

**Form 27**  
Clerk's stamp:



COURT FILE NUMBER 2101 – 00793

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT/CROSS-RESPONDENT THOMAS H. FERGSUON

RESPONDENT/CROSS-APPLICANTS ALI TEJPAN, ZAHRA TEJPAN, REGISTRAR OF LAND TITLES FOR THE LAND TITLES OFFICE, JOHN DOE, JANE DOE, AND ABC CORPORATION

DOCUMENT **CROSS – APPLICATION**

PARTIES FILING THIS DOCUMENT ALI TEJPAN AND ZAHRA TEJPAN

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BLAKE, CASSELS & GRAYDON LLP**  
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File Ref.: 25569/1

**NOTICE TO THE CROSS-RESPONDENT: THOMAS H. FERGUSON**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

- Date:** TBD
- Time:** 10:00 a.m.
- Where:** Calgary Courts Centre Virtually via WebEx
- Before Whom:** The Presiding Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Cross-Applicants, Ali Tejpar and Zahra Tejpar (the "**Tejpars**"), seek an Order:

- (a) declaring that the Property municipally described as 1023 32 Avenue SW, Calgary, Alberta and legally described as:

PLAN 3605FO  
BLOCK 91  
LOT 1  
Excepting Thereout All Mines and Minerals

(the "**Subject Property**")

is not subject to the Purported Caveat provided by the Applicant/Cross-Respondent, Thomas Ferguson in the within Action and identified as instrument 7648FT by the Registrar of Land Titles for Alberta (the "**Purported Caveat**");

- (b) declaring that the Purported Caveat has no binding effect on the Subject Property;
  - (c) granting the Tejpars solicitor and own client costs of this Cross-Application; and
  - (d) Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.
2. In the alternative, the Tejpars seek an Order:
- (a) declaring that the Purported Caveat does not prevent subdivision of the Subject Property;
  - (b) declaring that the Tejpars may proceed with subdivision of the Subject Property and erect one dwelling house on each subdivided lot of the Subject Property;
  - (c) granting the Tejpars solicitor and own client costs of this Cross-Application; and
  - (d) Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

**Grounds for making this application:**

**The Parties**

3. The Tejpars are the Registered Owners of the Subject Property. The Tejpars have obtained approval to subdivide the Subject Property from the City of Calgary.
4. The Applicant/Cross-Respondent, Thomas H. Ferguson, is the owner of the property municipally described as 1013 32 Avenue SW and legally described as Plan 3605FO, Block 92, Lot 9 (the "**Ferguson Property**").
5. The Ferguson Property is located to the east of the Subject Property.

**The Purchase of the Subject Property**

6. In December 2019, the Tejpars became aware that the Subject Property was for sale and viewed the Subject Property. At that time, they understood the Subject Property could be subdivided into two lots due to its size and other subdivided properties in the area.
7. On December 18, 2019, prior to placing an offer on the Subject Property, the Tejpars obtained a copy of the Certificate of Title to the Subject Property. The Certificate of Title showed one instrument registered on the Certificate of Title as follows:

<b>REGISTRATION NUMBER</b>	<b>DATE D/M/Y</b>	<b>PARTICULARS</b>
7648FT	21/05/1948	CAVEAT RE : SEE CAVEAT CAVEATOR - CANADIAN PACIFIC RAILWAY COMPANY 2000, 401-9 AVE SW CALGARY ALBERTA T2P 4Z4

(the "**Instrument**").

8. The Tejpars requested a copy of the Instrument from Land Titles and in response received a Certificate pursuant to Section 21 of the *Land Titles Act*, RSA 2000, c L-4 which advised that the Instrument had been lost, mislaid, or destroyed and had not been microphotographed (the "**Section 21 Certificate**").
9. Once the Tejpars received the Section 21 Certificate, they undertook significant efforts in an attempt to ascertain the nature of the interest related to the Instrument prior to waiving

the conditions on their offer of the Subject Property (the "**Conditions**"). These efforts included:

- (a) Contacting the Land Titles Office on multiple occasions in an attempt to obtain further information about the Instrument;
  - (b) Contacting the Caveator, Canadian Pacific Railway Company ("**CP Rail**") on multiple occasions in an attempt to obtain further information about the Instrument;
  - (c) Inquiring with the seller and the seller's realtor for information related to the Instrument; and
  - (d) Contacting the Elbow Park Residents' Association (the "**EPRA**") to advise of the proposed plans of subdivision for the Subject Property
10. On January 8, 2020, after conducting numerous investigations into the Instrument and the nature of the interest the Instrument may relate to, the Tejpars waived the Conditions.
  11. Even after waiving the Conditions, the Tejpars continued to investigate the Instrument and continued to contact CP Rail in an attempt to determine the nature of the interest the Instrument may relate to.
  12. On January 31, 2020, the Tejpars completed their purchase of the Subject Property.

#### **Interactions with the EPRA and Residents**

13. In June 2020, the Tejpars were contacted by Margo Coppus, the Chair of the Elbow Park Development Committee (the "**EPDC**") regarding the Subject Property. In June 2020, the Tejpars discussed their plans to subdivide the Subject Property with Ms. Coppus in her capacity as Chair of the EPDC. At no time in June 2020 did Ms. Coppus advise that there were any restrictions or prohibitions to subdividing the Subject Property due to a caveat, restrictive covenant, or otherwise.
14. In August 2020, the Tejpars submitted their Subdivision Plan to the City of Calgary Subdivision Authority after approving the subdivision plan and design for the Subject Property in March 2020. The plan was to subdivide the Subject Property into two lots: one lot that was approximately 60 feet and one lot that was approximately 50 feet.

15. In August 2020, the Tejpars attended a Zoom Meeting organized by the EPRA to discuss the subdivision application for the Subject Property. During the meeting, no one raised any restrictions to a subdivision of the Subject Property, by way of caveat, restrictive covenant, or otherwise.
16. On September 7, 2020, residents of the Elbow Park Neighborhood submitted a letter of opposition to the Tejpars proposed subdivision of the Subject Property. This letter stated the Tejpar's proposed subdivision should not proceed because of the contextual sensitivities in the neighborhood and the fact that prior subdivision applications had not been approved. At no point did the September 7, 2020 letter raise the existence of any restrictions to a subdivision of the Subject Property, by way of caveat, restrictive covenant, or otherwise.
17. The Tejpars' subdivision of the Subject Property was approved by the City of Calgary Subdivision Authority on September 11, 2020.

#### **The Purported Caveat**

18. On September 22, 2020, the Tejpars attended a Development Permit Review Meeting organized by the EPRA regarding the development of the Tejpar's single family home on the Subject Property. During this meeting, members in attendance, stated there was a caveat in the Elbow Park Community which may prevent the Tejpars from building two homes on the Subject Property and emailed a copy of this document, the Purported Caveat, to the Tejpars. This was the **first** time that anyone had mentioned the existence of such restrictions or raised the Purported Caveat to the Tejpars.
19. Despite numerous inquiries by the Tejpars as to where and how the Purported Caveat had been obtained, no information was provided by the EPRA or other individuals on the September 22, 2020 call. The Tejpars had no way to authenticate the Purported Caveat or validate and verify that it was in fact a true copy of the Instrument.
20. As no information was provided to authenticate the Purported Caveat, the Tejpars contacted Land Titles and the caveator, CP Rail to attempt to determine if the Purported Caveat was a true and authentic copy. Both CP Rail and Land Titles advised the Tejpars that they could not verify the authenticity of the Purported Caveat.

21. On October 27, 2020, approximately 10 months after completing the purchase of the Subject Property, the Tejpars received a letter on behalf of the Cross-Respondent, Thomas Ferguson, which stated that they were deemed to have notice that the Purported Caveat was a restrictive covenant. No information was provided which would assist the Tejpars in authenticating or validating the Purported Caveat.

**Other Subdivisions and Non-Compliance in Elbow Park**

22. There are several other subdivided properties in the Elbow Park Neighborhood that are in the immediate vicinity of the Subject Property, including:

- (a) Plan 3605FO, Block 80, Lot 1;
- (b) Plan 3605FO, Block 91, Lot 11;
- (c) Plan 3605FO, Block 91, Lot 3;
- (d) Plan 3605FO, Block 93, Lot 9; and
- (e) Plan 3605FO, Block 93, Lot 10.

23. The Purported Caveat includes restrictions for developments on lands subject to the Purported Caveat. These restrictions include:

3. The Owner hereby agrees to insert in all Agreements for sale of any one of the following lots of parcels of land [...] restrictive covenants similar to the covenants hereinafter contained:

[...]

(e) That no house or other building shall be located or placed on the said lot within Twenty-five (25) feet of the Street or Avenue, and any dwelling house shall be not less than Twenty-five (25) feet from the rear of said lot.

24. In breach of the Purported Caveat, 29 properties that are allegedly subject to the Purported Caveat have buildings that are located within 25 feet of the Street or Avenue.

25. The Purported Caveat does not state that there are any restrictions against subdividing a lot which may have been subject to the Purported Caveat. Further, there are no restrictions in the Purported Caveat against selling a portion of a lot which may have been subject to

the Purported Caveat. Therefore, the Tejpars subdivision of the Subject Property does not breach the terms of the Purported Caveat.

**The Tejpars Are not Bound by the Purported Caveat**

26. The Instrument was validly discharged from the Subject Property on January 13, 2021 by Order of this Honourable Court.
27. The Caveator, CP Rail did not take a position on the discharge of the Instrument.
28. The Subject Property is not subject to the Purported Caveat as the Tejpars had no knowledge or notice of its existence at the time of the purchase of the Subject Property.
29. Specifically, at the time prior to purchasing the Subject Property, at the time the Tejpars purchased the Subject Property, and in the 10 months after the purchase was complete, the Tejpars had no notice, deemed or otherwise, that the Instrument registered on title may have contained restrictions to development or was a restrictive covenant.
30. This lack of notice was despite numerous investigations commenced by the Tejpars in an attempt to determine the nature of the interest that the Instrument registered on title may have related to.
31. Even when a copy of the Purported Caveat was provided to the Tejpars, the Tejpars have not been able to validate or verify its authenticity. There is conflicting evidence as to whether multiple copies of the Purported Caveat may exist with similar, but not identical, terms and alleged restrictions.
32. As a result, the Purported Caveat has no binding effect on the Subject Property.
33. In the alternative, if the Purported Caveat is determined to effect the Subject Property, it does not include any restrictions to prevent subdivision of the Subject Property. Therefore, there is nothing to prevent subdivision of the Subject Property and the Tejpars are entitled to proceed with the approved subdivision.
34. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

35. Affidavit of Thomas Ferguson, sworn January 25, 2021;
36. Affidavit of Robert Engbloom, sworn March 30, 2021;
37. Affidavit of Zahra Tejpar, affirmed on April 13, 2021;
38. The transcript of Cross-Examination of Robert Engbloom, QC on an Affidavit sworn March 30, 2021, held on April 6, 2021;
39. The transcript of Cross-Examination of Thomas Ferguson, QC on an Affidavit sworn January 25, 2021, held on April 7, 2021;
40. The transcript of Cross-Examination of Zahra Tejpar, on an Affidavit sworn on April 13, 2021; and
41. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

42. *Land Titles Act*, RSA 2000 c L-4;
43. The Alberta *Rules of Court*, Alta Reg 124/2010;
44. *Judicature Act*, RSA 2000, c J-2, in particular sections 8, 13, 15, and 16.
45. Such further Acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

46. None.



**How the application is proposed to be heard or considered:**

47. It is proposed that the within Cross-Application be heard before the presiding Justice in Chambers at the same time as the Originating Application filed in the within Action by the Cross-Respondent on January 25, 2021.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.