions

[9] The Review Board received the City's submissions on November 16, 2018, and set dates for 1709492 Ontario Limited to respond (by December 3, 2018) and for the City to reply (by December 20, 2018).

[10] The City asks that all five proceedings be dismissed pursuant to Rule 15 because all three Objectors failed to attend the first PHC and because two of the Objectors did not respond to the Review Board's direction to indicate their intent to continue as Objectors. Alternately, the City asks that the proceedings be dismissed pursuant to Rule 14.01(a) as the issues raised by the objectors are not valid objections under Part IV of the *Ontario Heritage Act*.

[11] As the Review Board has already dealt with the status of Lin Li-Chuan and 960387 Ontario Limited above, this leaves only the City's submissions with respect to 1709492 Ontario Limited. The City argues that Mr. Domovitch's explanation that he forgot to attend the PHC is not a *bona fide* explanation. The City argues further that

Mr. Domovitch's letter of objection does not raise valid issues with respect to the criteria set out in Ontario Regulation ("O. Reg.") 9/06, as it should, but rather "deal[s] with the lack of beauty of the existing building." Accordingly, the City argues, the objections are frivolous pursuant to Rule 14.1(a).

[12] Mr. Domovitch responded on November 16 and again on December 1, 2018, arguing that he had "in fact, raised valid issues and strong reasons to support the notion that the said building is not worthy of protection and Heritage Building designation" and apologizing for forgetting to attend the hearing. He argued that "the subject building has been substantially altered, so as to make it not worthy of designation" and "does not have many attributes of architecture, including features that make the building beautiful, to make it into a building worthy of preservation." The objector indicated that it intends to hire an expert witness to testify at the hearing on these issues and others.

[13] The City did not provide arguments in reply.

Frivolous Proceeding

[14] Rule 14.01(a) permits the Review Board to dismiss proceedings without a hearing where it finds them to be frivolous, vexatious, or commenced in bad faith. The City's position is that the remaining Objector's letter of objection demonstrates a lack of valid reasons as it relates to the criteria set out in O. Reg. 9/06.

[15] The question, of course, is what does "frivolous" mean in this context? *Black's Law Dictionary*, 7th ed., defines it as "lacking a legal basis or legal merit; not serious; not reasonably purposeful." Thus, it would be necessary for the City to demonstrate that there is no reasonable chance of success in this proceeding and it is, therefore, without legal merit.

[16] The Review Board is satisfied that the “Reasons that the building is not worthy of Heritage designation” set out in Mr. Domovitch’s letter of January 9, 2017 are relevant to the requirements of s. 29(5) of the *Ontario Heritage Act* and do, therefore, have legal merit. The Act requires only that the objector provide “the reason for the objection and all relevant facts”. An objection that does not specifically use the words of the Act and the Regulation is not automatically invalid or frivolous. Nor is it a requirement for an objector to identify, on the relatively short notice required by the Act, the precise nature of their objection *vis-à-vis* O. Reg. 9/06. The Review Board is satisfied that Mr. Domovitch’s plan to hire an expert witness shows his intention to address the required criteria at the hearing. The Review Board is satisfied that by proceeding with the PHC, the parties can begin to narrow the issues and discuss the type of evidence that might be appropriate at the hearing.

Conduct of Proceedings

[17] Pursuant to Rule 15.3, the Review Board may dismiss the proceeding if it finds the remaining Objector did not comply:

- with a requirement of the Rules; or
- with an order or direction of the Review Board,

in order to prevent an abuse of process.

[18] The City does not allege that the remaining Objector’s failure to attend the PHC caused undue delay or prevented the fair, just, or expeditious resolution of the matter.

[19] The threshold to demonstrate that behaviour amounts to abuse of process is, necessarily, a high one. *Black’s Law Dictionary*, 7th ed. defines “abuse of process” as the “improper and tortious use of a legitimately issued court process to obtain a result

that is either unlawful or beyond the process's scope." In other words, does the behaviour, unadmonished, bring the administration of justice into disrepute?

[20] It is clear that the remaining Objector failed to attend the PHC without providing notice and his excuse is a weak one; to "forget" about a quasi-judicial proceeding is troubling. Yet, he did contact the Review Board thereafter of his own accord, to apologize and, in his later correspondence with the Review Board has demonstrated a clear intention to participate actively in the proceedings going forward. The Review Board can only assume, therefore, that this was an honest mistake rather than an improper attempt to subvert the Review Board's process. The failure to attend should be admonished but the Review Board is not satisfied that such behaviour amounts to an abuse of process worthy of dismissal.

[21] It should be noted, however, that the Review Board can make "any other order it considers appropriate" in Rule 15, and it may have been appropriate for the parties to make submissions on whether a remedy other than dismissal was warranted in the matter. This could have included anything from a formal reprimand to an order for costs, pursuant to Rule 34.04(a). However, the Review Board did not receive submissions from the parties on this.

[22] Having considered the submissions of both the City and the Objector 1709492 Ontario Limited, the Review Board is satisfied that the Objector 1709492 Ontario Limited should be permitted to continue with its objection and that the proceedings should not be dismissed.

ORDER

[23] The Review Board orders that a second PHC be held, on a date in early 2019 to be confirmed by the Case Coordinator, in order to:

- discuss settlement opportunities, as between the parties; and/or
- prepare for the eventual hearing of this matter and determine the length, date, and timing of the hearing, set dates for disclosure of evidence, and determine the number of potential witnesses and whether the parties will be calling expert witnesses. The Case Coordinator will contact the parties to determine their availability for a second PHC and propose dates.

[24] The Review Board may vary or add to this Order at any time, either on request or as it sees fit, and may do so by an oral ruling or in writing.

“Daniel Nelson”

DANIEL NELSON
MEMBER

“Laurie Smith”

LAURIE SMITH
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario
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