

Ferguson v. Tejpar et al

Jane Virtue
on Friday, April 30, 2021



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COURT FILE NUMBER 2101-00793

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT THOMAS H. FERGUSON

RESPONDENTS ALI TEJPAR, ZAHRA TEJPAR, REGISTRAR
OF TITLES for the LAND TITLES
OFFICE, JOHN DOE, JANE DOE, ABC
CORPORATION



502141

Transcript of Oral Questioning of

JANE VIRTUE

(On Affidavit sworn April 24, 2021)

Held via videoconferencing

April 30, 2021

1 ALL PARTIES APPEARING VIA VIDEOCONFERENCING

2

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1 (Proceedings commenced at 2:15 p.m.)

2 COURT REPORTER: Counsel, as you all know

3 because we are using a virtual connection, everyone is
4 going to have to be more conscious than ever of not
5 speaking over each other. If I cannot hear the end of
6 a question or the beginning of an answer, you are going
7 to have a very poor record. If I have to consistently
8 interrupt because I cannot hear or understand something
9 that is said, you will not have a good examination
10 flow. If there is an objection, I must be able to hear
11 it and know who is objecting. If I do have to
12 interrupt, please be patient and understand that my
13 goal is to provide you with a perfect record of these
14 proceedings. Please move your papers and/or legal pads
15 away from your computer so there is no ambient noise.

16 From time to time we've noticed the audio can be
17 affected, and if so, we may need to stop the
18 proceedings and wait for a moment for the audio to
19 improve, either by reconnecting or asking that everyone
20 use the conference call number if you're using computer
21 audio.

22 Would the witness please identify herself and
23 spell your first and last name for the record?

24 THE WITNESS: My name is Jane Virtue, J-A-N-E,
25 V-I-R-T-U-E.

1 COURT REPORTER: If there are any questions about
2 the witness's identity, would you counsel please advise
3 on the record now?

4 Hearing no objection, counsel, are you ready for
5 me to affirm the witness?

6 MS. REICHELT: I am.

7 JANE VIRTUE, affirmed, questioned via videoconference
8 by Ms. Reichelt:

9 Q. MS. REICHELT: Good morning [sic], Ms. Virtue.
10 My name is Renee Reichelt. I am counsel for the
11 respondents in this matter.

12 A. Good morning -- good afternoon.

13 Q. Did I say "good morning"? Sorry. It's all a blur
14 these days, isn't it?

15 Ms. Virtue, are you aware of an originating
16 application commenced by Mr. Thomas Ferguson in Court
17 of Queen's Bench, Action Number 2101-00793?

18 A. Yes, I am.

19 Q. And you're aware this application is for injunctive
20 relief, ma'am?

21 A. Yes.

22 Q. So if I refer to this application as "the injunction
23 application," you'll understand what I am referring to?

24 A. Yes, I will.

25 Q. And as I understand it, ma'am, you swore an Affidavit

1 in the injunction application on April 24th, 2021; is
2 that correct?

3 **A.** Yes, I did.

4 **Q.** And if refer to that simply as "your Affidavit," you'll
5 understand what I am referring to?

6 **A.** Yes, I will.

7 **Q.** And at the time that you swore that Affidavit, were you
8 represented by counsel in this -- in this matter?

9 MR. MARBLE: Counsel, Ms. Virtue appeared
10 virtually before me to sign this. Ms. Virtue isn't our
11 client. Mr. Ferguson is.

12 **Q.** MS. REICHEL: So, Ms. Virtue, you swore that
13 Affidavit in the context of being a witness as opposed
14 to a party?

15 **A.** Yes, I did.

16 **Q.** And your counsel is not Carbert Waite as it relates to
17 this matter?

18 **A.** No.

19 **Q.** And you understand, Ms. Virtue, that my client,
20 Ms. Tejpar, Zahra Tejpar, affirmed an Affidavit in
21 relation to the injunction application on April 13th,
22 2021?

23 **A.** Yes.

24 **Q.** And if I refer to that as "the Tejpar Affidavit,"
25 you'll understand what I am referring to?

1 A. Yes, I will.

2 Q. And have you reviewed that Affidavit, ma'am?

3 A. Yes, I have.

4 Q. And just before we began today, you took an oath to
5 tell the truth; that's correct?

6 A. Yes, I did.

7 Q. And I gather that you intend to do so today?

8 A. Of course.

9 Q. And you have a copy of your Affidavit and the exhibits
10 in front of you?

11 A. Yes, I do.

12 Q. Do you have anything else in front of you at this
13 moment, ma'am?

14 A. I have the Tejpar Affidavit, and I have the
15 cross-application of the Tejpar --

16 Q. Okay.

17 A. -- that was received today.

18 Q. And, ma'am, at the time you swore your Affidavit, it
19 was true to the best of your knowledge?

20 A. Yes.

21 Q. And as you sit here today, is your Affidavit still
22 true?

23 A. Yes.

24 Q. Do you have any corrections to make to your Affidavit?

25 MR. MARBLE: So as I had noted before going on,

1 counsel, I'm not sure it's a correction, but Ms. Virtue
2 wanted to clarify paragraph 5.

3 And then I noted a correction to a heading above
4 paragraph 10 where it says "The Tejpars Declined to
5 Engage the EPRA in Consultation," the balance of that
6 heading should read "Prior to Their Purchase of the
7 Subject Lands," which is what it says at paragraph 11.

8 **Q.** MS. REICHELTL: And as I understand it -- and I'll
9 have some questions about this for you, Ms. Virtue --
10 but your clarification as it relates to paragraph 5 of
11 your Affidavit was that you are referring to a
12 January 8, 2020, telephone call with Mr. and
13 Ms. Tejpar, and as you sit here today, you're not sure
14 whether both were on or just Ms. Tejpar?

15 **A.** Yeah. I'm -- my recollection is that most of my
16 conversation was with Ms. Tejpar and that I understood
17 that Mr. Tejpar was also on the call. But I don't
18 fully recall that, and I just didn't want to be putting
19 something on an Affidavit that I wasn't 100 percent
20 clear on.

21 **Q.** Well, fair enough, ma'am. It was, like, 14 months ago
22 or something along those lines, so perfect recollection
23 is hard.

24 I'm just going to -- because I know you said
25 um-hmm, the court reporter can't actually record

1 um-hmms or that type of thing, so I would just ask in
2 your answers that you give a verbal answer, if that's
3 all right with you?

4 **A.** Yeah, that was actually clearing my throat. Pardon me.

5 **Q.** Sorry.

6 **A.** Which I'll do again.

7 **Q.** Sure. And you understand that two of the respondents
8 in the injunction application are Zahra and Ali Tejpar,
9 correct?

10 **A.** Yes.

11 **Q.** And I if refer to them collectively as "the Tejpars,"
12 you'll understand who I'm referring to?

13 **A.** Yes, I will.

14 **Q.** And likewise, you understand the Tejpars to be
15 registered owners of a property legally described as
16 Plan 605F0, Block 91, Lot 1, correct?

17 **A.** Yes.

18 **Q.** And that has a municipal address of 1023 - 32nd Avenue
19 Southwest, correct?

20 **A.** Yes.

21 **Q.** And if I refer to that parcel as either "the subject
22 property" or "the Tejpar property," you'll understand
23 what I'm referring to?

24 **A.** Yes, I will.

25 **Q.** Can you tell me, Ms. Virtue, what you did to prepare

1 for today's cross-examination?

2 **A.** I read over my personal Affidavit, I read the
3 application, and I reviewed the Tejpar Affidavit.

4 **Q.** Did you speak with Mr. Ferguson in advance of today's
5 cross-examination?

6 **A.** No, I have not.

7 **Q.** Have you reviewed Mr. Ferguson's Affidavit in this
8 matter?

9 **A.** Yes, actually I did. Last night I reviewed that.

10 **Q.** Had you reviewed it prior to swearing your Affidavit in
11 this matter?

12 **A.** I don't recall.

13 **Q.** Did you speak to Mr. Engbloom in advance of today's
14 cross-examination?

15 **A.** No, I have not.

16 **Q.** Have you reviewed Mr. Engbloom's --

17 **A.** Yes. Yes, I recall that I did review that one as well.

18 **Q.** And did you review that prior to swearing your
19 Affidavit or in preparation for cross today?

20 **A.** Just in preparation. Mr. Marble provided me a Dropbox
21 with those documents, and last night I reviewed those.

22 **Q.** Prior to swearing your Affidavit on April 24th, 2021,
23 did you speak with Mr. Engbloom about this matter and
24 the matters involving the -- related to the injunction
25 application?

1 **A.** No, I've never spoken to him.

2 **Q.** What about Mr. Ferguson, had you spoken to Mr. Ferguson
3 about the injunction application?

4 **A.** No, I did not speak to him.

5 **Q.** Did you speak with Margo Coppus in advance of today's
6 cross-examination?

7 **A.** Yes, I spoke to her, given that she's the development
8 committee chair and development director, and we're
9 volunteers on the Elbow Park Residents Association
10 together.

11 **Q.** Okay. And when did you speak to her about the matters
12 involved in this application?

13 **A.** I'm not really clear on -- on matters. But I spoke to
14 her about the Affidavit prior to swearing it on
15 April 24th, would be my recollection.

16 **Q.** What did you discuss with Ms. Coppus?

17 **A.** Oh, I just informed her that -- that there was -- that
18 I was going to be swearing an Affidavit in regards to
19 the application that the group of residents had
20 submitted, and that I wasn't sure if she would be
21 involved as well, and just notifying her that -- what
22 was going on.

23 **Q.** Okay. When you say "group of residents had submitted,"
24 who are you referring to?

25 **A.** I'm referring to Mr. Ferguson, who made the

1 application, and I know that there are other groups of
2 residents who have the same caveat on their property.

3 Q. And do you know who those residents are?

4 A. I know some of them. I don't know all of them.

5 Q. Did you speak to any of them prior to swearing your
6 Affidavit or your cross today?

7 MR. MARBLE: Counsel, can you just clarify,
8 what do you mean "did you speak to any them"? Because
9 Ms. Virtue's answer was that she's aware of other
10 people with the caveat on their property.

11 Q. MS. REICHEL: Okay. Who are you aware of?

12 MR. MARBLE: Like, 60-some odd.

13 A. Well, I'm aware that Tom Ferguson has a caveat on his
14 property, and I know that Mr. Engbloom has one on his
15 property. And that's all actually that I recall having
16 caveats that I could say for sure, because I'm not
17 clear on exactly which homes have them and which don't
18 because some -- some homes have them and some don't
19 have them.

20 Q. How did you come to know that Mr. Engbloom had a caveat
21 on his property, ma'am?

22 A. Well, in -- when I was reading his Affidavit.

23 Q. Okay. Prior to that were you -- did you have any
24 information about Mr. Engbloom's title or property?

25 A. Well, I had received a copy of a Caveat that was

1 forwarded to me by Hugoline Morton, and I believe that
2 she got the Caveat from Mr. Engbloom.

3 **Q.** And we'll probably touch on this a bit later, but can
4 you tell me when you received a copy of this Caveat
5 forwarded by Hugoline Morton?

6 **A.** It would have been just prior to the September 22nd
7 meeting of the development committee.

8 **Q.** And can you tell me, in that email -- you said you
9 received a copy forwarded, I assume it was an email,
10 not a letter?

11 **A.** Yes.

12 **Q.** Okay. And in that email, what did Ms. Morton tell you
13 about the document she was forwarding to you?

14 **A.** I was aware that there was a group of residents that
15 were quite concerned about the Caveat, and so she
16 forwarded it to me since I didn't have a copy of it
17 myself. Did I answer your question?

18 **Q.** I was asking you -- you said she forwarded it, but what
19 did she say about it in the email when it was forwarded
20 to you?

21 **A.** I don't have the email, so I'm not clear on what she
22 said to me about that.

23 **MS. REICHELTL:** I'm going to ask for an
24 undertaking that you provide a copy of the email that
25 you received from Hugoline Morton forwarding the Caveat

1 prior to the September 22nd meeting?

2 MR. MARBLE: We'll take it under advisement.

3 UNDERTAKING NO. 1 - To provide a copy
4 of the email that Jane Virtue received
5 from Hugoline Morton forwarding the
6 Caveat prior to the September 22
7 meeting - TAKEN UNDER ADVISEMENT

8 Q. MS. REICHELTL: Did you respond to that email,
9 Ms. Virtue or provide that email to anybody else?

10 A. I recall I forwarded it to Margo Coppus. And now that
11 I'm saying this, I can't recall if Margo Coppus
12 forwarded it to me or if Hugoline forwarded it to me,
13 but I do know that we did receive a copy of that Caveat
14 just prior to the September 22nd meeting.

15 Q. When you received it, did you know where it came from,
16 ma'am?

17 A. I understood that it came from one of the homeowners
18 that has the Caveat registered on their title, and that
19 they had a copy of that from perhaps when they had
20 purchased their home. But I'm not exactly clear on the
21 details of that.

22 Q. Did you know who the homeowner was?

23 A. No.

24 MS. REICHELTL: And I'm just going to clarify my
25 undertaking, given that you're now not clear whether it

1 was Hugoline Morton or Margo Coccus that sent it, to an
2 undertaking to provide the email of which you first
3 received a copy of the Caveat, because I appreciate it
4 might be somebody different, and any subsequent emails
5 surrounding the discussion of the Caveat between
6 yourself and others?

7 MR. MARBLE: We'll take it under advisement.

8 UNDERTAKING NO. 2 - To provide the
9 email of which Jane Virtue first
10 received a copy of the Caveat, and to
11 provide any subsequent emails
12 surrounding the discussion of the
13 Caveat between herself and others -
14 TAKEN UNDER ADVISEMENT

15 Q. MS. REICHEL: Did you speak with -- are you
16 aware of the Elbow Park Residents Association caveat
17 subcommittee?

18 A. Yes, I am.

19 Q. And you're familiar with the members of that
20 subcommittee?

21 A. I am aware of Hugoline being the chairperson of that
22 committee, and I know that there are other residents
23 that are part of that committee, but I would not be
24 able to tell you exactly who they are.

25 Q. Okay. Did you have any discussions with Hugoline

1 Morton prior to swearing your Affidavit?

2 **A.** Well, because Hugoline and I work together quite
3 closely on development issues, in general I spoke to
4 her. Whether -- whether she spoke to me about the
5 specific -- my specific personal Affidavit, I don't
6 think we spoke about that. But I do recall that she
7 updated me on the fact that the application had been
8 submitted and that there was a cross-examination that
9 was going to occur, and just sort of generally the
10 process.

11 **Q.** When you say updated you on the application, you're
12 referring to this injunction application; is that
13 correct?

14 **A.** That's correct.

15 **Q.** Do you recall anything else that you discussed with
16 Hugoline about this application?

17 **A.** Not that I can recall.

18 **Q.** And you've told me that you have with you and you
19 reviewed the Tejpar Affidavit, correct?

20 **A.** Yes, I do have it here.

21 **Q.** And you've mentioned that you're aware of
22 cross-examinations. You were aware that Ms. Tejpar was
23 examined on April 26th, 2021?

24 **A.** Yes, I was aware that she was cross-examined. I don't
25 recall the date.

1 Q. Okay. And did somebody provide you with information
2 with respect to the content of Ms. Tejpar's evidence at
3 cross-examination?

4 A. I...

5 MR. MARBLE: I don't -- to the extent it's
6 helpful, counsel, unless you've seen, I don't think
7 I've seen transcripts.

8 MS. REICHEL: No, I appreciate that. That's not
9 what I asked. I asked about if someone told her about
10 the content of Ms. Tejpar's evidence at
11 cross-examination.

12 A. I don't recall that I seen anything about the
13 cross-examination. All I know is that I've seen her
14 Affidavit, and that I heard that she had been
15 cross-examined.

16 Q. But you don't recall any specifics about the
17 cross-examination or the evidence given?

18 A. No.

19 Q. Okay. And did you review the Affidavit of Mr. Schulli
20 in this matter?

21 A. Yes. That would have been in the Dropbox, and I did
22 review that last night.

23 Q. And did you speak with Mr. Schulli prior to the
24 cross-examination?

25 A. When I was preparing this morning, he was on the same

1 call as me. But we didn't discuss the matter.

2 **Q.** So outside of -- and I don't want you -- I don't need
3 you to talk about discussions you might have had with
4 Mr. Marble, but outside of this, you haven't spoken
5 with Mr. Schulli?

6 **A.** No.

7 **Q.** Thank you. Are you a part of residents in Elbow Park
8 who are supporting Mr. Ferguson's application?

9 **A.** Well, EPRA supports caveats being upheld. I wouldn't
10 classify myself as part of the group, no, because I'm
11 involved purely in my role as the president of EPRA.

12 **Q.** Have you participated in the fundraising effort by the
13 Elbow Park Residents Association in relation to the
14 injunction application?

15 **A.** Yes. Part of the role of EPRA is to support our
16 residents and assist them with communication and -- and
17 issues that involve the community as a whole. And we
18 set up a caveat fund that -- so that if people wanted
19 to donate it -- donate to it, they could do so, and it
20 would be used for educating stakeholders about caveats,
21 as well as use those funds to pay for consultants
22 and -- and lawyers, if need be.

23 **Q.** To try to enforce caveats?

24 **A.** In order to support the residents, given that EPRA has
25 no role in caveats because we're not property owners.

1 It's purely to support the residents and give them a
2 mechanism of gathering and communicating with each
3 other, given that we are an official association and
4 have the ability to do so just by the fact that we're
5 the organization that supports those residents.

6 **Q.** Well, but that includes gathering money to pay to fight
7 and try and enforce caveats, correct?

8 **A.** The caveat fund that we have right now, my recollection
9 is that none of those funds have been sent to this
10 particular case, and that the group of residents raised
11 money separately. And I'm unaware of the amount
12 because they directed that specifically to a lawyer's
13 office, and EPRA wasn't involved in that. Our caveat
14 fund at the moment still has small donations that have
15 been made, and we haven't spent any of that as yet.

16 **Q.** And you'll agree with me, Ms. Virtue, that the Tejpars
17 are a part of the community as well?

18 **A.** I would have to look at the membership to see if they
19 are members of the EPRA, but as property owners, we
20 would consider them residents, and we would facilitate
21 communication between the Tejpars and other residents,
22 absolutely.

23 **Q.** So you do agree, they are a part of the community?

24 **A.** Well, they're property owners in the community. They
25 don't reside in the community at the moment, so...

1 Q. Can you tell me when the caveat fund was started?

2 A. I don't recall the specific date, but I could go back
3 in my records to find that information out for you.

4 Q. Was it started after September 2020?

5 A. I don't recall.

6 Q. Was it started after March 2020?

7 A. I'm happy to go back to my records to -- to verify
8 that, but off the top of my head, I'm sorry I simply
9 don't recall.

10 Q. Okay. I'm going to ask for an undertaking that you do
11 so and provide that date.

12 But I'm just wondering whether or not we can talk
13 about whether you have a recollection whether it was at
14 the end of last year or at the very beginning?

15 MR. MARBLE: Counsel, I think she's answered
16 that.

17 Q. MS. REICHEL: Let me try and refresh your
18 memory. We've all lived through a pandemic. Do you
19 recall whether it was before or after the Covid
20 pandemic and the shutdown?

21 A. I'm sorry, I -- I simply don't recall, but I'm happy to
22 get information for you.

23 Q. Sure. Thank you. That's agreed.

24 UNDERTAKING NO. 3 - For Jane Virtue to
25 review her records and to advise the

1 date when the caveat fund was started

2 **Q.** MS. REICHELTL: And do you also recall whether or
3 not the caveat fund and associated fundraising started
4 after you had first received a copy of the purported
5 caveat from Ms. Coppus or Ms. Morton?

6 **A.** I don't recall. I'll have to look at the dates. When
7 I was preparing, I went back and wrote down as many
8 dates as I could in order to get my head around the
9 matter. But that was one particular question that I
10 didn't anticipate so I didn't look at the dates for
11 that, but I can certainly do so.

12 **Q.** Thank you.

13 UNDERTAKING NO. 4 - For Jane Virtue to
14 review her records and to advise
15 whether or not the caveat fund and
16 associated fundraising started after
17 she had first received a copy of the
18 purported caveat from Ms. Coppus or
19 Ms. Morton

20 **Q.** MS. REICHELTL: And you mentioned a group of
21 residents that are fundraising. Are those all
22 residents of the EPRA, the Elbow Park Residents
23 Association?

24 **MR. MARBLE:** I think you need to restate your
25 question, counsel. Like, are they members of EPRA, was

1 that your question?

2 MS. REICHEL: Yeah.

3 MR. MARBLE: Okay. You asked whether they were
4 residents of the EPRA.

5 MS. REICHEL: Oh, I apologize. I meant members.

6 **A.** Well, EPRA has 1,200 households that we're responsible
7 for, and we have a membership system that I can access.
8 Often there's two names that are reported on each
9 household, at least, and so if you are to ask me who is
10 a member and who isn't, given that each membership is
11 an annual membership and whether they're active members
12 or not, I would have to go to the membership system and
13 check that, which I'm happy to do so if you would like
14 me to.

15 **Q.** We'll consider whether or not we need to get into that.
16 Can you tell me, though, who operates the caveat fund
17 as part of the -- and when I say "EPRA," I should
18 clarify I mean the Elbow Park Residents Association,
19 and I assume you also mean that?

20 **A.** Yes. EPRA refers to Elbow Park Residents Association.

21 **Q.** Who operates the caveat fund?

22 MR. MARBLE: Do you mean the one within the
23 EPRA?

24 MS. REICHEL: Yes.

25 **A.** The EPRA caveat fund is the responsibility of the EPRA

1 board, which is a volunteer board with about 12
2 members. And Margo Coppus, who is the director of
3 development, would have to make a request to the board
4 to release any of those funds, and then at the board
5 level, the board would vote to determine where those
6 funds get directed.

7 **Q.** MS. REICHEL: Sorry, maybe my question wasn't
8 quite as detailed as that, but thank you for that.

9 I was more wondering -- let me ask it this way:
10 Who is in charge of the EPRA caveat subcommittee?

11 **A.** Well, the subcommittee is a subcommittee of the
12 development committee, which is a committee of the EPRA
13 board, and the subcommittee chairperson of the caveat
14 subcommittee is Hugoline Morton. However, Hugoline
15 would need to -- the EPRA caveat fund is not within her
16 purview because it is under the development committee
17 and the EPRA, and she wouldn't be able to access those
18 funds without going through those -- that process.

19 **Q.** Do you know when this Caveat subcommittee was struck?

20 **A.** I would have to go back to my records for the exact
21 date as well.

22 **Q.** Do you know an approximate date?

23 **A.** Well, I hate to make guesses. I would rather be able
24 to provide you with accurate information, so my
25 preference would be to have time to go back to my

1 records to give you the correct information.

2 Q. If I suggested to you November 7th, 2020, would that
3 assist with your recollection at all?

4 A. No. I'm looking at my dates that I have written down
5 in order to facilitate my recollection, and I don't
6 have that date written down, and it's not twiggng my
7 memory. My apologies.

8 Q. No, no problem at all. I'm just trying to be helpful
9 and avoid some work.

10 MS. REICHEL: But I'll ask for an undertaking
11 that you review your records and advise of the date of
12 which the Elbow Park Residents Association caveat
13 subcommittee was -- I said struck, but Mr. Marble
14 raised his eyebrows when I said that, but I meant
15 commenced or began, something along those lines.

16 MR. MARBLE: Under advisement.

17 Are my eyebrows that obvious?

18 MS. REICHEL: Well, I thought you thought I was
19 meaning disbanded, but what I was actually meaning was
20 the beginning.

21 MR. MARBLE: Counsel, that makes me very
22 self-conscious.

23 MS. REICHEL: Curtis, I've known you for too
24 long, I know your eyebrows, so there you go.

25 UNDERTAKING NO. 5 - For Jane Virtue to

1 review her records and to advise of the
2 date of which the Elbow Park Residents
3 Association caveat subcommittee
4 commenced or began -

5 TAKEN UNDER ADVISEMENT

6 **Q.** MS. REICHEL: Going now, ma'am, at paragraph 1
7 of your Affidavit, you state you are a resident of
8 Elbow Park, correct?

9 **A.** Yes, I am.

10 **Q.** And where in Elbow Park do you reside?

11 **A.** I'm in along 7th Street.

12 **Q.** What avenue?

13 **A.** 34th Avenue.

14 **Q.** And how long have you resided in Elbow Park?

15 **A.** 20-plus years.

16 **Q.** And for those 20-plus years, has that been at the same
17 residence at 7th Street and 34th Ave.?

18 **A.** Yes, it has.

19 **Q.** Does your Elbow Park residence have any instruments or
20 restrictive covenants registered on title?

21 **A.** Given that we purchased this property 20-plus years
22 ago, I don't recall if we have any restrictive
23 covenants registered on our title. We also lost our
24 documents in the flood, so it's not as easy to gather
25 that information without having to go to Land Titles.

1 Q. Fair enough. I'm sorry to hear about the flood. That
2 was certainly tragic for many people.

3 I'm just wondering whether or not you have any
4 recollection of there being restrictions on your
5 property as it relates to matters similar to what we're
6 seeing in this action, restrictive covenants by CP Rail
7 or others?

8 A. I don't recall. And I had the benefit of working with
9 an architect that was quite up-to-date on what the
10 residents of Elbow Park, based on the Charter that we
11 have -- or had, and so we complied with -- with
12 whatever restrictions there are on it, from what I
13 recall.

14 Q. But you, as you sit here today, don't actually know if
15 there are any on your piece of property?

16 A. I don't recall. It's over 20 years ago.

17 Q. And you are the -- just so we're clear, we've been
18 talking a lot about the EPRA, and you are in fact the
19 president of that organization, correct, ma'am?

20 A. Yes. I volunteered to be the president in June of
21 2018.

22 Q. And thank you for attending today. I appreciate it's a
23 volunteer position. I too volunteer on some boards,
24 and spend a lot of my time dealing with it, so I do
25 appreciate your time this afternoon.

1 Can you tell me what the purpose of the EPRA is?

2 We've talked about caveats, but generally.

3 **A.** The role of the EPRA is to provide sport facilities for
4 the residents of Elbow Park. We are -- have bylaws
5 under the Societies Act, and the objects of that bylaw
6 stipulate that the purpose is to provide residents with
7 an association so that they can connect with each other
8 socially and through sporting activities. We have a
9 community hall that we're responsible for maintaining.
10 As well we have a sublease with the City, and we are
11 responsible for the field and the tennis courts and
12 basketball courts that we manage as -- as volunteers.

13 **Q.** Did you say sport facilities or support facilities?
14 I'm sorry, I'm not sure which one.

15 **A.** I said sports.

16 **Q.** Oh, okay. Thank you. And when did you become the
17 president of the EPRA?

18 **A.** In June of 2018.

19 **Q.** And prior to becoming president, you were involved as
20 the social director and the director of landscaping?

21 **A.** That was quite a few years. I haven't been active on
22 the board for quite a few years before becoming
23 president. Prior to that, I held a position on the
24 board. I'd have to check on the exact dates, but I'm
25 going to -- I would say that it was probably 10-plus

1 years before.

2 **Q.** And what does your role as the president of EPRA
3 entail? Other than I know it's volunteer, what does it
4 entail otherwise?

5 **A.** The president of the EPRA is responsible for chairing
6 the board meetings that we have monthly, and we're the
7 spokesperson -- designated spokesperson for EPRA. And
8 we -- my -- in my term, what I've done is designated
9 portfolios on the board so that volunteers have
10 specific areas that they're involved in. And so it's
11 really managing the business of EPRA.

12 **Q.** And do you -- does the president approve committees and
13 subcommittees?

14 **A.** No. That's something that the entire board is needed
15 to vote on.

16 **Q.** And what about communications from the EPRA, do you
17 approve those?

18 **A.** Well, the -- I don't approve anything, because I'm one
19 person, and I would need to have the quorum of EPRA.
20 And so I take matters to the board, and we vote on
21 those, and based on that, we would submit communication
22 from EPRA.

23 With the development committee, meetings are held
24 with the development committee, and they are -- report
25 to EPRA, and -- and are just -- are sort of a

1 subcommittee, I guess, of EPRA.

2 **Q.** So for communications that are sent, for example, in
3 relation to subdivision applications, are those
4 approved by you or by the larger board?

5 **A.** No, I don't approve anything without the board's
6 knowledge or approval.

7 **Q.** So in this -- and we're going to get to them, and I
8 believe one is attached to your Affidavit at Exhibit A,
9 it is a letter to the City of Calgary on behalf of the
10 Elbow Park Residents Association signed on your -- in
11 your name. Was that approved by the whole board?

12 **A.** Yes, it was.

13 **Q.** And at paragraph 3 of your Affidavit, you note that
14 EPRA doesn't have standing to approve developments,
15 correct?

16 **A.** Correct.

17 **Q.** But you'll agree with me that the EPRA does take
18 involvement in the development that occurs at the --
19 occurs in Elbow Park, correct?

20 MR. MARBLE: Can you maybe rephrase that,
21 counsel. You said you'll agree with me that the EPRA
22 takes involvement; I'm not sure it's clear what you
23 mean by that.

24 **Q.** MS. REICHEL: Well, does the EPRA take an active
25 role in development that occurs in Elbow Park?

1 **A.** The role of EPRA is to facilitate communication between
2 residents in regards to development, and we disseminate
3 information, and we facilitate communication through
4 the mechanisms that we have because of our mailing
5 list, and we communicate through, you know, the news
6 letter in regards to some of the development policies
7 that the City has, you know, globally. We -- we
8 communicate to residents about those. We did a survey
9 to determine the viewpoints of our residents, and based
10 on those viewpoints, we represent them by submitting
11 letters in regard to development issues.

12 **Q.** You take the view of 1,400 residents before you submit
13 responses in relation to development issues?

14 **A.** No. We have in the past completed surveys of our
15 residents in order to understand sort of where the
16 majority stand on certain issues. And when it comes to
17 sending in a letter to the City on development
18 applications, we facilitate communication amongst
19 residents through the development committee review or
20 other mechanisms in order to understand if they have
21 issue with a particular application, and based on the
22 comments that we hear, we send a letter to the City
23 reflecting those.

24 MS. REICHEL: Mr. Marble, I appreciate it's
25 about time for kids to get home from school, and do you

1 need to take a short break? Or is everything fine?

2 MR. MARBLE: No, it's fine. My office door was
3 just banging because of the wind.

4 MS. REICHEL: Okay, no problem.

5 MR. MARBLE: I just reached over and latched
6 it.

7 MS. REICHEL: We don't need you to blow away.

8 Q. MS. REICHEL: So the EPRA has a development
9 committee, right? We've spoken about that.

10 A. Yes.

11 Q. And the development committee reviews development
12 permit applications for Elbow Park as submitted by
13 residents to the City?

14 A. Well, the development permits aren't always submitted
15 by residents. They're submitted -- well, they're
16 submitted by whomever is wanting to develop the
17 properties, so that could be residents that already
18 live here, or it could be developers or people that are
19 wanting to move into the neighbourhood.

20 Q. Okay.

21 MR. MARBLE: Sorry, counsel, maybe I missed
22 this, and if I did I apologize. But the EPRA doesn't
23 issue approval for development permits. That's done by
24 the City.

25 MS. REICHEL: It's not what I -- my question was

1 does it review development permits.

2 MR. MARBLE: I missed that.

3 MS. REICHEL: We already confirmed that they
4 can't approve developments. That was three questions
5 ago.

6 Q. MS. REICHEL: So the development committee does
7 review development permit applications for the Elbow
8 Park area, correct?

9 A. Yes.

10 Q. And it provides feedback to the City on these
11 applications, correct?

12 A. We have the opportunity to provide comments to the
13 City. There's no obligation on our part. I know in
14 the past if there has been no indication from residents
15 that anyone opposes, we often will send a letter that
16 says "no comment" or check the box. I'm not exactly
17 sure on the exact format, but we would, you know, check
18 a box that says that we don't have a comment in that
19 particular regard. So we would -- we comment based
20 on -- on what residents are -- have indicated to us.

21 Q. Does the EPRA respond in some fashion to every single
22 development application received?

23 A. There's two different types of development permit
24 applications, and then there's the subdivision
25 applications. There's contextual and discretionary

1 DPs, and we receive those by email only if they are
2 discretionary. But the contextual DPs, we would have
3 to learn about them through residents or look on the
4 City of Calgary map, because those ones don't get sent
5 to us by email.

6 **Q.** Okay. Of every development application that the EPRA
7 becomes aware of, do they reply, whether it's no
8 comment or substantive comment?

9 **A.** Of the applications that come in front of the
10 development committee, a letter is usually sent. That
11 would be the normal practice, would be to send a letter
12 with comments and reflecting generally what the
13 residents' concerns are.

14 **Q.** And with respect to, you mentioned, subdivision
15 applications, does the EPRA also comment on subdivision
16 applications received by the City as it relates to
17 parcels of land in Elbow Park?

18 **A.** My understanding is that we would also receive from the
19 City an email indicating that the subdivision
20 application had been submitted, and we would have a
21 development committee meeting. And from what I
22 understand, the development director will invite
23 different residents, depending on the location of the
24 subject property, and those residents can choose to
25 attend the meeting, and based on that, a letter would

1 be sent.

2 **Q.** You will agree with me, ma'am, that the development
3 committee has an obligation to provide oversight in a
4 fair, responsive, transparent, and consistent manner?

5 **A.** Do you mind repeating that question for me, please?

6 **Q.** For sure. You would agree with me that the EPRA
7 development committee has an obligation to provide
8 oversight in a fair, responsive, transparent, and
9 consistent manner?

10 MR. MARBLE: Who are they providing oversight
11 to?

12 MS. REICHEL: Maybe we can pull out the Elbow
13 Park Residents Association website because this is a
14 direct quote from there.

15 MR. MARBLE: Yeah, but you --

16 MS. REICHEL: Well, I'm going to refer to that.
17 I didn't draft it, Mr. Marble. It's part of her --

18 MR. MARBLE: In fairness to the witness, put it
19 to her if you want to ask her about it.

20 **Q.** MS. REICHEL: Just bear with me. Do you
21 recognize that commentary from the website, ma'am?

22 **A.** I think that you have to understand that EPRA is a
23 volunteer-run organization, and volunteers come and go
24 depending on their commitment levels. And the -- in
25 the past, depending on who the volunteer is, documents

1 are written with the intention to give direction to the
2 other volunteers, and the intent behind that type of
3 document would be in hopes that there would be
4 transparency.

5 And I can't remember the other wording, but the
6 fact is that it's a volunteer-run organization, and to
7 the extent of a volunteer-run organization, of course
8 the volunteers would attempt to make every effort to be
9 transparent and fair and honest. Given that this
10 particular development came through in the summer
11 months when EPRA is on a break for two months and
12 residents are often away on vacation, it can complicate
13 matters.

14 **Q.** Okay. So let me put it to you this way, then: You'll
15 agree with me that the development committee should --
16 you talked about it should be fair and transparent and
17 consistent to everyone, not just to a certain
18 interested group but to all members of the community;
19 wouldn't you agree?

20 **A.** Well, our position at EPRA is that not everybody is
21 going to agree on a particular issue, and I would guess
22 that in most democrat organizations, we take votes, and
23 we would represent the majority viewpoint in matters.
24 And when neighbours and residents, you know, are the
25 people involved, that can sometimes become difficult,

1 but volunteers do the best job that they can in order
2 to represent the viewpoints of the majority of
3 residents.

4 **Q.** Did the Elbow Park Residents Association have a
5 consistent view on subdivisions within Elbow Park?

6 **A.** Well, given that Elbow Park is a community that began
7 in 1930, my guess is that it wouldn't be consistent
8 because we evolve over time and policies evolve. And
9 depending on what's happening with the City bylaw and
10 changes within the land-use bylaw, the residents will
11 be more engaged than in other times.

12 **Q.** Is the current position of the EPRA in opposition to
13 subdivision?

14 **A.** What we heard from the survey was that the majority of
15 residents are in opposition of subdivisions, depending
16 on the width, but then there are other issues with --
17 that come into play. So residents have indicated to
18 EPRA that they would like to maintain the lot sizes
19 that we currently have, and that if a subdivision does
20 go through, that those residents that live and are most
21 affected by that would be able to have a say. Our
22 position is that we uphold caveats and believe that
23 that is a very good mechanism to maintain the character
24 of our neighbourhood. And so if a caveat says that
25 subdivisions -- that only one house is permitted on a

1 property, then we would uphold that.

2 **Q.** Well, but actually at paragraph 3 of your Affidavit,
3 ma'am, you state your understanding that only
4 individual owners can enforce restrictive covenants.
5 The EPRA can't uphold caveats, can it?

6 **A.** I'm not suggesting that we are upholding caveats.
7 Obviously the EPRA has no standing to approve
8 developments or to enforce caveats.

9 **Q.** Or to approve subdivision, correct?

10 **A.** Or to approve anything in regard to development. The
11 City is the approval process. Our role is simply to
12 facilitate communication between residents and to
13 provide information when we can and disseminate
14 information and to educate and provide letters to the
15 City that indicates what the general consensus is of
16 the residents who attended our committee meeting.

17 **Q.** Now just a minute ago, ma'am, you talked about, you
18 know, the view of -- the current view of the EPRA on
19 subdivision and mentioned the words "depending on the
20 width" --

21 **MR. MARBLE:** Forgive me, Renee, my sound
22 glitched out there. Can you repeat the question?

23 **MS. REICHEL:** Likely not because it's 3:15 on a
24 Friday, but I'll do my best.

25 **MR. MARBLE:** Give it a college try, if you

1 would.

2 **Q.** MS. REICHEL: Previously, just a few minutes
3 ago, you were talking about the current EPRA view on
4 subdivision, and one of the comments you made was
5 "depending on the width" -- those were the words you
6 said -- and I'm assuming you mean the width of the lot
7 when you say that; is that correct?

8 **A.** When I was referring to width of the lot, I was --

9 **Q.** Let me stop you there. When you said "depending on the
10 width," were you referring to the width of a lot? Just
11 so we can clarify that.

12 **A.** Yes, I would be referring to the width of the lot.

13 **Q.** Okay. My next question is, were you involved in the
14 preparation of the draft 2021 Charter for the EPRA?

15 **A.** Peripherally, yes. That was a development committee
16 project that was taken on, and I was involved by
17 reviewing the document and providing my suggestions
18 after they --

19 **Q.** And --

20 **A.** -- drafted it.

21 **Q.** Sorry, I didn't mean to cut you off.

22 And are you aware that that Charter notes that
23 40 feet is the appropriate width for a lot in Elbow
24 Park?

25 **A.** Well, that's the width that the bylaw states is the

1 minimum width.

2 **Q.** Does the Charter state that as well?

3 **A.** I would have to look at the development guidelines, but
4 my recollection is that there are also clauses within
5 the development document that indicates that
6 subdivisions, if they are approved by the City, the
7 preference would be for those to be greater than
8 40 feet because that is what the bylaw stipulates at
9 the moment.

10 **Q.** Thank you. Now, at paragraph 4 of your Affidavit, you
11 state that you spoke to Ms. Tejpar on the request of
12 Mr. Tom O'Leary; do you see that?

13 **A.** Yes.

14 **Q.** And in this paragraph you're referring to a call that
15 took place between you and the Tejpars on January 8th,
16 2020, correct?

17 **A.** Correct.

18 **Q.** And if I refer to that as "the January call," you'll
19 understand what I'm referring to?

20 **A.** Yes.

21 **Q.** In your Affidavit you state that Ms. Tejpar is a
22 colleague of Mr. O'Leary?

23 **A.** Mr. O'Leary asked me to speak to a colleague of his, so
24 I refer to them as "colleague." I'm not sure what
25 their relationship is with Mr. O'Leary.

1 Q. Okay. And how did Mr. O'Leary request that you speak
2 to Ms. Tejpar? Was that in an Affidavit? Or did you
3 receive a phone call? Or, sorry, an email. Sorry,
4 this is what happens on a Friday afternoon. An email
5 or a phone call?

6 A. I -- I recall that I received -- I received an email
7 from Mr. O'Leary asking if I would -- or did it --
8 pardon me. It was either a phone call or an email that
9 Mr. O'Leary asked me to speak to the -- the Tejpars.

10 Q. And as you sit here today, you don't actually recall
11 which one it was?

12 A. No, I don't.

13 Q. And if I suggested to you that Mr. O'Leary and
14 Ms. Tejpar had in fact only met on one occasion at a
15 hockey game, would that accord with your understanding
16 of their relationship?

17 A. My recollection is that Mr. O'Leary said, Would you --
18 would you be interested in speaking to some people who
19 are interested in moving to the neighbourhood; they are
20 colleagues of mine, is my recollection.

21 Q. And do you know when this request from Mr. O'Leary came
22 in -- or came to you?

23 A. I think it was a couple of days before the
24 conversation, so we spoke on January 8th, so my guess
25 is it was a few days before that.

1 Q. And other than saying -- I guess why would he be asking
2 you if you would be interested in speaking to the
3 Tejpars? Or do you know?

4 A. I don't know if the Tejpars asked O'Leary to put them
5 in touch. I know at that time that Margo Coppus was
6 out of the country. She would most likely be the
7 person that would generally speak to people about
8 development issues. Given she was out of the country,
9 I agreed that I would take that call.

10 Q. Do you know Mr. O'Leary?

11 A. Yeah. Mr. O'Leary is a board member of the EPRA.

12 Q. And so Mr. O'Leary presumably would know about your
13 involvement as president and Margo's involvement with
14 the development committee?

15 A. I should hope so, but yes.

16 Q. Fair enough. And what did you tell Mr. -- you agreed
17 you would take the call because Margo was out of the
18 country, and then what happened next?

19 A. I set up a call, letting the Tejpars know when I would
20 be available, and we set one up, and we had a call on
21 January 8th for about an hour.

22 Q. Okay. If you turn to Exhibit D of Ms. Tejpar's
23 Affidavit, let me know when you are there.

24 A. You know what, I'm not sure I have the exhibits. I
25 think I just have the main copy.

1 MR. MARBLE: They are in the -- can we go off
2 for a minute?

3 MS. REICHEL: Sure.

4 (DISCUSSION OFF THE RECORD)

5 (ADJOURNMENT)

6 Q. MS. REICHEL: So up on the screen we've got -- I
7 hope you can see it -- Exhibit D to the Affidavit of
8 Ms. Tejpar.

9 A. Yes.

10 Q. And that's an email from Ms. Tejpar to you, copying
11 Mr. O'Leary on January 2nd, 2020, correct?

12 A. Correct.

13 Q. And this email, in fairness, is sent to an email
14 address president@elbowpark.com, and that's an email
15 address you operate, correct?

16 A. Correct.

17 Q. And you in fact received this email?

18 A. Yes, I did.

19 Q. And in this email, Ms. Tejpar has advised you that she
20 received your contact information from Mr. O'Leary, and
21 that she wished to speak to you about building a home
22 in Elbow Park, correct?

23 A. Correct.

24 Q. And that was on January 2nd where she contacted you
25 directly to request to speak to you. Had you already

1 spoken to Mr. O'Leary at this time?

2 **A.** I recall that Mr. O'Leary, either through a phone call
3 or email, informed me that there was a colleague of his
4 that had requested to speak to someone in regard to
5 development because they were interested in moving to
6 the neighbourhood.

7 **Q.** And I guess my point was, you knew from Mr. O'Leary
8 that there was somebody that might be contacting you?

9 **A.** Yes. This wasn't a surprise, this email. I was
10 expecting them to contact me.

11 **Q.** Right, that was my point. Now, if we turn to Exhibit E
12 to Ms. Tejpar's Affidavit, this is an email from Margo
13 Coppus on January 6, 2020, that's to Zahra, copying the
14 email, the president at Elbow Park; do you see that
15 email?

16 **A.** Yes.

17 **Q.** And do you recall receiving this email, ma'am?

18 **A.** Yes.

19 **Q.** And Ms. Coppus, as we spoke about before, is the chair
20 of the Elbow Park development committee, correct?

21 **A.** Correct.

22 **Q.** And do you know as the chair what her responsibilities
23 are in that role?

24 **A.** Well, I've explained that the development committee is
25 the committee that offers residents an opportunity to

1 get together to discuss development permits, and her
2 role is the chairperson of this committee.

3 **Q.** Okay. What is the duties and responsibility of that
4 role, if you know?

5 **A.** Well, once again, it's a volunteer committee, and
6 the -- the role of that committee is to receive from
7 the City an email indicating that there is an
8 application that has been submitted. And depending on
9 the address of that application, Margo would go door to
10 door providing leaflets indicating that a meeting will
11 be held to discuss the development permit, and then she
12 would book the meeting and chair that meeting.

13 **Q.** And that happens after the application is submitted to
14 the City, and then Margo convenes a meeting to discuss
15 it, correct?

16 **A.** Well, the development committee can be requested to
17 meet at any time, but routinely the normal practice is
18 that -- that meetings are held when an application
19 comes through. But often out of courtesy, I know that
20 Margo, as the development director, has met with
21 individual residents in order to -- she'll go to, you
22 know, look at the fence or look at the -- you know, the
23 property and assist them in that way. So often
24 residents will ask to -- for the development committee
25 to meet on their behalf to facilitate. It doesn't

1 necessarily have to be based on an application.

2 **Q.** That type of a facilitation and Margo going to look at
3 a fence is something that -- something similar to the
4 call you subsequently had with the Tejpars, right, to
5 discuss their development prior to them purchasing the
6 property, correct?

7 **A.** It would be to, you know, gather more information
8 and -- and learn more about what the resident's
9 concerns were, and so, yes, I guess that's my answer.

10 **Q.** Is it part of what the Elbow Park development committee
11 and what in fact you were doing on that call with the
12 Tejpars was to provide some information and it sounds
13 like a sounding board for a potential development?

14 **A.** Well, I looked at that conversation as a friendly
15 conversation that I was having because I was requested
16 by one -- another board member to do so. And given
17 that Margo was out of the country, I wanted to assist
18 somebody that is wanting to come into the community and
19 make them feel welcome and try to provide as much
20 information about our processes as I can. And so it
21 was, you know, in the hopes that I could provide some
22 information, yes.

23 **Q.** Because Ms. -- Ms. Tejpar's email -- and just so
24 there's no confusion, Ms. Tejpar's maiden name is in
25 the email, and her married name is Tejpar. But it

1 says: (as read)

2 We're looking to potentially build a
3 family home in Elbow Park, and we were
4 hoping to run a few questions by you
5 about zoning.

6 So you understood the whole purpose of this call was so
7 that they could ask some questions about zoning in Elbow
8 Park, correct?

9 MR. MARBLE: Just for the record, you're
10 looking at Exhibit E still?

11 MS. REICHEL: Yes. It's the -- it's the email
12 at the bottom which is Exhibit D.

13 MR. MARBLE: D, thank you.

14 **A.** B as in Bob? Sorry.

15 **Q.** MS. REICHEL: So Exhibit D is just Zahra's
16 email. Exhibit E is the chain, so it includes the
17 response. So let's look at E for sake of reference.

18 So you see in the second paragraph, it says:
19 (as read)

20 I'm wondering if you have a few minutes
21 to chat sometime in the next few days?
22 My husband and I are looking to
23 potentially build a family home in Elbow
24 Park, and we were hoping to run a few
25 questions by you about zoning. We are

1 still in the very early stages of
2 considering this but trying to do our
3 research! We have just spoken to Tom,
4 and he suggested we reach out to you.

5 Do you see that?

6 **A.** I do see that, yes.

7 **Q.** So you understood the reason why Ms. Tejpar was
8 reaching out to you was as your role as president of
9 the development -- of the EPRA to discuss a potential
10 development in Elbow Park and zoning related to that?

11 **A.** Yes.

12 **Q.** Okay. And if we go to Ms. Coppus's email which is at
13 the top of that chain where she replies back and says:
14 (as read)

15 Jane is quite familiar with the Elbow
16 Park development, and I'll leave it to
17 you to give her a call while I'm away.

18 And so you had agreed to have that call with the Tejpars
19 to address their questions, correct?

20 **A.** Correct.

21 **Q.** And then following that, we see: (as read)

22 Once I'm back, we can invite you to a
23 development permit review meeting with
24 the committee to present your
25 plan/ideas. At that time we can give

1 you some feedback.

2 Do you see that?

3 **A.** I do see that.

4 **Q.** So you agree with me that Ms. Coppus was suggesting
5 that at some time in the future there would be a
6 development permit review meeting; do you agree?

7 **A.** I see that that's what Margo said in her email, yes.

8 **Q.** Did you talk to Ms. Coppus about the development permit
9 review meeting for the Tejpars and when that would
10 happen?

11 **A.** At this point it's complicated, because there are --
12 there's the subdivision committee meeting, and then
13 there's the development permit review meeting, and I'm
14 trying to get my head around this. Is this -- is this
15 before -- yeah, this is before they purchased the
16 property, and this is in regard to the call that I'm
17 going to have with them on January 8th.

18 And so once again, residents can ask for the
19 development committee to meet if they want some
20 communication facilitation. And what the normal
21 practice is is as soon as the development director
22 receives the application for either a subdivision or a
23 DP, then she would call a meeting. And so my -- I
24 suspect that she is saying, you know, as a -- as a
25 reminder that is the process, and, you know, when we

1 get the application, that you'll -- you'll have an
2 opportunity at that time to come and meet with us.
3 But, you know, it's -- it's not the only process
4 available to them, to meet with the development
5 committee.

6 **Q.** You'll agree with me, Ms. Virtue, at this time they're
7 not residents, correct?

8 **A.** No, they haven't purchased their property at this
9 point.

10 **Q.** And there's no application for a subdivision at this
11 point, correct?

12 **A.** Correct.

13 **Q.** And there is no development permit application that's
14 been filed at this point?

15 **A.** Not yet, because they are attempting to still purchase
16 their property at that point. I think that soon
17 after -- actually, I think they had --

18 **Q.** My question was quite clear -- or quite simple. There
19 is no development permit application at this point,
20 January 6th, 2020; agreed?

21 **A.** Agreed.

22 **Q.** Just to refresh your memory, if we go to Exhibit H of
23 Ms. Tejpar's Affidavit, it's an email from yourself
24 from a different email account, janevirtue@icloud.com.
25 That's your email account, ma'am?

1 **A.** Yes.

2 **Q.** It's dated January 7th at 5:31 p.m.

3 **MR. MARBLE:** Counsel, if you can wait for the
4 screen to catch up, please.

5 **MS. REICHEL:** I will, yeah.

6 **Q.** **MS. REICHEL:** Do you see that email, ma'am?

7 **A.** Yes.

8 **Q.** And that's an email account that you operate,
9 janevirtue@icloud.com?

10 **A.** Yes.

11 **Q.** And that is the email in which you set up the call
12 January 8th to discuss the questions that the Tejpars
13 had about the development that they were considering in
14 Elbow Park, correct?

15 **A.** Correct.

16 **Q.** And you in fact spoke with the Tejpars on January 8th,
17 2020, for approximately one hour, correct?

18 **A.** Correct.

19 **Q.** And during that call, the January call, you advised the
20 Tejpars that you had also moved to Elbow Park when you
21 had a young family, correct?

22 **A.** I may have shared that information with them, because
23 that is correct. I don't recall saying that.

24 **Q.** Okay. And during the January call, you advised the
25 Tejpars that you thought the lot of the subject

1 property was great and really nice, correct?

2 **A.** No, I did not say that.

3 **Q.** And the focus of the January call was for the Tejpars
4 to introduce themselves and discuss their intentions
5 for the subject property, correct?

6 **A.** Yes.

7 **Q.** And the Tejpars told you that they planned to subdivide
8 the subject property, sell the westerly lot, and build
9 a single-family home on the easterly corner lot?

10 **A.** My recollection of the call is they -- as you know from
11 me not recalling whether Mr. Tejpar was on the call,
12 and my recollection is that they told me that they were
13 considering purchasing a property that was 100 feet
14 wide, and that they were considering subdividing that
15 property.

16 **Q.** Do you recall them telling you the proposed size of the
17 lot during the January call?

18 **A.** No, I don't.

19 **Q.** If I tell --

20 **A.** My recollection is that it was a 100 foot lot.

21 **Q.** And do you recall them telling you that the proposed
22 subdivision lots would have frontages of 50 to 60 feet?

23 **A.** I don't recall that.

24 **Q.** Do you recall saying that would be perfect?

25 **A.** Absolutely not. I would never say that.

1 Q. Do you have any notes of this call, ma'am?

2 A. No, I don't.

3 Q. Subsequent to the call, did you send an email to Margo
4 or anybody else at the EPRA with respect to your call
5 with the Tejpars?

6 A. I recall I sent an email to Margo updating her on the
7 call, and I recall saying that at this moment, it
8 doesn't raise any red flags for me or something to that
9 effect.

10 MS. REICHELTL: Okay. I'm going to ask for an
11 undertaking that you produce a copy of that email?

12 MR. MARBLE: We'll take it under advisement.

13 UNDERTAKING NO. 6 - For Jane Virtue to
14 produce the email that she sent to
15 Margo Coppus or anybody else at the
16 EPRA with respect to her phone call
17 with the Tejpars -

18 TAKEN UNDER ADVISEMENT

19 Q. MS. REICHELTL: And do you recall the Tejpars
20 asking you if the size of the proposed two lots after
21 the subdivision would be an issue, in your opinion,
22 obviously?

23 A. Well, what I told the Tejpars during that call was that
24 it's very unpredictable whether there would be
25 opposition to a subdivision, and it really depends on

1 the views of the residents that live nearby. And
2 that -- that the 100 foot lot is sort of, you know,
3 favourable because there may be less opposition for a
4 lot of that size; however, it's imperative for them to
5 check with the residents because we never know what the
6 viewpoints of residents are until they're aware of the
7 subdivision. And I recommended that she go and speak
8 to those residents in order to determine what their
9 viewpoints would be.

10 **Q.** I'm going to suggest to you that you didn't raise
11 anything about the residents at that time; isn't that
12 correct, ma'am? I appreciate it was 14 months ago.
13 I'm going -- I'm going to suggest that you never
14 suggested a discussion with the residents prior to a
15 development committee meeting?

16 **A.** What I would have as a pat answer to anybody that asked
17 me about developing in Elbow Park would be that the
18 best approach is to speak to the residents directly and
19 ensure that you try to contact each one of them by
20 knocking on their doors; and that that's really the
21 only way that we can determine what the viewpoints will
22 be and whether there will be opposition or not, and
23 that's extremely unpredictable to know, and that there
24 needs to be communication with the residents in order
25 to determine that.

1 Q. You'll agree with me your discussions with the Tejpars
2 was about lot sizes that are appropriate for the Elbow
3 Park, correct?

4 A. My conversation with the Tejpars was to provide them
5 with some information about how the development process
6 generally occurs in Elbow Park. And I informed them of
7 the fact that EPRA has a development committee that is
8 available to them, that facilitates discussions with
9 residents, and that the normal practice is for people
10 who are coming into the neighbourhood to speak to
11 residents. And I recall also saying that it's really
12 important because many residents are also very
13 concerned about trees, and the only way that you can
14 figure that out is to go door to door and speak to each
15 one of them.

16 Q. You state in your Affidavit that: (as read)

17 The Tejpars did not tell me during the
18 conversation they were investigating a
19 Caveat on the subject property.

20 Do you see that?

21 A. Yes.

22 Q. So you'll agree with me there was no discussion about a
23 caveat or of that nature on your telephone call,
24 correct?

25 A. No, the Tejpars never asked me any questions about a

1 caveat during that entire conversation.

2 **Q.** Right. So I need you to listen to my question so that
3 we can try and get through this quicker.

4 So you'll agree with me that there was no
5 discussion about any caveats during that January call,
6 correct?

7 **A.** We didn't discuss caveats at all.

8 **Q.** Right. So you've said a couple times now that the
9 Tejpars didn't ask you, and likewise, you didn't
10 volunteer any information about caveats on that call,
11 did you?

12 **A.** Well, the EPRA role is --

13 **Q.** Ma'am, we're going to be here for a really long time if
14 you don't listen to my questions and answer it. I
15 said --

16 MR. MARBLE: You haven't let her answer your
17 question yet, so I don't know how you can possibly --

18 MS. REICHEL: She's going to EPRA role.

19 **Q.** MS. REICHEL: So let's -- I asked if you raised
20 the issue of caveats on the January call?

21 **A.** Well, there was no reason for me to raise the issue of
22 caveats because the Tejpars gave me no indication that
23 they had any questions about a caveat, that they knew
24 that there was a caveat on the property. And they gave
25 me no indication -- I did not know at that point

1 exactly where the property was even located, and I
2 would not take it upon myself to ever know whether a
3 property has a caveat on it or not. That's -- caveats
4 are registered on title, and it's the property owner's
5 responsibility to -- to uphold those caveats, and EPRA
6 is not involved in that because it's personal property.
7 So I leave that up to individual residents to discuss
8 caveat issues, because that's just not within our
9 purview.

10 **Q.** So, again, you'll agree with me that you did not raise
11 the prospect of a caveat on the property at issue with
12 the Tejpars in the January call, correct?

13 **A.** I don't -- I didn't raise that because that's not
14 within my role to -- to raise that.

15 **Q.** So you did not raise a caveat --

16 **MR. MARBLE:** Sorry, it's been asked and
17 answered three times now.

18 **MS. REICHEL:** Right. If she wanted to answer it
19 without -- without quibbling, I'd be happy to move on.

20 **MR. MARBLE:** As you know, the witness is
21 allowed to explain their answer, and she's done that,
22 and she's given you a clear answer.

23 **OBJECTION TAKEN to answering the question:** So you did not
24 raise a caveat --

25 **Q.** **MS. REICHEL:** At the time of the January call,

1 Ms. Virtue, were you aware of the purported caveat
2 that's at issue in this application?

3 **A.** Well, like I said, I didn't even realize which property
4 they were speaking of. All I knew of the property was
5 that it was somewhere up above my house on the hill.
6 So there would be no way that I would have that
7 information. Now, if the Tejpars had asked me about a
8 caveat, then I would have been able to say, Let me go
9 and research that for you. I have access to residents
10 and can look that up and get back to you. But at no
11 time was I asked anything about a caveat. So, no, that
12 didn't come up in the conversation.

13 **Q.** On January 8th, 2020, were you aware of the Caveat
14 that's at issue in this application?

15 **A.** I don't know individual -- what -- which properties in
16 Elbow Park had individual caveats. There's -- from my
17 understanding, there's three different kind -- types of
18 caveat. They're scattered throughout the
19 neighbourhood. And it's not my responsibility in my
20 role given that those caveats are on personal property,
21 and it's up to the homeowners to uphold those. So I
22 don't take it upon myself to know each individual
23 property and whether a caveat is on a personal property
24 title.

25 **Q.** On January 8th, 2020, were you aware that the property

1 that the Tejpars were planning on buying had a caveat
2 on title?

3 **A.** Well, given that I wasn't even clear about which
4 address or property they were considering, all I
5 remember is that the property was up the hill from me,
6 I would never guess what type of a caveat was on a
7 property that didn't have an address to it, in my mind.

8 **Q.** On January 8th, 2020, had you seen a copy of the Caveat
9 that's at issue in this application?

10 **A.** No, I don't think that I had seen that particular
11 caveat. There's three different ones. And I -- I
12 think that I had seen a CP Rail caveat, but I can't say
13 whether it was the caveat on this particular property
14 or not, given that I am unclear as to which particular
15 property they had. I did know that caveats -- that
16 people could have caveats on their property, but that
17 it's up to the individual property owner to uphold
18 those between each -- each resident, from the group of
19 residents that have those caveats.

20 **Q.** As the president of the Elbow Park Residents
21 Association and with knowledge that there are some
22 caveats and talking about subdivision and zoning with
23 the Tejpars, did you say to them on that call, you
24 know, in addition to community views on the -- the --
25 what your development might be, have you looked into

1 whether or not there's a caveat -- there's any
2 restrictions with respect to a caveat to subdividing
3 the property? Did you raise that with them?

4 **A.** Well, what I recommended to them was to go to each
5 individual resident and go knock on each residents'
6 door in order to understand whether residents would
7 oppose a particular subdivision. And if they had done
8 so, they would have knocked, I would imagine, on
9 residents' doors that would have been able to provide
10 them with that information. And given that it is the
11 resident's responsibility to uphold their own caveats,
12 that that would be a process that I did suggest that
13 they go to find out as much information about their
14 property as they -- they could.

15 And from what I recall, I think that the Tejpars
16 closed the purchase about five hours after my
17 conversation, so I'm going to gather that they didn't
18 take my advice to go and speak to residents that are
19 surrounding that particular property.

20 **Q.** You never told them that they should go knock on the
21 door to see if anybody had a copy of a caveat, did you?

22 **A.** Well, what I said to them was that I recommend that
23 they knock on the residents' doors in order to find out
24 if there would be any opposition to the subdivision.
25 So based on if somebody had had an opposition, it could

1 be because of trees. It could be because they didn't
2 like the size of the lot. It could be the
3 configuration of the lot. It could be the fact that it
4 had -- you know, it might affect their light or
5 shadows. And they could be opposed for any reason, for
6 many, many reasons. So I didn't go into every detail
7 about why somebody could oppose. What I did recommend
8 is that they speak to each individual resident in order
9 to determine whether there would be opposition to a
10 subdivision, and based on the fact that EPRA cannot
11 approve any subdivisions and has no authority to
12 approve subdivisions, that is their best bet, is to go
13 and speak to the residents.

14 Q. But you never raised that there may be a caveat that
15 impacts subdivision?

16 MR. MARBLE: I think that's been --

17 MS. REICHEL: It has not been answered.

18 Q. MS. REICHEL: Did you ever the raise the fact
19 that there could be a caveat on the subject property --

20 MR. MARBLE: You're asking it one more time, I
21 gather. So you can ask it one more time, but then I
22 think it's time to move on.

23 MS. REICHEL: Let's hope we can get an answer.

24 MR. MARBLE: She's answered it three times at
25 least.

1 Q. MS. REICHEL: Did you ever raise on the January
2 call with the Tejpars that there was a caveat that
3 could impact subdivision on the property they wanted to
4 purchase?

5 A. What I recommended was for the Tejpars to reach out to
6 the residents in order to find out more about the
7 property, and they would have found that information
8 out if they had gone to each resident. And given that
9 caveats are not in the EPRA's purview, this is
10 something that is on personal property and title of
11 personal property of residents, I leave that up to the
12 residents to determine whether they want to uphold
13 those caveats or not. Some residents may. Some
14 residents might not. You can request to have them
15 removed, and some residents might oppose that, some
16 might not. It's not within my purview to make any
17 decisions about that because it's personal property,
18 and EPRA doesn't own any -- any property.

19 Q. Well, I'm going to let the Court decide on what your
20 answer is to that. But it's interesting that you say
21 it's not your purview, but you have a caveat
22 subcommittee as part of the EPRA?

23 A. Yeah, but the Caveat subcommittee is in order to
24 facilitate communication between residents. We have --

25 Q. (AUDIO DISTORTED) and pay for lawyers?

1 **A.** I'm sorry, I can't understand --

2 MR. MARBLE: Maybe you can let the witness
3 finish her answer and not interrupt her. Like, I have
4 no idea what was just said there.

5 COURT REPORTER: Me either.

6 **Q.** MS. REICHELT: Go ahead, Ms. Virtue.

7 **A.** I'm unclear as to what the question was. I didn't hear
8 what you said.

9 **Q.** You just told me that it's up to individual residents,
10 and it's not in the purview of the EPRA to deal with
11 caveats, but in fact you have a caveat subcommittee, so
12 EPRA does take involvement in caveats. And in fact you
13 said it was for education, but you spoke earlier --
14 your evidence earlier today included the fact that you
15 are collecting funds to pay for lawyers, so it's not
16 just for education.

17 MR. MARBLE: That's not what her evidence was,
18 Ms. Reichelt.

19 MS. REICHELT: There was part of her evidence.

20 MR. MARBLE: Maybe she can finish her answer
21 this time and she can explain it then.

22 **A.** When I was speaking previously and was cut-off, I think
23 I was cut-off at the list that ended at education. So
24 part of the role of the subcommittee caveat committee
25 is to educate residents about the fact that there are

1 caveats on their titles and that they -- and provide
2 some information. It's also to facilitate
3 communication between residents. Because in the
4 previous -- you know, I know that there is another
5 caveat within the neighbourhood that has 120 residents
6 that are involved, and it's very difficult for
7 residents to contact each other if they don't have
8 their Community Association facilitate that. So we act
9 as the facilitation for communication. And the
10 residents also want to fundraise in order to have a
11 caveat fund in case they want to spend money in regard
12 to caveat, and we facilitate that. But it's all
13 resident driven, and we're just there to facilitate
14 their needs.

15 **Q.** We're going to screen share. That froze. We'll come
16 back to that.

17 Let's go to this knocking on doors you said you
18 suggested. You'll agree with me that some of the lots
19 have caveats and some of them don't, correct?

20 **A.** That's my understanding.

21 **Q.** So it's a hypothetical for you to suggest that if the
22 Tejpars had knocked on a door, they would find out
23 about a caveat, right? You have no actual individual
24 knowledge; that's just your hypothesis.

25 **A.** No. I in fact know that by speaking to residents

1 directly, you really do get a lot of information, and
2 that's why we facilitate that. When people are wanting
3 to build a new home and there are trees that need to be
4 removed and there's fences that are involved and
5 retaining walls and whatnot, the best way for people to
6 deal with those issues is speak directly to the
7 residents who are bordering the property or are going
8 to look at the property. And they're the ones that
9 have the most invested in it, and they're the people
10 that are going to be mostly -- the most strongly
11 opposed or in favour of a development. So the best bet
12 really is to speak to the residents, and, you know,
13 that's my answer that I give everybody. Communication
14 is the best bet.

15 **Q.** On the January call -- on the January call, you told
16 the Tejpars that there was a landowner in Elbow Park
17 with a 75 foot lot that had tried to subdivide it into
18 three 20 foot lots, correct?

19 **A.** I am going to suspect that -- I don't recall that
20 conversation. But I will -- I suspect that I was
21 referring to a development permit that the person had
22 asked for a re-designation of the zoning into three 25
23 lots on it, a 75 foot lot.

24 **Q.** But you told the Tejpars that Elbow Park community
25 didn't like narrow lots like that, correct?

1 **A.** I don't recall saying that. But I would suspect that
2 that's something that I would inform them of.

3 **Q.** Okay. You noted to the Tejpars that the proposed
4 subject property was drastically different than that
5 proposal of the 25 foot lots?

6 **A.** Well, it's a completely different development because
7 it's a re-designation of the zoning, and what the
8 Tejpars were proposing was a subdivision, so they're --
9 they're quite different, and so I'm not quite clear on
10 -- on -- on why we would be discussing that.

11 MS. REICHEL: It just occurred to me,
12 Mr. Marble, Mr. Ferguson has been on quite some time,
13 which is fine of course because he's a party, but is
14 Mr. Ferguson alone?

15 MR. MARBLE: I would assume so. He's in his
16 house.

17 MS. REICHEL: Well, maybe we should confirm that
18 because obviously he shouldn't be having other
19 residents. So I'll leave that to you, that maybe
20 confirm by email or something, but if there are other
21 people listening in, that would be inappropriate, and
22 they shouldn't be there. I assume he's alone.

23 **Q.** MS. REICHEL: Any discussion that you may have
24 raised about a community outreach was in relation to a
25 subdivision, correct?

1 **A.** I recall giving them the information about the fact
2 that people can oppose development permits and
3 subdivisions on many, many different issues, such as
4 like I mentioned before, trees and driveways and walls.
5 And so I think that I indicated to them that there
6 could be many factors involved, and that the only way
7 to determine really what factor was going to be an
8 issue was to speak to the individual residents because
9 those are the people that have the information. I
10 would not have that information because I don't live
11 near that property. It doesn't affect me whatsoever.
12 And so I would have -- so what I did was I suggested to
13 them that they find out what people would be opposed to
14 it and whether they -- how they felt about that
15 particular proposal.

16 **Q.** You'll agree with me that you told the Tejpars that the
17 next step would be a development permit review meeting
18 with the development committee once they had a
19 development plan, correct?

20 **A.** I recall that I was educating them as to what avenues
21 were available to them, and I would have explained that
22 we have a development committee that is available to
23 them and that the normal practice is that once we
24 receive applications, a meeting is called and they're
25 invited to that meeting.

1 Q. The suggestion is that there would be -- and I take
2 this from your clarification of the title in your
3 Affidavit -- is that you don't have development
4 committee meetings on development that haven't yet
5 proceeded to a stage of application?

6 MR. MARBLE: I think you're referring to the
7 heading above paragraph 10 that says "The Tejpars
8 Declined to Engage the EPRA in Consultation Prior to
9 the Purchase of the Subject Lands" was the
10 clarification; is that what you're referring to?

11 MS. REICHEL: That's what I'm referring to.

12 Q. MS. REICHEL: But you wouldn't have a
13 development committee meeting before somebody buys the
14 property and had put in place a development, correct?

15 A. We would offer someone that wanted to have a
16 conversation with other residents before they purchase
17 a property, we would offer that as something that we
18 could facilitate.

19 Q. Not a requirement obviously?

20 A. No, we're a volunteer organization that -- that
21 attempts to facilitate communication between residents,
22 and it's -- obviously we don't have any jurisdiction as
23 to tell people whether they have to attend or don't
24 attend. It's just a service that we provide in order
25 to facilitate and disseminate information, and that's

1 open to residents and as well as open to potential
2 residents. If they're interested in purchasing the
3 property, we would absolutely facilitate a conversation
4 between residents if we were asked.

5 **Q.** I'm going to suggest to you the Tejpars -- you told the
6 Tejpars the next touch point would be to attend a
7 development meeting with the EPRA once they had
8 development plans for the subject property?

9 **A.** I would have indicated that that is our normal
10 practice, to post development committees, but I would
11 have offered to facilitate communication between
12 residents and suggested that they -- they do so on
13 their own. Before they purchase a property, go speak
14 to the residents.

15 **Q.** So you earlier told me you didn't know where the
16 property was, and then you just recently said, I told
17 them I don't live near the property, so I'm just
18 confused by that contradiction in your two statements.
19 Can you clarify that for me?

20 **A.** What I said was that during the conversation on
21 January 8th with the Tejpars, I knew the general
22 vicinity of the property, and I knew that it was
23 somewhere up the hill from me. But I didn't pay much
24 attention to the particular property because it isn't
25 in the -- in the area that I live in.

1 Q. Okay. We're just going to share our screen now.

2 MR. MARBLE: I don't see anything.

3 MS. REICHELT: It's coming.

4 Q. MS. REICHELT: This is the website, ma'am, of the
5 elbowpark.com/epra-development-committee; are you
6 familiar with this website?

7 A. Yes.

8 Q. Okay. And if we scroll to the top, this is the Elbow
9 Park Caveats and Restrictive Covenants information part
10 of the website; is that an accurate description?

11 A. Yes.

12 Q. Do you know when this part of the website was commenced
13 or when it was created?

14 A. That's -- that would have been after the conversation
15 that I had with Tejpars. We hadn't -- we didn't have a
16 webmaster until just a few months ago in order to help
17 us. So we've just recently updated our -- the entire
18 website with -- with new information.

19 Q. Well, in fact this was actually commenced in and around
20 the time this injunction application was brought,
21 wasn't it?

22 A. Well, I'd have to go back to records to know exactly
23 when, but...

24 MS. REICHELT: We'll take that by an undertaking,
25 then. You can review the records and advise --

1 MR. MARBLE: We'll take it under advisement. I
2 fail to see the relevance when a volunteer organization
3 posts a website.

4 MS. REICHEL: Well, it's all about Elbow Park
5 caveats and restrictive covenants, and so I don't know
6 how -- and she's here as the president purporting to
7 have information on the subject matter.

8 Can you scroll down, please?

9 COURT REPORTER: Can you clarify the undertaking,
10 please?

11 MS. REICHEL: To review the records and advise
12 when the EPRA development committee established the
13 restrictive covenant and caveat website.

14 MR. MARBLE: We'll take it under advisement.

15 UNDERTAKING NO. 7 - To review the
16 records and to advise when the EPRA
17 development committee established the
18 restrictive covenant and caveat website

19 - TAKEN UNDER ADVISEMENT

20 Q. MS. REICHEL: And then if we scroll down to this
21 website, you told me before the Elbow Park doesn't have
22 in their purview to have caveat funds in their purview,
23 but it goes on to say: (as read)

24 Why does this matter? There currently
25 have been several applications to

1 subdivide certain lots, relax setbacks,
2 and rezone away from RC1 in Elbow Park
3 in violation of the restrictive
4 covenants. Because the covenants are
5 contracts between the property owners
6 and not a municipal law -- or bylaw, the
7 City of Calgary is ambivalent about them
8 and often approves zoning changes,
9 subdivisions, and development permits
10 that violate the covenants. Many
11 neighbours wish to preserve the
12 character.

13 And let me see, going to the bottom. (as read)

14 EPRA Caveat Subcommittee: In light of
15 the upswing in development activity in
16 Elbow Park, EPRA has recently sanctioned
17 the creation of a subcommittee which is
18 tasked with ensuring the restrictive
19 covenants and caveats in Elbow Park are
20 complied with. This is a brand new
21 committee that would welcome any
22 suggestions and input.

23 So it's not actually accurate to say that the EPRA
24 doesn't have in its purview caveats and restrictive
25 covenants, is it, Ms. Virtue?

1 MR. MARBLE: Counsel, you're looking at a
2 website from a volunteer organization, and the evidence
3 that Ms. Virtue gave is that the EPRA doesn't have
4 standing to enforce caveats.

5 MS. REICHEL: No. Her evidence was it was not
6 in their purview.

7 MR. MARBLE: I think we'll wait and see what
8 the transcript says.

9 MS. REICHEL: Well, I guess Ms. Virtue can come
10 back and speak to it then.

11 OBJECTION TAKEN to answering the question: So it's not
12 actually accurate to say that the EPRA doesn't have in
13 its purview caveats and restrictive covenants, is it,
14 Ms. Virtue?

15 Q. MS. REICHEL: So at paragraph 11 --

16 A. I can certainly clarify if -- if -- if you would like
17 me to, again. My understanding is that EPRA has no
18 standing to approve developments. We have no standing
19 to enforce restrictive covenants, and that my
20 understanding is that it's only individual owners that
21 can enforce restrictive covenants. The website is
22 simply to provide information to residents. And given
23 that we're a volunteer organization, it would be a
24 volunteer that would have written that and -- and
25 submitted that information to share.

1 Q. Can you turn to paragraph 11 of your Affidavit?

2 A. Um-hmm.

3 Q. At the end of that paragraph, it says: (as read)

4 Despite being invited to do so during my
5 call, the Tejpars opted not to attend
6 such a meeting prior to the purchase of
7 the subject lands.

8 Do you see that?

9 A. Yes.

10 Q. Was there an actual meeting that you -- that was set up
11 that they failed to attend?

12 A. They did not fail to attend a meeting, but they did not
13 opt to take the opportunity to have EPRA facilitate any
14 conversations with any residents, including facilitate
15 a development meeting.

16 Q. You'll agree with me that the Tejpars certainly have
17 attended development committee meetings as it relates
18 to their development when their plans were submitted,
19 correct, or their application?

20 A. They attended the meetings after the application was
21 submitted, but they did not ask EPRA to clarify any of
22 the information or to facilitate getting more
23 information. They didn't notify us that they were
24 concerned about a caveat or that they had any
25 information about it. They didn't ask us any questions

1 about it. And they -- they didn't take what is offered
2 by EPRA to facilitate fact-finding.

3 **Q.** And likewise, the EPRA didn't advise the Tejpars or the
4 notify the Tejpars or have a meeting with the Tejpars
5 to advise them that there was a caveat that impacted
6 subdivision on their property, correct?

7 **A.** Well, the Tejpars didn't provide us with any
8 information other than the conversation that I had on
9 January 8th, just prior to them purchasing, so we
10 didn't have the opportunity to -- to offer them any
11 guidance as to how to get residents -- to facilitate a
12 residents' meeting.

13 **Q.** You're aware, ma'am, at the time that they bought the
14 property that the Caveat was missing in Land Titles
15 Office?

16 **MR. MARBLE:** Sorry, can you repeat that,
17 please? You said, Were you aware at the time?

18 **MS. REICHELTL:** Yes.

19 **A.** Well, given that I was unaware of which property they
20 were even speaking about, I was -- that wasn't on my
21 radar to -- can you -- can you ask that question again,
22 please?

23 **Q.** **MS. REICHELTL:** I said at the time -- I can't
24 actually ask the question again. Can the court
25 reporter read it back? I actually don't remember it.

1 COURT REPORTER: (By reading)

2 You're aware, ma'am, at the time that
3 they bought the property that the Caveat
4 was missing in Land Titles Office?

5 **A.** No, I wasn't aware of that.

6 **Q.** MS. REICHEL: Were you aware at in or around
7 January of 2020 that there was in fact a missing caveat
8 as it related to the Elbow Park development?

9 **A.** No, I was unaware of that.

10 **Q.** Had there been any discussion at the EPRA about missing
11 documents in the Land Titles Office or a caveat
12 respecting various properties?

13 **A.** I don't recall.

14 **Q.** As the president of the Elbow Park Residents
15 Association, had anybody raised to you the fact that
16 there was a missing caveat in or around the year 2020?

17 **A.** Well, given that the Tejpars never raised that
18 information with me on the call, that there was
19 anything about a caveat, that was not something that
20 was on my radar at that time.

21 **Q.** Well, Ms. Virtue, I'm not asking about the Tejpars.
22 I'm asking about -- like, they're not the only people
23 that bought in Elbow Park. So I'm asking as president
24 of the Elbow Park Residents Association, were you aware
25 that there was a caveat related to some of the lands

1 that was missing?

2 **A.** I was aware that there are approximately three
3 different types of caveats. They're from -- I think
4 there's a City of Calgary, the CP Rail. It's not
5 something that I need to understand, because this is
6 something that affects the individual residents. And
7 so at that time, I was unaware that there was any issue
8 around caveats because it was not brought to my
9 attention.

10 **Q.** Okay. So I'm not trying to cast disparaging comments
11 towards you, Ms. Virtue. I'm just trying to
12 understand, and I think you've answered me, and it's
13 fair. You didn't know that it was missing, correct?
14 In January 2020, you did not know that this caveat was
15 missing in Land Titles?

16 **MR. MARBLE:** Counsel, she's answered it, like,
17 four times now.

18 **MS. REICHEL:** I beg to differ.

19 **OBJECTION TAKEN to answering the question:** Okay. So I'm
20 not trying to cast disparaging comments towards you,
21 Ms. Virtue. I'm just trying to understand, and I think
22 you've answered me, and it's fair. You didn't know
23 that it was missing, correct? In January 2020, you did
24 not know that this caveat was missing in Land Titles?

25 **Q.** **MS. REICHEL:** Anyway, let's go on. There was a

1 meeting on August 27th, 2020, correct, a development
2 committee meeting regarding the Tejpars property?

3 **A.** Yes. I was out of the province on a vacation for a
4 month, and my understanding is that there was a
5 development committee meeting that Margo called. I
6 think it was on August 27th, 2020.

7 **Q.** And the purpose of that meeting was to facilitate
8 communication about the subject property between
9 interested parties, correct?

10 **A.** Wow, is --

11 **MR. MARBLE:** Slow down a bit, please, counsel.

12 **A.** Yeah, I'm sorry, I didn't understand the question
13 because you were just speaking a little quickly for me.

14 **Q.** **MS. REICHEL:** The purpose of that meeting was to
15 facilitate communication about the subject property
16 between interested parties, correct?

17 **A.** Yeah, it was the normal practice that EPRA would host
18 the development committee meeting after they had
19 received an application. So that would be that type of
20 meeting, and the residents and the applicant would be
21 invited though that meeting.

22 **Q.** Ms. Virtue, are you aware of an application by the law
23 firm Glenn & Card being served on the Elbow Valley Park
24 Residents Association in January of 2020 as it relates
25 to this caveat that we're here talking about today but

1 by another landowner?

2 **A.** I'm going to say no. Because I didn't quite
3 understand.

4 **Q.** In January of 2020 were you aware that an application
5 by a landowner to discharge a caveat was served on the
6 Elbow Valley Park Residents Association?

7 **A.** Oh, I'm sorry, you're saying Elbow Valley, and I think
8 you're meaning -- and that's what confused me. Pardon
9 me.

10 **Q.** I apologize. I meant Elbow Park.

11 **A.** It's Friday afternoon. Okay, so we're not talking
12 about Elbow Valley, we're talking about Elbow Park.

13 **Q.** Most certainly.

14 **A.** So if you can you repeat the question, and I'll get my
15 mind back into this community.

16 **Q.** Sorry, I certainly wouldn't have expected you to know
17 anything about Elbow Valley.

18 I said, are you aware of an application by a
19 landowner, in particular of the property at 1002 - 32nd
20 Avenue, being served on the Elbow Park Residents
21 Association in January 2020 relating to the discharge
22 of a caveat?

23 **A.** Not of 1002, no.

24 **Q.** Are you aware of a different application to discharge a
25 caveat being served on the Elbow Park Residents

1 Association in January of 2020?

2 **A.** Well, it's never served on EPRA. It's always between
3 individual property owners. So I would have to say no.

4 **Q.** Were you present at the August 27th, 2020, development
5 committee meeting? You said you were on holidays, so
6 I'm assuming you were not.

7 **A.** I was not present. I -- I was in Quebec at the time.

8 **Q.** Okay. Are you aware -- were you provided with an
9 update about that meeting by members of the development
10 committee?

11 **A.** Margo Coppus forwarded me the letter that she sent to
12 the City after the meeting was held, and that was the
13 first that I had heard what transpired. And I was
14 surprised by her letter that she submitted, because I
15 was under the impression that there were several
16 residents that were opposed to it, and her letter
17 didn't seem to reflect that. And in further
18 investigation, I realized that many of those residents
19 were unable to attend that particular development
20 meeting given it was August 27th, right during peak
21 holiday time.

22 **Q.** You'll agree with me, though, that the Tejpars engaged
23 the EPRA in consultation with respect to the design and
24 subdivision of the subject property at that meeting?

25 **A.** I wasn't at that meeting, but I understand that the

1 Tejpars had the opportunity to discuss their...

2 Q. Okay.

3 MR. MARBLE: Counsel, how much longer are you
4 going to need? We've been going for an hour and a bit.

5 MS. REICHEL: Do you want to take a quick break?
6 I mean, I've still got, depending on the length --
7 actually, I've still got quite a bit. I am mindful
8 that it's 4:30. I'm wondering whether or not we should
9 adjourn and continue.

10 MR. MARBLE: That would be my preference if
11 this is going to keep going.

12 MS. REICHEL: Can I finish off one thing so we
13 can try and end it, perhaps?

14 MR. MARBLE: Sure.

15 Q. MS. REICHEL: We're just going to bring a
16 document up on the screen, which I believe was provided
17 by Mr. Engbloom in his undertaking. This is a
18 Substitutional Service Order dated January 16th, 2020,
19 which was provided in Mr. Engbloom's undertakings. And
20 I see at paragraph 2, the service was required on the
21 president of the Community Association for the
22 neighbourhood; do you see that, Ms. Virtue?

23 A. Yes, I do.

24 Q. Have you seen this order before?

25 A. You know what, it's hard to say when it's just kind of

1 that little portion on the screen.

2 **Q.** Is that better?

3 **A.** And I think that I am getting fatigued, so it's hard to
4 kind of focus on that. I don't recall seeing that.

5 MS. REICHELTL: All right. So I think we're going
6 to pause for today, given the time and obviously the
7 fatigue, and I don't want to drag that out for
8 Ms. Virtue. I will remind you, Ms. Virtue, and remain
9 under oath, and that you're not to speak to anybody at
10 your evidence.

11 And then maybe we can -- counsel, can jointly get
12 together with our calendars. We can go off the record.

13 _____
14 (Proceedings ended at 4:35 p.m.)
15 _____

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1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages
4 1 to 81 are a complete and accurate transcript of the
5 proceedings taken down by me in shorthand and transcribed
6 from my shorthand notes to the best of my skill and
7 ability.

8

9 I further certify that this questioning was conducted in
10 accordance with the Alberta Protocol for Remote
11 Questioning, Revised 05/05/2020.

12

13 Dated at the City of Calgary, Province of Alberta, this
14 13th day of May, 2021.

15

16

17

Sandra Dreher

18

19

Sandra Dreher, CSR(A)

20

Official Court Reporter

21

22

23

24

25

1 - I N D E X -

2 JANE VIRTUE

3 April 30, 2021

4 The following is a listing of exhibits, undertakings and
5 objections as interpreted by the Court Reporter.

6 The transcript is the official record, and the index is
7 provided as a courtesy only. It is recommended that the
8 reader refer to the appropriate transcript pages to ensure
9 completeness and accuracy.

10
11 ***EXHIBITS***

12 (No Exhibits)

13
14 ***UNDERTAKINGS REQUESTED***

15 UNDERTAKING NO. 1 - To provide a copy of the email 13
16 that Jane Virtue received from Hugoline Morton
17 forwarding the Caveat prior to the September 22
18 meeting - TAKEN UNDER ADVISEMENT

19
20 UNDERTAKING NO. 2 - To provide the email of which 14
21 Jane Virtue first received a copy of the Caveat,
22 and to provide any subsequent emails surrounding
23 the discussion of the Caveat between herself and
24 others - TAKEN UNDER ADVISEMENT
25

1	UNDERTAKING NO. 3 - For Jane Virtue to review her	19
2	records and to advise the date when the caveat	
3	fund was started	
4		
5	UNDERTAKING NO. 4 - For Jane Virtue to review her	20
6	records and to advise whether or not the caveat	
7	fund and associated fundraising started after she	
8	had first received a copy of the purported caveat	
9	from Ms. Coppus or Ms. Morton	
10		
11	UNDERTAKING NO. 5 - For Jane Virtue to review her	23
12	records and to advise of the date of which the	
13	Elbow Park Residents Association caveat	
14	subcommittee commenced or began -	
15	TAKEN UNDER ADVISEMENT	
16		
17	UNDERTAKING NO. 6 - For Jane Virtue to produce the	51
18	email that she sent to Margo Coppus or anybody	
19	else at the EPRA with respect to her phone call	
20	with the Tejpars - TAKEN UNDER ADVISEMENT	
21		
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