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COURT FILE NUMBER 2101-00793

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) THOMAS H. FERGUSON

RESPONDENT(S) ALI TEJPAN, ZAHRA TEJPAN, REGISTRAR  
OF TITLES for the LAND TITLES OFFICE,  
JOHN DOE, JANE DOE, ABC CORPORATION

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File: 120632.001

Form 7  
[Rule 3.8]

\$50



## NOTICE TO THE RESPONDENT(S)

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: ~~April 30, 2021~~ May 3, 2021  
Time: 10:00 AM Virtually VIA WebEx  
Where: Calgary Courts Centre, ~~601 5<sup>th</sup> Street SW, Calgary AB~~  
Before: The Presiding Justice in Chambers

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

## Basis for this claim:

### Overview

## THE PARTIES

1. The Applicant, Thomas H. Ferguson, is one of the owners of the land located at 1013 32 Avenue SW, Calgary, Alberta. The legal description of the land is Plan 3605FO Block 92

Lot 9 excepting thereout all mines and minerals (the “**Ferguson Lands**”).

2. The Respondents, Ali Tejpar and Zahra Tejpar (the “**Tejpars**”), are the registered owners of the land located at 1023 32 Avenue SW, Calgary, Alberta which has the legal description of Plan 3605FO Block 91 Lot 1 excepting thereout all mines and minerals (the “**Respondent Lands**”). The Tejpars are in the process of subdividing the Respondent Lands, constructing multiple dwellings on the Respondent Lands and selling the Respondent Lands.
3. The Respondents, John Doe, Jane Doe and ABC Corporation, are the presently unknown parties who are the purchasers of the most westerly portion of Respondent Lands pursuant to an agreement for purchase. John Doe, Jane Doe and ABC Corporation either have, or are in the process of, purchasing, subdividing and developing the Respondent Lands.

#### **THE RESTRICTIVE COVENANT**

4. The Ferguson Lands and the Respondent Lands are both subject to a restrictive covenant, being Instrument 7648 FT which has been registered against the relevant land titles since 1948 (the “**Caveat**”).
5. The Caveat makes clear that it applies to all future developments on lands subject to the Caveat. Among other things, the Caveat places several restrictions on any subject lot. In particular, only one single family dwelling may be built:

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

IT IS HEREBY COVENANTED AND AGREED with the Owner by the above mentioned Purchasers on behalf of themselves, their executors, administrators and assigns, and successors in title as follows:

(a) That there shall not be erected or suffered or permitted to be erected or used or placed upon the said Lot Seven (7), Block Ninety (90), Plan 3605 F.O., any building whatsoever except for the purposes of a private residence and building garage in connection therewith.

(b) That there shall not be erected upon the said Lot more than one (1) such residence and garage.

6. The Tejpars received conditional approval from the City of Calgary to subdivide the Respondent Lands. Among other things, this approval states that the City of Calgary has not reviewed or considered all instruments registered on the title to the property and that the property owners must evaluate whether the application to subdivide is in compliance with any documents registered on the title.
7. The subdivision was appealed to the Calgary Subdivision and Development Appeal Board (the “**SDAB**”). The SDAB denied the appeal of the subdivision. The SDAB did not consider any instruments registered on the title to the Respondent Lands in rendering its decision.
8. The Tejpars have applied for a development permit for the Respondent Lands and a development permit has been granted with respect to the easterly portion. This development permit is under appeal.
9. Subdividing and developing the Respondent Lands to construct multiple dwelling houses will breach condition numbers 3(a) and (b) of Instrument 7648 FT which restrict development on the Respondent Lands to a single private dwelling and garage. The sale of the westerly portion is also a clear breach of the restrictive covenant.

#### **INJUNCTIVE RELIEF IS APPROPRIATE IN THESE CIRCUMSTANCES**

10. The Caveat is a restrictive covenant which runs with the land and is part of a valid building scheme registered to shape development in the Elbow Park community.
11. Construction of multiple dwelling units on the Respondent Lands constitutes a breach of the Caveat. Injunctive relief is the presumptive remedy for a breach of a restrictive covenant of this nature.
12. The Ferguson Lands are a dominant tenement and the Respondent Lands are the servient tenement under the restrictive covenant that is registered by way of the Caveat. As a result, the Applicant is entitled to enforce the terms and conditions of the Caveat.
13. There have been no events after registration of the Caveat that suggest the Caveat has become unenforceable.

14. As subdivision and construction of multiple dwelling units on the Respondent Lands is imminent, the Court's equitable discretion ought to be exercised in favour of granting an injunction.
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Remedy sought:**

16. The Applicant seeks an order for:
  - (a) A declaration that the subdivision of the Respondent Lands and the development of multiple dwellings on the Respondent Lands constitutes a breach of Clause 3(b) of the Restrictive Caveat;
  - (b) A permanent injunction:
    - (i) Requiring the Respondents, the Tejpars, John Doe, Jane Doe and ABC Corporation to comply with the Caveat including halting any subdivision or construction of further dwellings on the Respondent Lands; and
    - (ii) Restraining the Registrar from registering any subdivision or other instruments contrary to the Caveat with respect to the Respondent Lands.
  - (c) In addition, or alternatively, an Order directing the parties to enter into a litigation plan regarding the exchange of evidence and briefs and a date for hearing of the within injunction application;
  - (d) Costs of this Originating Application; and,
  - (e) Such further and other relief as counsel may advise and this honourable Court may deem appropriate.

**Affidavit or other evidence to be used in support of this application:**

17. Affidavit of Thomas H. Ferguson, sworn January 25, 2021;
18. Affidavit of Robert Engbloom, sworn March 30, 2021; and

19. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

20. *Land Titles Act*, R.S.A. 2000 c. L-4;
21. *Alberta Rules of Court*, A.R. 124/2010;
22. *Judicature Act*, RSA 2000, c. J-2 at sections 8 and 13; and
23. Such further acts and regulations as counsel may advise and this Honourable Court may permit.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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 applicant(s) a reasonable time before the application is to be heard or considered.