

# Ferguson v. Tejpar et al

Robert Engbloom  
on Tuesday, April 6, 2021



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COURT FILE NUMBER 2101-00793

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

LA



APPLICANT THOMAS H. FERGUSON

502141

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

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Transcript of Oral Questioning of

ROBERT ENGBLOOM

(On affidavit sworn March 30, 2021)

Held via videoconferencing

April 6, 2021

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1 ALL PARTIES APPEARING VIA VIDEOCONFERENCING

2

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22 403-266-1744

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1 (Proceedings commenced at 11:01 a.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 himself and  
23 spell your first and last name for the record?

24 THE WITNESS: Yeah, Bob Engbloom, and you spell  
25 my last name, E-N-G-B-L-O-O-M.



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. REICHEL: Yes.

7 ROBERT ENGBLOOM, affirmed, questioned via videoconference  
8 by Ms. Reichelt:

9 Q. MS. REICHEL: Good morning, sir.

10 A. Good morning.

11 Q. As you know, I'm counsel for two of the respondents,  
12 Mr. and Mrs. Tejpar. I'm not -- it's not clear to me  
13 and I don't know if the Registrar of Titles for the  
14 Land Titles Office was served, but as I understand it,  
15 there is nobody here that represents them at this  
16 point.

17 And also I understand that Mr. Ferguson, who is  
18 the applicant, is in your house, present, not on camera  
19 but present for your cross-examination; is that  
20 correct?

21 A. That is correct.

22 Q. And, sir, you swore an Affidavit in Court of Queen's  
23 Bench, Action Number 2101-00793 on March 30th, 2021; is  
24 that correct?

25 A. Yes.

1 Q. And if we refer to that action as "the injunction  
2 application," you will understand what I am referring  
3 to?

4 A. I will.

5 Q. And you're aware that that relates to an application  
6 for injunctive relief commenced by Mr. Tom Ferguson,  
7 correct?

8 A. Correct.

9 Q. And I understand based on an email received from your  
10 counsel yesterday afternoon that there are two  
11 corrections you wish to make to your Affidavit; is that  
12 correct?

13 A. Yes.

14 Q. Okay. Do you want to proceed and confirm those for us?

15 A. Well, I -- I don't have the language right in front of  
16 me, but it would be -- should I dig out the email?

17 Q. Well, I guess I can suggest it to you, then. As I  
18 understand it, you wanted to correct paragraph 16 to  
19 include at the end "except as noted in paragraph 19  
20 below," and then at paragraph 21 where the sentence  
21 reads "subsequent to subdivisions referred to in  
22 paragraph," it should read, "19"?

23 A. Correct. Both are correct.

24 Q. And those are the only two corrections that you wish to  
25 make to your Affidavit, sir?

1 A. Yes.

2 Q. And, sir, if I refer to it as "your Affidavit," you'll  
3 understand I mean the Affidavit you swore on  
4 March 30th, 2021, in this action?

5 A. I'll understand that.

6 Q. And, sir, right before you began, you took an  
7 affirmation to tell the truth; is that correct?

8 A. Yes.

9 Q. And that affirmation is binding on your conscience?

10 A. Yes.

11 Q. And, sir, you've confirmed to me that you have a copy  
12 of your Affidavit with you, correct?

13 A. Correct.

14 Q. If we turn to page 5 of that Affidavit, at the bottom  
15 of the page there is a signature of what appears to be  
16 yourself sworn before Matthew Bobawsky on March 30th,  
17 2021; is that your signature, sir?

18 A. Yes, it is.

19 Q. And you confirm at the time that you swore this  
20 Affidavit that you provided an oath to tell the truth?

21 A. Yes.

22 Q. And that the contents of that Affidavit are true to the  
23 best of your knowledge?

24 A. Correct.

25 Q. And they remain as you sit here today?

1     **A.**    Yes.

2     **Q.**    And, sir, two of the respondents in this injunction  
3            application are Zahra Tejpar and Ali Tejpar, correct?

4     **A.**    Correct.

5     **Q.**    And if I refer to those two individuals collectively as  
6            "the Tejpars," you'll understand who I am referring to?

7     **A.**    Yes.

8     **Q.**    And you'll understand that the Tejpars, as set out in  
9            your Affidavit, are the resident owners of the property  
10           legally described as Plan 3605FO, Block 91, Lot 1,  
11           correct?

12    **A.**    Correct.

13    **Q.**    And so if we call that "the respondents' land" or "the  
14            Tejpar property," you'll know what I'm referring to?

15    **A.**    Yes.

16    **Q.**    And before I continue, we should also note that you and  
17            Ms. Tejpar have a prior professional relationship,  
18           correct?

19    **A.**    Correct.

20    **Q.**    You both worked together at Norton Rose Fulbright  
21            Canada LLP?

22    **A.**    Yes, that's correct.

23    **Q.**    And you still are counsel there; is that correct?

24    **A.**    Yes.

25    **Q.**    And you're aware that the Tejpars are clients of Norton

1 Rose?

2 **A.** Yes.

3 **Q.** And you're aware primarily that the Tejpars utilized  
4 the services of Norton Rose for real estate purchases,  
5 correct?

6 **A.** No, I didn't know that.

7 **Q.** And you reviewed, prior to coming here today, the  
8 Affidavit of Mr. Ferguson sworn in this action?

9 **A.** Yes.

10 **Q.** And you're aware that Mr. Ferguson and his wife, Dianne  
11 Elizabeth Ferguson, own the lands legally described as  
12 Plan 3605FO, Block 92, Lot 9, correct?

13 **A.** Yes, correct.

14 **Q.** And if we refer to that as "the Ferguson property,"  
15 you'll understand what I'm referring to?

16 **A.** I will.

17 **Q.** And, sir, I guess we should also identify your lot,  
18 which I believe is set out of Plan 3605FO, Block 91,  
19 Lot 8, and we'll refer to that as "your property"; does  
20 that make sense to you, sir?

21 **A.** It does.

22 **Q.** Other than discussions with your legal counsel, which I  
23 don't want to hear about, can you tell me what you did  
24 to prepare for today's cross-examination?

25 **A.** Yes. I reviewed the -- the Affidavit and the -- and

1 the attachments. I reviewed the Caveat. I reviewed  
2 the lot plan that was provided to me yesterday by your  
3 office, I believe. I reviewed the Plan 3605FO. And I  
4 did some calculations.

5 **Q.** Okay. And when you referred to "the Caveat," is that  
6 the document attached at Exhibit B to your Affidavit,  
7 sir?

8 **A.** Yes.

9 **Q.** Okay. And I'm going to refer to that as "the purported  
10 Caveat" so we understand what we are talking about.  
11 And when you say that you referred to Plan 3605FO, is  
12 that the attachment that you've included at Exhibit C  
13 to your Affidavit?

14 **A.** Correct.

15 **Q.** And that was the plan as it was in or around the 1940s,  
16 correct?

17 **A.** Yeah. I think it was 1946, correct.

18 **Q.** So that's the plan as of that date that you've included  
19 in your Affidavit?

20 **A.** I'm sorry, how did you describe it?

21 **Q.** That's the plan as of that date that you've included in  
22 your Affidavit?

23 **A.** Correct.

24 **Q.** Did you speak with Mr. Ferguson regarding today's  
25 cross-examination?

1     **A.**     Today?  Not today.  Yes, I've spoken with Mr. Ferguson  
2             over the last number of months but not about the  
3             cross-examination.

4     **Q.**     Okay.  Did you speak with --

5     **A.**     We were -- we were on a call Saturday with counsel to  
6             prepare and one yesterday to prepare.

7     MS. EMBURY:                     All of those were with counsel.

8     MS. REICHEL:                    Yeah, that's fine.

9     **Q.**     MS. REICHEL:            And as I said, I don't want to  
10            hear about your discussions with counsel.

11    **A.**     Okay.

12    **Q.**     Other than counsel, did you speak with anybody else  
13            regarding today's cross-examination?

14    **A.**     My wife.

15    **Q.**     Anyone else?

16    **A.**     I mentioned it to our son yesterday, and --

17    **Q.**     Sorry, go ahead.

18    **A.**     -- I think I mentioned it to our daughter and her  
19            husband on the weekend.

20    **Q.**     And did you speak with anybody at Norton Rose about the  
21            cross-examination today?

22    **A.**     No.

23    **Q.**     You reside at the property that we've identified, which  
24            we're referring to as your property, and as I  
25            understand it, your wife, Nancy, is the registered

1 owner of that property; is that correct?

2 **A.** It is.

3 **Q.** And that property bears a municipal address of 3410 -  
4 10th Street Southwest; is that correct?

5 **A.** Yes.

6 **Q.** That property is located on 10th Street between 32nd  
7 and 34th Avenue Southwest?

8 **A.** Yes.

9 **Q.** And the Tejpar property is located approximately 200  
10 metres from your property to the northeast of that,  
11 correct?

12 **A.** Well, it's in the same block, 200 metres, 600 feet,  
13 roughly, yes.

14 **Q.** In paragraph 1 of your Affidavit, you state that you  
15 and Ms. Engbloom acquired your property in 1982, and I  
16 have maybe perhaps mistakenly assumed that you  
17 purchased it but perhaps you're using that word in some  
18 other fashion. Can you describe to me what that means?

19 **A.** It was purchased.

20 **Q.** How long have you resided in the Elbow Park  
21 neighbourhood?

22 **A.** Since I was born in 1950, with the exception of time  
23 away for university and travels.

24 **Q.** Were you involved in the acquisition of your property?  
25 Or was it solely your wife at the time you purchased in



1 1982?

2 **A.** I was involved.

3 **Q.** And was there a dwelling house located on the lot when  
4 you acquired it?

5 **A.** Yes.

6 **Q.** Is it the same dwelling house that's currently located  
7 on the property?

8 **A.** Yes, with a few modifications.

9 **Q.** And your wife, Ms. Engbloom, has continuously owned  
10 that property since 1982?

11 **A.** Yes.

12 **Q.** As I mentioned to you before as we talked about what  
13 you reviewed, at paragraph 1 you note you were involved  
14 in a group of concerned residents of Elbow Park for the  
15 purposes of enforcing what you described as a  
16 Restrictive Covenant contained in Instrument 7648 FT;  
17 do you see that reference there?

18 **A.** I do.

19 **Q.** I'm going to refer to that Instrument Number 7648 FT as  
20 "the purported Caveat"; you'll understand what I'm  
21 referring to?

22 **A.** Yes.

23 **Q.** And that's the document you've attached at Exhibit B to  
24 your Affidavit?

25 **A.** Yes.

1 Q. Can you tell me, sir, who the group of concerned  
2 residents is?

3 A. Yes. Well, I can tell you that the group that I am  
4 referring to there would be Mr. Ferguson and an  
5 informal committee -- subcommittee of the Elbow Park  
6 Residents Association that consists of six -- six of us  
7 who have taken -- been primarily responsible for taking  
8 the initiative with respect to dealing with the  
9 proposed development both from the subdivision, at the  
10 planning -- planning permit, development permit, and to  
11 these -- these proceedings.

12 Q. Can you tell me who those six people are?

13 A. Mr. Ferguson; myself; Hugoline Morton, who lives on  
14 8a Street; Risa Desa, who lives on 9th Street; Wayne  
15 Gambell, who lives on 9th Street; and Hector McFadyen,  
16 who lives on 8a Street.

17 Q. Okay. So if we refer to this as "the group of  
18 residents," you'll know which group I'm referring to?

19 A. Yes. Yes.

20 Q. Okay. And when was this group formed?

21 A. We first started discussing the situation as a group in  
22 I think it was late August or early September.

23 Counsel, could I just go back for a moment? The  
24 answer, when I said that I've lived throughout my life  
25 in Elbow Park, we did live in Chinook Park for two

1 years.

2 **Q.** Okay. Thank you for that clarification.

3 And, sorry, can I just confirm for you, when you  
4 said we were first discussing this in late August,  
5 early September, the year you were referring to is  
6 2020?

7 **A.** Correct.

8 **Q.** And you joined this group of residents at or around  
9 that time as well?

10 **A.** Yes.

11 **Q.** How did this group or informal subcommittee come to be  
12 organized?

13 **A.** Well, I -- I became involved in it when I -- there was  
14 a knock on the door, and it was one of my neighbours,  
15 Risa Desa, asking me how I had how had been successful  
16 at -- at the stopping the proposed subdivision on  
17 3412 - 10th Street in 2017, which I refer to in my  
18 Affidavit, and that led to a discussion in the  
19 backyard, that Hugoline Morton joined us on. And that  
20 was my -- my first -- first involvement with -- with  
21 the group with -- with the issue.

22 **Q.** Okay. One second. And so what is -- what is your  
23 involvement with this group of residents, then, sir?

24 You've sworn this Affidavit to try and get an  
25 injunction. What else -- what other involvement do you

1 have?

2 **A.** Well, just participating in the group and discussing  
3 ways to -- to, you know, oppose the development  
4 proposal. So we had discussions around subdivision  
5 issues, development permit issues, around injunction  
6 issues, and I have been involved in -- in those  
7 discussions in meetings.

8 **Q.** Internal meetings with the subcommittee? Or other  
9 meetings?

10 **A.** Internal meetings with the -- with the subcommittee.

11 **Q.** At paragraph 4 of your Affidavit, you speak about the  
12 Tejpars applying for, granted -- and be granted  
13 approval from the City of Calgary to subdivide the  
14 respondent lands, and you also go on to say that they  
15 applied for a development permit for a home on the  
16 easterly portion of the respondent lands and a  
17 development permit was granted and is currently under  
18 appeal. Do you see that, sir?

19 **A.** I do.

20 **Q.** And how do you know this, sir? How did you become  
21 aware of this?

22 **A.** Well, I am aware of the application for the  
23 subdivision. I guess I first became aware of the  
24 formal application when the notice board went up on the  
25 property. And I -- I have a copy -- I was provided

1 with a copy of the subdivision -- the conditional  
2 approval of the subdivision -- proposed subdivision  
3 from the City of Calgary. And there would have been  
4 many discussions about that. You know, I became aware  
5 that the -- you know, further discussions with the  
6 group and others that the development permit, there had  
7 been an application for a development permit on a home  
8 on the easterly portion of the -- of the lot. I made  
9 submissions on an appeal of that, and I listened in to  
10 portions of the appeal hearing before the SDAB.

11 **Q.** Okay. Can you tell me when the notice board, you  
12 mentioned, went up was?

13 **A.** I -- I could only -- it would be in that  
14 August/September time frame. I could -- I could check  
15 my records to see if I could find a more precise date,  
16 if you wish.

17 **Q.** That time frame is fine currently. You also said you  
18 had a copy of the subdivision conditional approval.  
19 Who provided that to you?

20 **A.** I don't recall. I imagine the City. Maybe I copied it  
21 off of the City website. I don't recall how I got  
22 that.

23 **Q.** And when would you have received that; do you recall?

24 **A.** It would have been shortly after the date of the -- the  
25 approval, so September 2020.

1 Q. And you're calling it a conditional approval, sir, but  
2 you'll agree with me that the subdivision has been  
3 approved, and the only step left to take is the removal  
4 of the house and then the two titles will be issued;  
5 isn't that correct?

6 MS. EMBURY: Counsel, if you're asking him to  
7 interpret the document, the document speaks for itself,  
8 and if I'm not mistaken, there are certain conditions  
9 listed on it. I'm going to instruct the witness not to  
10 interpret the document.

11 OBJECTION TAKEN to answering the question: And you're  
12 calling it a conditional approval, sir, but you'll  
13 agree with me that the subdivision has been approved,  
14 and the only step left to take is the removal of the  
15 house and then the two titles will be issued; isn't  
16 that correct?

17 MS. REICHELT: Well, I don't think he's provided  
18 it as one of the attachments to his Affidavit, but I'm  
19 asking him why he's referring to it as a conditional  
20 approval.

21 A. I can answer that, because as I -- as I read it, it  
22 says "conditions of approval - subdivision plan," so...

23 MS. REICHELT: The witness is showing the  
24 document that is not included in his Affidavit, which  
25 appears to be a City of Calgary document, just so the

1 record can show that.

2 MS. EMBURY: Well, in fairness, it is -- I  
3 appreciate that it's not Mr. Ferguson's  
4 cross-examination, I'm certain that that document is  
5 attached to the Affidavit of Mr. Ferguson.

6 MS. REICHELTL: We'll keep going, then. We'll  
7 look at that and circle back if we need to.

8 Q. MS. REICHELTL: And you mentioned that the  
9 subdivision was appealed, correct?

10 A. Correct.

11 Q. And that the only person to appeal the subdivision was  
12 Mr. Hugoline Morton, correct?

13 A. I'm not sure.

14 Q. Okay. Did you participate in the subdivision appeal?

15 A. No. I was aware of it, but I didn't participate in it.

16 Q. And you're -- are you aware of the fact that the appeal  
17 of the subdivision was denied, correct?

18 A. Yes.

19 Q. And development permit and associated appeal  
20 proceedings are separate from the injunction  
21 application, correct?

22 A. Correct.

23 Q. And as I understand it, the development permit appeal  
24 brought by -- you mentioned yourself making  
25 submissions, that was heard on April 1st?

1     **A.**    Yes.

2     **Q.**    At paragraph 4 of your Affidavit, you also state that:  
3           (as read)

4           Further, the Tejpars listed for sale the  
5           most westerly portion of the respondent  
6           lands as a separate lot for the  
7           development of a second residence  
8           thereon if the proposed subdivision is  
9           completed.

10          Do you see that, sir?

11     **A.**    I do.

12     **Q.**    What's the source of your information for that, sir?

13     **A.**    The listing sign that was posted on the property and  
14           the information in the website that I looked at dealing  
15           with that listing.

16     **Q.**    Okay. And then you said, (as read)

17           I understand the proposed lot has been  
18           "sold" to a buyer unknown to me.

19          Why did you put the word "sold" in quotes?

20     **A.**    Because that's the way that it had been described to  
21           me.

22     **Q.**    By whom?

23     **A.**    Well, it had been described to me by Hugoline Morton,  
24           who had been speaking to a realtor in the  
25           neighbourhood, who had told Hugoline that she had



1           talked to the Tejpars' realtor and had been informed  
2           that it had been sold.

3   **Q.**    When you say that's how it was referred to you, are you  
4           talking about an email you received by Hugoline Morton  
5           or something?

6   **A.**    No.    A verbal conversation.

7   **Q.**    Okay.   So you're basing the fact that it was sold on  
8           something that was told to you by Hugoline, who was  
9           told to Hugoline by another realtor who apparently  
10          talked to the Tejpars' realtor?

11 **A.**    That's right.

12 **Q.**    I don't even know how many levels of hearsay that is,  
13          but we'll just roll with it.

14 MS. EMBURY:                            How about we go with several.

15 **Q.**    MS. REICHEL:            Sir, at paragraph 5, you state:  
16          (as read)

17                    Many people in the neighbourhood object  
18                    to the development of the respondent  
19                    lands.

20 **A.**    Yes.

21 **Q.**    You've mentioned the subcommittee of six people, and  
22          obviously there was a development application where  
23          people had an opportunity to respond; is that who  
24          you're referring to there?

25 **A.**    Well, no, it would be broader than that.   It would

1 include those, but there's been -- you know, I've had a  
2 number of conversations with people in roots, residents  
3 of the community who have, you know, voiced their  
4 concern. I have -- our -- our subcommittee group that  
5 we spoke of earlier, we've had multiple or a few --  
6 three or four -- two or three or four communications  
7 out to a group that has expressed concern. I've been  
8 involved in community meetings about this and other  
9 developments where concern has been expressed. It  
10 would be a wide range of -- how do I describe them? --  
11 concerned neighbours.

12 **Q.** Okay. None of those individuals, other than  
13 Mr. Ferguson, have sworn an Affidavit in support of  
14 this injunction, correct?

15 **A.** Correct.

16 **Q.** Okay. And do you know if they intend to?

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

18 **Q.** And we'll get to it later, but are those people part  
19 out of your fundraising efforts?

20 **A.** Some would be, yes.

21 **Q.** Sir, if we could turn to Exhibit A of your Affidavit.

22 **A.** Okay.

23 **Q.** That is, as I understand it -- sorry, I don't mean  
24 Exhibit A, because that's actually your property,  
25 right? Sorry, I didn't mean that. That's the title

1 for your property?

2 **A.** Yes.

3 **Q.** And we see the purported Caveat registered on title  
4 down at the bottom of the page, and it's registered  
5 simply as "Caveat Re: See Caveat," correct?

6 **A.** Correct.

7 **Q.** Has the manner in which registration of the purported  
8 Caveat and how it appears on your title changed since  
9 you acquired the property in 1982?

10 **A.** I don't know. I don't -- well, I could look to see if  
11 I've got a title from 1982, a copy of the title. But  
12 this is a more recent copy, I believe. It's not one I  
13 provided.

14 **Q.** Okay. You'll agree with me that the registration on  
15 your title at Exhibit A doesn't indicate that nature of  
16 the Caveat, correct?

17 **A.** Correct.

18 MS. EMBURY: The document speaks for itself.

19 MS. REICHEL: I think the witness answered.

20 **Q.** MS. REICHEL: And, sir, do you recall when you  
21 purchased the property in 1982 whether or not the  
22 indication on the title was the same, "Caveat Re: See  
23 Caveat"?

24 **A.** No, I don't recall. But I have -- I have it in my  
25 file. Why don't I dig it out?

1 MS. REICHEL: Well, why don't we do this, as  
2 opposed to you digging it out right now: We'll ask for  
3 an undertaking that you review your files and produce a  
4 copy to us of the version of the title that you had  
5 from the time of your purchase in 1982?

6 MS. EMBURY: We'll give that undertaking.

7 UNDERTAKING NO. 1 - For Robert Engbloom  
8 to review his files and to produce a  
9 copy of the version of title that he  
10 had from the time of his purchase in  
11 1982

12 Q. MS. REICHEL: Sir, at the time that you  
13 purchased the property in 1982, was the purported  
14 Caveat registered on the title?

15 A. Yes.

16 Q. And before acquiring the property, did you obtain a  
17 copy of what was registered as the purported Caveat?

18 A. Yes. Well, yes.

19 Q. You seemed -- there seemed to be a bit of a delay  
20 there, "well, yes." Was there a further explanation  
21 required?

22 A. Well, you know, the clarification would be we made an  
23 offer to purchase, and subsequent to the offer to  
24 purchase being accepted, we reviewed the Caveat before  
25 closing the transaction. So I may not have had it --

1 the point of hesitation was I may not have had a copy  
2 at the time we made the offer, but I did by time we  
3 closed the offer.

4 **Q.** Okay. I think my question was before acquiring the  
5 property, so --

6 **A.** I wanted to clarify that.

7 **Q.** Okay. So based on your evidence you just gave, you  
8 obtained a copy of the purported Caveat prior to  
9 closing on the property in 1982, correct?

10 **A.** Correct.

11 **Q.** And that seems to be November 16th you purchased the  
12 property in 1982, based on the Land Titles Certificate?

13 **A.** Yes.

14 **Q.** And how did you obtain a copy of the purported Caveat?

15 **A.** Well, in the transaction, Nancy and I were represented  
16 by my law firm at that time, MacKimmie Matthews, and  
17 one of our partners there was acting for us. You know,  
18 he searched the title and provided me with a copy.

19 **Q.** Okay. What did you understand the purported Caveat to  
20 be at the time that you purchased the property?

21 **A.** Sorry, can you repeat that?

22 **Q.** What did you understand the purported Caveat to be at  
23 the time that you purchased your property?

24 **A.** There was a Caveat that had a Restrictive Covenant in  
25 it that restricted development on the property to --

1           you know, in accordance with the terms of the -- that  
2           is set out in the Caveat.

3   **Q.**   And in order to determine those restrictive --  
4           restrictions, you needed a copy of that Caveat,  
5           correct?

6   **A.**   Correct.

7   **Q.**   Because otherwise just looking at the title, you're not  
8           able to determine the nature of the Caveat or whether  
9           or not it's a Restrictive Covenant or has any  
10          development restrictions, correct?

11  MS. EMBURY:                    Sorry, is that a question that you  
12           are -- because at the time he reviewed the title in  
13           1982, we're not confident what the title said.

14  MS. REICHEL:                   Well, I guess we can come back and  
15           answer that on the undertakings, but I feel like  
16           Mr. Engbloom can likely answer me as to whether or not  
17           in order to determine it was a Restrictive Covenant and  
18           whether there were restrictions on it, he needed to  
19           actually see the document.

20  MS. EMBURY:                    Counsel, I'm actually not going to  
21           let him answer that. It's a hypothetical. If you want  
22           to ask him factually what happened in 1982, I'm  
23           comfortable with you asking that question.

24  OBJECTION TAKEN to answering the question: Because  
25           otherwise just looking at the title, you're not able to

1 determine the nature of the Caveat or whether or not  
2 it's a Restrictive Covenant or has any development  
3 restrictions, correct?

4 **Q.** MS. REICHEL: Mr. Engbloom, do you recall in  
5 1982 when you purchased the property, in order to  
6 determine the nature of the Caveat, you actually had to  
7 read the document and obtain a copy of it?

8 **A.** Yes, to -- to understand the details of it. It was  
9 common knowledge that this area had, you know, a Caveat  
10 and Restrictive Covenant building scheme on it, so I  
11 wasn't surprised to see it. But, yes, to answer your  
12 specific question, you would need to read the Caveat.

13 **Q.** What do you mean by "common knowledge," sir?

14 **A.** Well, I grew up in the neighbourhood, and everybody  
15 understood the CPR caveats in this neighbourhood and  
16 other neighbourhoods in the area that were developed in  
17 the '40s and the '50s, that had --

18 **Q.** So if you grew up in the neighbourhood, you might  
19 understand that?

20 **A.** Pardon me?

21 **Q.** So if you grew up in the neighbourhood, you might  
22 understand that there might be Restrictive Covenant?

23 MS. EMBURY: Counsel, he's talking about his  
24 personal experience, so let's just slow down a little  
25 bit. If you're asking hypotheticals related to people

1           who didn't grow up in the neighbourhood, I don't think  
2           it's appropriate for this witness to answer. You can  
3           ask him facts related to his personal involvement.

4   MS. REICHEL:                   I'm asking -- I'm just following  
5           up on his own evidence, counsel, so thank you for that,  
6           but he's answered the question.

7   OBJECTION TAKEN to answering the question: So if you grew  
8           up in the neighbourhood, you might understand that  
9           there might be Restrictive Covenant?

10   Q.   MS. REICHEL:           Did you keep a copy of the  
11           purported Caveat that you received in 1982?

12   A.   Yes, I did.

13   Q.   And where did you maintain that?

14   A.   In a file dealing with the purchase of the property in  
15           our filing cabinet in our home.

16   Q.   And do you still have a copy of this purported Caveat  
17           that you received as part of the purchase?

18   A.   I do.

19   Q.   And is that the document attached at Exhibit B?

20   A.   Yes.

21   Q.   So, sir, can you tell me, when I'm reviewing Exhibit B  
22           of this purported Caveat, the legal description in the  
23           agreement attached is not actually your property. It's  
24           a different parcel in the building plan. Is there an  
25           agreement that exists that actually references your



1 property?

2 **A.** Not in -- the reference to our property in Clause 3.  
3 But, no, this is the only one I'm aware of. It deals  
4 with all the properties listed on paragraph 3.

5 **Q.** Right. And I'm looking at page 3 of that document,  
6 which is the agreement between CP Rail and the  
7 Greenans, and it reference -- it's referenced to a  
8 particular lot, which is purchase Lot 7 in Block 90  
9 which is not your lot, correct, sir?

10 **A.** Yes.

11 **Q.** Okay. And so what I'm asking is if you're aware of an  
12 agreement between CP Rail and the Greenans that relates  
13 to your parcel or property?

14 **A.** Well, as I said, I think this does relate to our parcel  
15 or property because it is listed in Clause 3. But if  
16 you're asking me whether I had a similar -- this is the  
17 only agreement -- this is the only document I've got  
18 relating to the Caveat.

19 **Q.** Okay. Thank you. Sir, have you provided this Caveat  
20 to other people?

21 **A.** Just a moment, please. I just want to make a note.  
22 Pardon me. Go ahead.

23 **Q.** Have you provided the purported Caveat that is found at  
24 Exhibit B to other people?

25 **A.** Yes.

1 Q. And who?

2 A. Well, the first person would have been my counsel when  
3 we were opposing this subdivision in -- on 3412 - 10th  
4 Street, next to us, in 2017. And other than that, I  
5 think the other person would have been Hugoline Morton  
6 on the day I spoke of earlier where Hugoline and Risa  
7 and I met in my backyard and I provided her with a copy  
8 the Caveat -- my copy of the Caveat at that time.

9 Q. And that would have been late August or early September  
10 2020?

11 A. Yes.

12 Q. You didn't provide a copy of the purported Caveat to  
13 the Tejpars before they purchased the lands, correct?

14 A. Correct.

15 Q. Did you provide a copy of the purported Caveat to  
16 anyone else?

17 A. I provided it to Mr. Ferguson, and, you know, there  
18 would have been -- I think I provided it to other  
19 members on the committee who may have asked for it.

20 Q. And all of these provisions of the purported Caveat  
21 would have happened after you provided it to Hugoline  
22 in late August, early September 2020?

23 A. Yes.

24 Q. And none of Mr. Ferguson or any others you provided it  
25 to had their own copies of the Caveat?

1     **A.**    Not that I'm aware of.

2     **Q.**    Did you provide a copy of the purported Caveat to any  
3            of the prior owners of Tejpar property?

4     **A.**    No.

5     **Q.**    When the Tejpar property was first listed for sale by  
6            the prior owners, did you raise the copy of the  
7            purported Caveat with the sellers?

8     **A.**    No.

9     **Q.**    And you're aware that Mr. Ferguson or others involved  
10           in the community association initially raised the  
11           existence of a purported Caveat in September of 2020?

12    **A.**    Sorry, would you repeat that?

13    **Q.**    Sure.  You're aware that Mr. Ferguson or others  
14           involved with the community association first raised  
15           the existence of this purported Caveat in September of  
16           2020 with the Tejpars, correct?

17    **A.**    Correct.

18    **Q.**    And at the time when Ms. Tejpar asked about the origin  
19           of the Caveat, Mr. Ferguson stated that he did not  
20           know?

21    **A.**    I can't comment.

22    **Q.**    Were you present during that community meeting?

23    **A.**    No.

24    **Q.**    Sir, if we look at Exhibit B, again, to your Affidavit,  
25           there are a number of handwritten notations on the

1 document. Do you know who made those markings?

2 **A.** No.

3 **Q.** To confirm, this is the only copy of the purported  
4 Caveat you've ever seen?

5 **A.** Correct.

6 **Q.** If we turn to -- sorry, bear with me for one second --  
7 Clause 3 of the Caveat.

8 **A.** Okay.

9 **Q.** It talks about the purported Caveat. It talks about  
10 "restrictive covenants similar to the covenants  
11 hereinafter being contained." Do you know if the  
12 Caveat that was potentially filed against all the other  
13 lands had the exact same covenants?

14 **A.** Am I aware? No, I'm not aware.

15 **Q.** Okay. Prior to December of 2020, did you ever see a  
16 copy of the purported Caveat that was filed in respect  
17 of the Tejpars' property?

18 **A.** Sorry, can you repeat that?

19 **Q.** Prior to December 2020, did you ever see a copy of the  
20 purported Caveat that was filed in respect of the  
21 Tejpars' property?

22 **A.** Prior to -- sorry --

23 **Q.** December 2020.

24 **A.** December 2020?

25 **Q.** Yes.

1     **A.**    Did I ever see what?

2     **Q.**    A copy of the purported Caveat filed against the  
3            Tejpars' property?

4     **A.**    Well, I saw the -- I would have seen title to the  
5            Tejpars' property that showed the registration of this  
6            instrument, the caveat instrument, yes.

7     **Q.**    Did you see -- did you pull the instrument and see a  
8            copy of what was filed?

9     **A.**    Oh, I see what you're getting at.  No.  Well, there  
10           were two things going on.  So December of 2020 -- I'm  
11           just trying to remember when I became aware that it was  
12           lost.  Oh, okay.  No, I -- I -- I was aware that --  
13           okay.  To answer your question, I did not check  
14           Tejpars' property before December of 2020 for the --  
15           the instrument registered as the Caveat, 7648 FT.

16    **Q.**    And had you checked the Tejpars' title previously --  
17           previous to December 2020 to see how the Caveat was  
18           referenced on their title?

19    **A.**    I can't recall.  I may well have.

20    **Q.**    Have you ever seen a copy of the associated agreement,  
21            i.e., a similar agreement to what we see at page 3 of  
22            the purported Caveat as it relates to the Tejpars'  
23            property?

24    **A.**    This is the only document I've seen in relation to the  
25            Caveat.

1 Q. So when you talk about discussions with -- about the  
2 purported Caveat with the group of residents, is that  
3 discussion that first one you talked to me about in the  
4 backyard with Hugoline Morton and stuff, that's the  
5 first time you discussed the Caveat?

6 A. With that group, yes.

7 Q. And during that discussion, you discussed a way to  
8 prevent the Tejpars from subdividing the property; is  
9 that correct?

10 A. Well, it would have been broader than that, but it  
11 would have included ways to -- to object to, restrict,  
12 stop the building of two homes on the -- the original  
13 parcel, correct.

14 Q. And when you mean "broader than that," does that cover  
15 the matters you just told me? Or were there additional  
16 matters that were discussed?

17 A. The issues, that was the development permit issues, it  
18 would have been injunctive relief issues, the range of  
19 issues around the process.

20 Q. And did you discuss with any members of the group of  
21 residents that were upset with the Tejpars moving into  
22 the neighbourhood?

23 A. No.

24 Q. And is this the time you advised these fellow  
25 neighbours that the purported Caveat existed?

1     **A.**     Yes.

2     **Q.**     And that was Hugoline Morton, and who was the second  
3             person that you advised this of?

4     **A.**     Risa Desa.

5     **Q.**     Were either of them in possession of a copy of the  
6             purported Caveat at the time?

7     **A.**     No.

8     MS. EMBURY:                     To his knowledge.

9     MS. REICHEL:                    Right.

10    **A.**     To my knowledge, no.  Yeah, thank you.

11    **Q.**     MS. REICHEL:             And were either of them aware that  
12             there was a Restrictive Covenant on their property at  
13             the time to your knowledge?

14    **A.**     I don't know.

15    **Q.**     When did you first discuss the purported Caveat with  
16             Mr. Ferguson in the context of the Tejpar property?

17    **A.**     It would have been shortly after that.

18    **Q.**     Had you discussed it with Mr. Ferguson prior to that?

19    **A.**     No.

20    **Q.**     How did the discussion arise?

21    **A.**     We were having a discussion about a developing concern  
22             around the development proposal and that the Caveat was  
23             relevant.

24    **Q.**     Okay.  And you said shortly after that, so would that  
25             be in September of 2020?

1     **A.**     Yes.

2     **Q.**     And where were you?

3     **A.**     Where was I? Well, I think we had a couple of  
4             telephone calls, and we also had a meeting in Tom's  
5             backyard.

6     **Q.**     Was Mr. Ferguson in possession of a copy of the  
7             purported Caveat?

8     **A.**     Not to my knowledge.

9     **Q.**     Was he aware of the Caveat?

10    MS. EMBURY:                    To my client -- or to the  
11            witness's knowledge? You're asking him about what was  
12            in the mind of another person.

13    MS. REICHEL:                   Right.

14    **Q.**     MS. REICHEL:        During your discussions, did  
15            Mr. Ferguson tell you he was already aware of it?

16    **A.**     Yes.

17    **Q.**     And, sir, we already spoke about this generally, but  
18            you can confirm for me that prior to the Tejpars'  
19            purchase of the respondents' land, you did not advise  
20            the seller that you had a copy of the purported Caveat?

21    **A.**     Correct.

22    **Q.**     And you didn't advise the Tejpars that you had a copy  
23            of the Caveat, correct?

24    **A.**     I didn't know they were intending the buy the property.

25    **Q.**     Did you advise the seller's realtor that you had a copy



1 of the Caveat?

2 **A.** No.

3 **Q.** Did you advise the purchasers' realtors that you had a  
4 copy of the Caveat?

5 **A.** No.

6 **Q.** Now, sir, to the best of your knowledge, prior to the  
7 Tejpars' purchase of the respondents' land, are you  
8 aware if anyone else advised the sellers of the content  
9 of the purported Caveat or provided them with a copy?

10 **A.** I'm not aware.

11 I should put this in -- in a broader context. You  
12 know, when we were objecting to the subdivision of  
13 3412 - 10th Street in 2017, that's when I first became  
14 aware that the Caveat was missing or lost or missing  
15 its -- its registration. And, you know, at the time  
16 there was quite a bit of community discussion with  
17 various people around trying to block the subdivision  
18 on 3412, which included reference to the Caveat and  
19 Restrictive Covenant in the building scheme. During  
20 that process, when I became aware the Caveat was  
21 missing, counsel -- our counsel on that project wrote  
22 -- wrote to the Land Titles Office with a copy of the  
23 Caveat and asked that it be filed under -- under its  
24 instrument number. And I never heard anything back  
25 from that, and so I -- you know, I just assumed it was

1 back where it should have been.

2 **Q.** So you were aware it was missing in 2017. Who was your  
3 counsel that wrote to the Land Titles Office?

4 **A.** Sam Durante at Norton Rose.

5 **Q.** Do you have a copy of that letter, sir?

6 **A.** No.

7 **Q.** And of the people that you were discussing this with in  
8 terms of opposing the other subdivision in 2017, who --  
9 who did that involve? What neighbours were those?

10 **A.** Well, again, it was a group of, you know, concerned --  
11 concerned residents in the immediate area. It was the  
12 Elbow Park Residents Association in the normal process  
13 to go and seek community input to the subdivision  
14 proposal, and the community went through that process  
15 and was strongly opposed to -- to the subdivision. But  
16 it was neighbours -- neighbours in our immediate area  
17 and the broader Elbow Park community that were in  
18 opposition to that subdivision proposal.

19 **Q.** Okay. And did you or any -- to your knowledge any of  
20 the other residents bring an application to have the  
21 instrument reinstated at that time?

22 **A.** No.

23 **Q.** Sir, I'm turning to paragraph 9 of your Affidavit.

24 Actually, before we go too far, let's just turn to  
25 paragraphs 5 and 6. And just initially I'll have some

1 other questions on this shortly, but at paragraph 5(c),  
2 you talk about the subdivision resulting in two of the  
3 smallest lots in the plan area. They won't be the  
4 smallest lots, though; isn't that correct, sir?

5 **A.** Pardon me?

6 **Q.** The -- the lots -- the Tejpars' property divided into  
7 two lots, they won't in fact be the smallest, will  
8 they?

9 **A.** In the plan area, I -- I don't know in the plan area  
10 what's smaller.

11 **Q.** Okay. Well, you've made the statement, sir, so I  
12 assume you had something to back that up?

13 **A.** Oh, yeah --

14 **Q.** Or is that your guess?

15 **A.** The process that I went through to support that  
16 statement was to review the plan -- what's the plan?  
17 -- 3605FO, that is Exhibit C, and on -- on that  
18 exhibit, the size of the lots are identified. You can  
19 calculate them from the description on -- on the -- on  
20 that plan. So I went through the process of  
21 identifying which ones appeared to be the smallest,  
22 smaller end of the spectrum, and did the calculation on  
23 their square footage and compared that to what I  
24 understood to be the square footage of the proposed  
25 subdivided lots and came to -- came to that conclusion

1           that you have in (c).

2   **Q.**   Okay.  You're not -- you're not a planner, a City  
3           planner?

4   **A.**   I'm not a planner.

5   **Q.**   Right.  And you'll agree with me, as we've already  
6           discussed, the exhibit you've attached is the area plan  
7           as of 1949, not currently, correct?

8   **A.**   Correct.

9   **Q.**   And there have been changes to the neighbourhood since  
10          that time, correct?

11  **A.**   Correct.

12  **Q.**   Like, for example, Block 91, Lot 11 --

13  **A.**   Yes.

14  **Q.**   -- is a subdivided lot?

15  **A.**   Yes.

16  **Q.**   One part owned by Mike Major, one part owned by the  
17          Chidleys, correct?

18  **A.**   Correct.

19  **Q.**   Both of those lots are smaller than the proposed lots  
20          that would be the Tejpars' when subdivided, correct?

21  **A.**   Yes.

22  **Q.**   So I'm not purporting to take you through all of --

23  **A.**   Yeah, I don't know that.  I didn't do that calculation.  
24          I guess I was referring to lots other than the two  
25          subdivided ones that I referred to in paragraph 19.

1 Q. Okay. So you'll agree with me there were smaller lots  
2 in the plan area?

3 A. Yes.

4 Q. Okay. And with respect to your paragraph 5(d), when  
5 you talk about the --

6 A. With respect --

7 (SIMULTANEOUS CROSS-TALK)

8 COURT REPORTER: I'm sorry, we need to speak one at  
9 a time.

10 MS. EMBURY: It sounds like he would like to  
11 make a clarification, counsel.

12 MS. REICHEL: He's answered the question. We're  
13 moving on.

14 Q. MS. REICHEL: So the building of the proposed  
15 home, we're looking at paragraph 5(d) where you talk  
16 about "will out of context and out of 'fit' with the  
17 block and the plan area in my view," that's your  
18 personal opinion, sir?

19 A. It is.

20 Q. And you'll agree with me that neither of the comments  
21 that you've put in 5(c) and (d) have any application to  
22 whether or not this injunction should be permitted,  
23 correct?

24 MS. EMBURY: Objection.

25 OBJECTION TAKEN to answering the question: And you'll

1 agree with me that neither of the comments that you've  
2 put in 5(c) and (d) have any application to whether or  
3 not this injunction should be permitted, correct?

4 **Q.** MS. REICHELTL: They don't -- they don't have any  
5 application to compliance with the Restrictive  
6 Covenant, correct?

7 MS. REICHELTL: Objection.

8 OBJECTION TAKEN to answering the question: They don't --  
9 they don't have any application to compliance with the  
10 Restrictive Covenant, correct?

11 **Q.** MS. REICHELTL: Well, I'm just going to refer you  
12 to paragraph 6 of your own Affidavit. (as read)

13 This issue in this application is  
14 compliance with the Restrictive Covenant  
15 and specifically the one residence.

16 I provide the above in C and D for  
17 context.

18 Right?

19 **A.** Right.

20 **Q.** If we go to paragraph 9 of your Affidavit, you talked  
21 about: (as read)

22 From my knowledge of Elbow Park, I  
23 understand the development began in  
24 1907.

25 And you've told me that you grew up in Elbow Park, but

1 are there any documents that you're referencing as it  
2 relates to you setting out the history of the  
3 neighbourhood?

4 **A.** Well, I was on the website and just scrolling through  
5 some of the information on there and historic knowledge  
6 from, you know, my being raised in -- in the community.

7 **Q.** Sir, can you tell me what website you're referring to?

8 **A.** Elbow Park Residents Association.

9 **Q.** In your Affidavit at paragraph 9, you state: (as read)

10 Elbow Park has always existed as a  
11 neighbourhood of single-family homes.

12 Do you see that?

13 **A.** I do.

14 **Q.** And by "single-family homes," you mean one house per  
15 lot, correct?

16 **A.** Correct.

17 **Q.** And such a lot would include a lot that's been  
18 subdivided and has one home on each lot, correct?

19 **A.** Sorry, repeat that?

20 **Q.** Such a lot -- when you talk about a neighbourhood of  
21 single-family homes, a single-family home is one house  
22 per lot, and such a lot would include a lot that's been  
23 subdivided and has one home on each subdivided lot,  
24 correct?

25 **A.** Yes.

1 Q. Paragraph 5(a) of your Affidavit, the last sentence is  
2 talking about the purported Restrictive Covenant, and  
3 it talks about the effect of subdividing and building  
4 two residents and the intention to circumvent. You  
5 would agree with me, sir, as a lawyer of many years,  
6 that's a legal opinion?

7 MS. EMBURY: Sorry, sorry, sorry. Which  
8 paragraph are you at exactly, counsel?

9 Q. MS. REICHEL: 5(a), reading directly from:  
10 (as read)

11 The effect of subdividing and building  
12 two residences thereon is to circumvent  
13 the intention of the Restrictive  
14 Covenant.

15 Is that your legal opinion?

16 MS. EMBURY: Counsel, he's not -- he has  
17 expressed an opinion in his Affidavit. That's fine.  
18 He can answer the question. He's not being produced as  
19 a lawyer.

20 Q. MS. REICHEL: And that's part of my point. You  
21 appreciate that that's a decision for the justice to  
22 make, correct?

23 MS. EMBURY: When you say "that," counsel, just  
24 to be very clear, is the question, that as to the  
25 effect of subdividing the building, is that a decision



1           for the justice; is that the question?

2   MS. REICHEL:                    No.

3   **Q.**   MS. REICHEL:           (as read)

4           The effect of subdividing and building  
5           two residences thereon is to circumvent  
6           the intention of the Restrictive  
7           Covenant.

8           You're not purporting to provide a legal opinion with  
9           your Affidavit; is that correct, sir?

10   **A.**   Yeah. I'm just trying to make a simple statement that  
11           there will be two homes where there should be one.

12   **Q.**   Okay. Well, that's -- that's your personal opinion of  
13           that, but you didn't swear this Affidavit as a lawyer  
14           to provide a legal opinion to the Court, correct?

15   **A.**   Correct.

16   **Q.**   And in fact your primary practice, albeit lengthy, has  
17           been corporate securities law, correct?

18   **A.**   Correct.

19   **Q.**   You're not a real -- you don't practice real estate  
20           law?

21   **A.**   No.

22   **Q.**   And if we turn to paragraph 15 of your Affidavit, I'll  
23           give you an opportunity to review that if you would  
24           like. I'm focussing on the last sentence, for your  
25           reference.

1     **A.**    Okay.

2     **Q.**    In the last sentence of paragraph 15, you state:

3           (as read)

4                    One residence per lot is the principle  
5                    element of development within the plan  
6                    area and Elbow Park more generally.

7           Is that your personal opinion, sir?

8     **A.**    Yes.

9     **Q.**    You didn't review any documents that set out that legal  
10            requirement or that description that you've provided  
11            there?

12    **A.**    Just the Caveat for -- for the plan area, the Caveat.

13    **Q.**    And that is your interpretation of what the Caveat  
14            states; is that correct?

15    **A.**    Yes.

16    **Q.**    Have you reviewed each of the lots and the properties  
17            in the outline of Exhibit M in your Affidavit, sir?

18    **A.**    Which exhibit?

19    **Q.**    M, as in mother.

20    **A.**    No.

21    **Q.**    Okay. So you're not aware whether each of the  
22            properties in Elbow Park is a single-family home,  
23            correct?

24    **A.**    Well, from living here for as long as I have, I think  
25            that is certainly the nature of the community, but I

1 have not checked each home and each title, correct.

2 **Q.** And, sir, are you aware of a property located at  
3 1031 - 32nd Avenue Southwest, a few doors down from  
4 your property?

5 **A.** Can you repeat that property?

6 **Q.** Yeah. It's -- the residential address is 1031 - 32nd  
7 Avenue Southwest.

8 **A.** Which lot is it? Can you tell me which lot it is?

9 **Q.** Block 91, Lot 11.

10 **A.** Okay. That's the subdivided one.

11 **Q.** It's one of the subdivided ones, correct. That's half  
12 of it which is Mr. Major's property, correct?

13 **A.** I'm familiar with it.

14 **Q.** Okay. You're also aware of a property located at  
15 1035 - 32nd Avenue Southwest, also a few doors down  
16 from your property, sir?

17 **A.** Again, what lot is that? The document you provided me  
18 yesterday I'm having difficulty reading municipal  
19 addresses on them.

20 **Q.** Okay. And the document I think you provided in your  
21 Affidavit doesn't have municipal addresses on it.  
22 That's the other half of the Block 91, Lot 11, which is  
23 the Chidley property. You're familiar with that  
24 property as well?

25 **A.** Yes.

1 Q. And, sir, is it your personal view that both of these  
2 properties are single-family houses?

3 A. Yes.

4 Q. And is it your personal view that these properties and  
5 lots thereon are appropriate for and consistent with  
6 the character of the Elbow Park neighbourhood?

7 A. No.

8 Q. Can you tell me, sir, did you oppose the subdivision of  
9 that property?

10 A. No. Just in terms of timing, we bought in '82, and I  
11 think those were done right around the same time.  
12 Anyways.

13 Q. Okay. So, sir, let's go to the -- we're going to talk  
14 a bit about the changes. So I know that you attached  
15 -- you state in your Affidavit that: (as read)

16 A plan of re-subdivision dated October  
17 11th, 1946, was registered as Instrument  
18 Number 3605FO.

19 Do you see that at paragraph 10 of your Affidavit, sir?

20 A. Yes.

21 Q. And you've attached that at Exhibit 6 -- or, sorry --  
22 Exhibit C, correct?

23 A. Correct.

24 Q. And we can refer to that as "the 1946 plan"?

25 A. Yes.

1 Q. How did you become aware of the 1946 plan, sir?

2 A. When -- when we were doing the research for  
3 establishing the building scheme to object to the  
4 subdivision on 3412 - 10th Street, that is when I  
5 became aware of the -- that plan. I've made reference  
6 to it and I had a copy of it in my file, and so I guess  
7 I knew back from the purchase that there was an extract  
8 from that plan that had been provided to me at the time  
9 of -- of the purchase.

10 Q. Do you recall if you ever provided a copy of the 1946  
11 plan to the Tejpars, other than in your Affidavit, sir?

12 A. No, I didn't.

13 Q. At paragraph 11 of your Affidavit, you talk about "the  
14 first transfer"; do you see that, sir?

15 A. I do.

16 Q. When did you become aware of the first transfer, as  
17 you've defined it?

18 A. Same thing, when we were doing our research on 3412, so  
19 that would have been in the fall of 2017 and over the  
20 winter -- over that winter.

21 Q. And how did you become aware of this first transfer?

22 A. A historical search of the properties and titles in the  
23 area.

24 Q. What documents did you rely upon to -- to inform  
25 yourself of this first transfer, as you've defined it?

1     **A.**     The transfer.   The document.

2     **Q.**     Do you still have that document, sir?

3     **A.**     Yeah, it's in Land Titles.   I've got a copy of it.

4     MS. REICHELTL:                 Sure.   I'm going to ask for an  
5             undertaking that you provide a copy of it?

6     **A.**     Sure.

7                     UNDERTAKING NO. 2 - With reference to  
8             paragraph 11 of Robert Engbloom's  
9             Affidavit, to provide a copy of the  
10            first transfer document

11    **Q.**     MS. REICHELTL:         At paragraph 12 of your Affidavit,  
12             I'll give you an opportunity to review that.

13    **A.**     Okay.

14    **Q.**     And in that paragraph you state that at some point the  
15             text, which is the actual instrument, of the purported  
16             Caveat was missing in the Land Titles Office?

17    **A.**     Yes.

18    **Q.**     And by when you say "at some point the text," you  
19             actually mean the entirety of the agreement attached as  
20             Exhibit B of your Affidavit, correct?

21    **A.**     Yeah.   It's Exhibit B, correct.

22    **Q.**     So when somebody -- you mentioned that you became aware  
23             of that in 2017?

24    **A.**     Correct.

25    **Q.**     Okay.   And how did you become aware of that?

1     **A.**    When we were doing the searches on titles and we  
2            searched the instrument and it seemed to be missing.

3     **Q.**    And when you say "seemed to be missing," is that  
4            because you received a certificate from the Land Titles  
5            Office that it was lost --

6     **A.**    Yes.

7     **Q.**    -- or destroyed?

8     **A.**    Yes.

9     **Q.**    So when you say "the text of the Caveat missing," as  
10           you've confirmed, it was in fact the entirety of the  
11           document Exhibit B, correct?

12    **A.**    Correct.

13    **Q.**    And when you state at paragraph 12 that notwithstanding  
14           that it was missing, it remained registered on title,  
15           you're referring to the fact that there was a notation  
16           on title of a Caveat Re: See Caveat; is that correct?

17    **A.**    Correct.

18    **Q.**    When you found out that this was a missing instrument  
19           in 2017, did you share this information more broadly  
20           than those that you've already spoken to -- spoken  
21           about, sorry?

22    **A.**    You mean when I learned it was missing?

23    **Q.**    Yes.

24    **A.**    No, just the ones I had spoken to and the letter that I  
25           previously mentioned.

1 Q. Did the Elbow Park Community Association board of  
2 directors know about the missing Caveat?

3 MS. EMBURY: To his knowledge?

4 Q. MS. REICHEL: Yeah, to your knowledge.

5 A. I didn't inform them. They don't have any standing  
6 under that -- the Caveat. But, no, not to my  
7 knowledge.

8 Q. In your Affidavit you talk about -- or you provide an  
9 overview at paragraph 13 of what you call the "City  
10 Registered Restrictive Covenants"; do you see that,  
11 sir?

12 A. I do.

13 Q. And those were Restrictive Covenants registered against  
14 lots transferred in the first transfer that you  
15 referred to; is that right?

16 A. Yes.

17 Q. When did you become aware of City registered covenants?

18 A. Oh, that would have been in my childhood, because  
19 that's the instrument that was registered against my  
20 parents' home. But in this context, I became aware of  
21 it again in 2017.

22 Q. You were aware of a Restrictive Covenant registered  
23 against your parents' home as a child?

24 A. Yeah, this same one.

25 Q. You have personal knowledge of that?



1     **A.**    Well, no, it was -- it was a point of discussion.  I  
2            recall as, you know, early days in the community the  
3            reference to the caveats and restrictive covenants, so  
4            yes.  But that would have been when I first became  
5            aware of it.  In this context, it would have been in  
6            2017 when I was doing the research on the subdivision  
7            on 3412.

8     **Q.**    Sir, the Tejpar property wasn't (AUDIO DISTORTED).

9     **A.**    Pardon me?

10    MS. EMBURY:                    Sorry, you're cutting out.

11    **Q.**    MS. REICHEL:        The Tejpar property wasn't  
12            transferred as part of what you call that first  
13            transfer?

14    **A.**    Sorry, you're cutting out again.

15    **Q.**    Can you hear me better now, sir?

16    **A.**    Yes.

17    **Q.**    So Tejpar property was not transferred as part of what  
18            you call that first transfer; is that correct?

19    **A.**    I believe that's correct, yes.

20    **Q.**    And your property wasn't transferred as part of the  
21            first transfer?

22    **A.**    Correct.

23    **Q.**    And likewise, the Ferguson property was also not  
24            transferred as part of the first transfer, correct?

25    **A.**    Correct.

1 Q. Sir, at Exhibit F of your Affidavit, you've attached  
2 what I understand to be the same 1946 plan that's  
3 Exhibit C but it's now colour coded; is that correct?

4 A. Correct.

5 Q. And other than the colour coding of lots, Exhibit C and  
6 F are the same?

7 A. Correct.

8 Q. Did you apply the colour coding to Exhibit F, sir?

9 A. No.

10 Q. And who did so, sir?

11 A. Counsel.

12 Q. And are you aware what they reviewed in applying this  
13 coding, sir?

14 MS. EMBURY: Objection.

15 MS. REICHEL: Well, you put it in evidence.

16 We're allowed to understand the basis of it,  
17 particularly again that it's not correct and reflective  
18 of the current area plan.

19 MS. EMBURY: Again, you can ask him what he  
20 knows about what was reviewed.

21 MS. REICHEL: That's exactly what I did,  
22 counsel.

23 OBJECTION TAKEN to answering the question: And are you  
24 aware what they reviewed in applying this coding, sir?

25 Q. MS. REICHEL: So, sir, are you aware of what was

1 reviewed to apply the coding to this exhibit to your  
2 Affidavit?

3 **A.** My understanding was that counsel had searched the  
4 titles to all of the properties that were listed, that  
5 are colour coded in the blue and the green, to identify  
6 this colour coding.

7 **Q.** And you'll agree with me, sir, that this Exhibit F,  
8 which is the colour coded Plan 46, doesn't represent  
9 the plan area today, correct?

10 **A.** Well, no, I don't know what you mean by that. It -- it  
11 doesn't reflect the subdivision on 80-1, and it doesn't  
12 reflect the subdivision on 91-11. But otherwise, I --  
13 I'm not aware that it doesn't reflect the situation  
14 today.

15 **Q.** Okay. Sir, we emailed to your counsel yesterday and  
16 we'll put it on the screen for ease of reference.

17 **A.** Yes.

18 **Q.** Which is a document that is the same plan as depicted  
19 in Exhibit F?

20 **A.** Yes.

21 **Q.** But is recent to the current date because it's found on  
22 the My City Calgary website.

23 MS. EMBURY: In fairness, counsel, it does not  
24 reflect the blocks -- the lot, blocks, and lot numbers  
25 -- or the block numbers. It doesn't have the legal

1 title. All it has is the municipal title, the  
2 municipal address.

3 MS. REICHELTL: Right. But still, I didn't say it  
4 had the lot numbers. I said it was reflective of the  
5 area plan at the current date.

6 Q. MS. REICHELTL: Sir, have you had an opportunity  
7 to review this?

8 A. Yes.

9 Q. And would you agree with me that it reflects the  
10 current area plan as of 2020 -- or 2021?

11 A. In -- in terms of municipal addresses, I have not  
12 checked lot by lot. But, yes, it generally looks like  
13 it reflects the municipal address, which of course are  
14 a little different than -- than the legal description.  
15 There we go, okay.

16 Q. And in particular, as you described to me just before  
17 we put this up on the screen, it does show the lots  
18 next to the Tejpar property that were subdivided in the  
19 '80s, correct?

20 A. Correct.

21 Q. And also across 32nd Avenue shows the other lots that  
22 were subdivided in the 1980s, you said, which are from  
23 Block 80, Lot 1?

24 A. Correct.

25 Q. Correct. Which does not appear on your Exhibit F,

1 correct?

2 **A.** Correct. Yes.

3 MS. REICHELT: I'm going to ask that this  
4 document be marked as Exhibit 1?

5 MS. EMBURY: That's fine.

6 COURT REPORTER: Can I just ask, can you just  
7 define it for me?

8 MS. REICHELT: Sure. It's the area plan from  
9 2020.

10 MS. EMBURY: Counsel, I'm not sure that it is  
11 the area plan, because my understanding is an area plan  
12 typically reflects legal descriptions. So I wonder if  
13 you could refer it to as an excerpt from the City's  
14 website, which as you say purports to reflect the  
15 municipal addresses and structure of the area as of  
16 2020. I just don't think you can define it as an area  
17 plan because I think if you do a search at Land Titles,  
18 something entirely different will come up.

19 MS. REICHELT: Well, why don't we call it the  
20 City of Calgary area plan 2020, given it comes right  
21 off of their website?

22 MS. EMBURY: And if you can show me the -- why  
23 don't we say excerpt from the City of Calgary website  
24 2020?

25 MS. REICHELT: Sure.

1 EXHIBIT 1 - An excerpt from the City of  
2 Calgary website 2020

3 Q. MS. REICHELTL: Sir, you'll agree with me that  
4 Exhibit F to your Affidavit doesn't reflect the current  
5 subdivided properties in the area plan, correct?

6 A. It doesn't reflect 80 -- the subdivision of 80-1 and  
7 91-11, correct.

8 Q. Any others?

9 A. No, I'm not aware of any other others.

10 Q. And you'll agree with me, sir, that the injunction  
11 application is to enforce the purported Caveat as  
12 against the Tejpar property, correct?

13 A. Correct.

14 Q. And it doesn't make any reference to the City  
15 Registered Restrictive Covenant, correct?

16 A. I'm sorry, what doesn't?

17 Q. The injunction application doesn't have any reference  
18 to that because it's not applicable, correct?

19 A. I'd have --

20 MS. EMBURY: Whoa, whoa, whoa. Sorry. Sorry.  
21 The injunction application doesn't have any -- doesn't  
22 have any reference to what exactly?

23 MS. REICHELTL: The City Registered Restrictive  
24 Covenant.

25 MS. EMBURY: On the Tejpar property?

1 MS. REICHELTL: Correct. The injunction only has  
2 to do with the Tejpar property.

3 MS. EMBURY: I'm struggling to -- the -- the  
4 document, the application document -- I just don't --  
5 I'm struggling with the question. Because if you're  
6 saying that that particular property is not referred to  
7 in the originating application, it is.

8 MS. REICHELTL: No, it's not a property. It's a  
9 Restrictive Covenant. What he calls the City one  
10 doesn't apply. It's not registered or purported to be  
11 registered against the Tejpar property.

12 MS. EMBURY: That's a legal question that  
13 you're asking, so I'm going to object to the question.

14 OBJECTION TAKEN to answering the question: The injunction  
15 application doesn't have any reference to that because  
16 it's not applicable, correct?

17 Q. MS. REICHELTL: Now, sir, if we look again at  
18 Exhibit F, several of the lots are not colour coded?

19 A. Correct.

20 Q. They look white, correct?

21 A. Yes.

22 Q. And now I understand that your counsel apparently did  
23 this coding, but it is in your Affidavit so it is your  
24 evidence. So those lots which you state have had the  
25 Caveat -- the purported Caveat or the City Registered

1 Restrictive Covenants discharged, correct? Those are  
2 the white lots? Is that -- is that accurate?  
3 Paragraph 18 of your Affidavit, if that assists.

4 **A.** Yes.

5 **Q.** So on the white lots that we see on Exhibit F, the  
6 Caveat -- or purported Caveat that you attached at  
7 Exhibit B, nor the City Registered Restrictive  
8 Covenants that you reference are registered against  
9 those lots; that's correct?

10 **A.** Currently correct, yes.

11 **Q.** You say "currently correct." Is that because they've  
12 been discharged?

13 **A.** Yeah. So those -- those are the ones I am referring to  
14 in paragraph 18 of my Affidavit, where I show which  
15 lots have had the Caveat or the City Registered  
16 Restrictive Covenant discharged.

17 **Q.** Okay. And how did you determine that the purported  
18 Caveat or the City Registered Restrictive Covenant was  
19 discharged from these lots?

20 **A.** When a title search was done, they were not on the --  
21 on the titles currently, and when the search -- the  
22 historical search was done, they -- they were shown on  
23 -- on those titles.

24 **Q.** So you're making an inference that some type of a  
25 discharge was done?



1     **A.**    Yes.

2     **Q.**    And you'll agree that only two of those lots, Block 91  
3            Lot 3 and Block 92, Lot 3, were subject to the City  
4            Registered Restrictive Covenant?

5     **A.**    Sorry, repeat that again?  91-3.

6     **Q.**    And 91-3 and 92-3.

7     **A.**    Correct.

8     **Q.**    So the Caveat has been discharged from Block 80, Lot 1,  
9            correct?

10    **A.**    Yes.

11    **Q.**    And the Caveat has been discharged from Block 80,  
12            Lot 8?

13    **A.**    Correct.

14    **Q.**    And the purported Caveat has been discharged from  
15            Block 91, Lot 11?

16    **A.**    Correct.

17    **Q.**    As well as Block 92, Lot 8?

18    **A.**    Correct.

19    **Q.**    And at paragraph 19 of your Affidavit, you state that  
20            Block 80, Lot 1 was subdivided to allow the building of  
21            two single-family homes?

22    **A.**    Correct.

23    **Q.**    And you've previously stated that a single-family home,  
24            one lot -- on one lot is in accordance with the  
25            character of the neighbourhood, correct?

1     **A.**     Yes.

2     **Q.**     And Block 91, Lot 11 was also subdivided, as we spoke  
3             about, to allow the building of two single-family  
4             homes, correct?

5     **A.**     Correct.

6     **Q.**     Also in the accordance with the character of the  
7             neighbourhood, correct?

8     **A.**     Well, I think I indicated earlier that I didn't agree  
9             with the statement that the subdivisions in -- in the  
10            homes that were built were in the accordance with the  
11            character. They are single-family homes, certainly,  
12            but they are two homes on one original lot, and I don't  
13            think that is in accordance with the character of the  
14            plan area.

15    **Q.**     And to that point that you just raised, sir, you've  
16             reviewed the development proposals for the Tejpars'  
17             property, correct?

18    **A.**     Correct.

19    **Q.**     And you'll agree with me that that development proposal  
20             relates to a proposal to build a single-family home,  
21             correct?

22    **A.**     Yes.

23    MS. EMBURY:                 Sorry, I didn't hear the yes to  
24             the first question, having reviewed -- sorry, I wasn't  
25             looking at the witness, and so was there a yes to the

1 first question?

2 MS. REICHELTL: Yes.

3 So we've been going for an hour and a half. We  
4 don't have too much longer, but I think we should take  
5 about a ten-minute break.

6 (ADJOURNMENT)

7 Q. MS. REICHELTL: Sir, you've spoken a couple of  
8 times this is morning about -- and in your Affidavit at  
9 paragraph 21 about a proposal to subdivide a property  
10 with the residential address of the 3412 - 10th Street,  
11 correct?

12 A. Correct.

13 Q. And so we can speak of the City plan, that is Block 91,  
14 Lot 7, correct?

15 A. Correct.

16 Q. And that is the property that is right next door to  
17 your house; is that correct?

18 A. Correct.

19 Q. And that proposal to subdivide happened in 2017; is  
20 that correct?

21 A. Yes.

22 Q. And you state "the effort to subdivide was successfully  
23 resisted," and that appears at paragraph 23 of your  
24 Affidavit?

25 A. Yes.

1 Q. Actually, I think -- sorry, I might have cited it  
2 wrong. It was paragraph 21, not 23?

3 A. Let me double-check. That's right it's 21.

4 Q. Right. Can you tell me what that effort was?

5 A. Yes. So when -- when the lot was sold to the  
6 developer, I called the developer to see what his  
7 intentions were, and that's when I became aware that he  
8 was proposing to subdivide the parcel and build two  
9 single-family homes on the parcel. And so I -- I  
10 alerted him at the time to the existence of the Caveat  
11 and the Restrictive Covenant combination. That was the  
12 Restrictive Covenant and Caveat. In any event he  
13 proceeded ahead with the subdivision approval  
14 application, and I and the community made submissions  
15 to the subdivision authority. The subdivision  
16 authority advised that all of the requirements for  
17 subdivision had been met in terms of size of lot, width  
18 of lot, front footage, mechanical, transportation, all  
19 -- all the various elements, but they -- they  
20 ultimately denied the subdivision approval on the basis  
21 that the building of two homes on that lot would not be  
22 in the context of the community.

23 Q. Sir, didn't the City deny it due to the lot size and  
24 that it was too small to subdivide?

25 A. No.

1 Q. Sir, do you have a copy of the City decision as it  
2 related to that subdivision application that you  
3 participated in?

4 A. I don't know if I still have it, but I could -- I don't  
5 know if I still have it.

6 MS. REICHELTL: I'm going to ask for an  
7 undertaking that you review your records and produce a  
8 copy of the subdivision denial or decision as it  
9 related to that property, if you still have it?

10 MS. EMBURY: Yeah, the undertaking is granted.  
11 He will review his own records, and if he still has it,  
12 he will produce it.

13 UNDERTAKING NO. 3 - For Robert Engbloom  
14 to review his records, and if  
15 available, to produce a copy of the  
16 subdivision denial or decision as it  
17 related to the property referenced in  
18 paragraph 21 of his Affidavit

19 Q. MS. REICHELTL: And, sir, did you submit a comment  
20 letter or submissions in opposition to that  
21 subdivision?

22 A. Yes.

23 Q. And do you still have a copy of that, sir?

24 A. I'd have to look for them. I may have.

25 MS. REICHELTL: I'm going to ask for an

1           undertaking that review your records and if you have  
2           your comment letter or submissions, to provide same?

3   MS. EMBURY:                    Sure.

4           UNDERTAKING NO. 4 - For Robert Engbloom  
5           to review his records, and if  
6           available, to provide his comment  
7           letter or submissions in opposition to  
8           the subdivision referenced in paragraph  
9           21 of his Affidavit

10   Q.   MS. REICHEL:           And I just want to clarify one  
11           other point, that you mentioned that that lot actually  
12           is subject to the City Restrictive Covenant, correct?

13   A.   Correct.

14   Q.   Sir, if you could just refer to paragraph 5(e) of your  
15           Affidavit for me?

16   A.   Yes.

17   Q.   I apologize, 5(b) where you talk about history  
18           exceptions?

19   A.   Sorry, 5(b)?

20   Q.   B as in Bob.

21   A.   Got it.

22   Q.   And you've mentioned "two limited historical  
23           exceptions"?

24   A.   Correct.

25   Q.   Can you tell me what those historical exceptions you're

1 referring to are?

2 **A.** They're the ones we talked about and I identify in my  
3 -- on 19, so Block 80, Lot 1, Block 91, Lot 11.

4 **Q.** Okay. And what documents or information did you review  
5 to determine that there had been no other exceptions?

6 **A.** Well, part was just my knowledge that I had never --  
7 never seen a subdivision proposal on any of the other  
8 lots. The other would be walking the neighbourhood.  
9 It's apparent that there aren't -- apparent to me that  
10 there aren't any others. And then the review of titles  
11 that we did in conjunction with the 2017 initiative on  
12 3412.

13 **Q.** Okay. You're aware of the Elbow Park Residents  
14 Association, correct?

15 **A.** Yes.

16 **Q.** If I refer to that as "the Residents Association"  
17 you'll know what I'm referring to?

18 **A.** I will.

19 **Q.** And what is your involvement with the Residents  
20 Association?

21 **A.** I pay my member fees.

22 **Q.** And the subcommittee that you were talking about  
23 earlier, is that a part of the Residents Association?

24 **A.** Well, I don't know -- I don't know how to answer that.  
25 It is a group of residents in the community. We titled

1           ourselves -- well, whatever the name was, so Elbow Park  
2           caveat subcommittee. But it is not a formal part of  
3           the Residents Association, although -- yeah, it's not.

4           **Q.** Does it advertise on the Residents Association website?

5           **A.** I don't -- I don't know. I don't believe so.

6           **Q.** And you're familiar with the Residents Association's  
7           development committee?

8           **A.** Generally.

9           **Q.** Are you a part of that committee?

10          **A.** No.

11          **Q.** Are you aware that they have a website?

12          **A.** Yes.

13          **Q.** Did you discuss putting a copy of the purported Caveat  
14          on the website with anyone?

15          **A.** I can't recall. I -- I know there are a number of  
16          different caveats and restrictive covenant regimes in  
17          Elbow Park. I don't know if there was a central  
18          collection depository.

19          **Q.** Exhibit E to your application and a reference is also  
20          made at paragraph 12, you've included an order of the  
21          Alberta Court of Queen's Bench. Oddly, it doesn't --  
22          it doesn't have a court file number on the document  
23          that we've been provided with, but an order of Justice  
24          Malik dated December 16, 2020. Do you see that?

25          **A.** I do.



1 Q. I don't know why it doesn't have a file number, but  
2 that was an order requiring the Registrar to rectify a  
3 missing document as it related to the status of the  
4 purported Caveat?

5 A. Yes.

6 Q. And if we refer to that as "the restoration  
7 application," you'll know what I'm referring to?

8 A. I will.

9 Q. And what was your involvement in that application, sir?  
10 Because it doesn't seem to note that at paragraph 12 of  
11 your Affidavit.

12 A. Well, this application came about as part of the  
13 initiative to oppose the -- the proposed development on  
14 1023, and my role in that specifically was around  
15 swearing an Affidavit as to my having a copy the Caveat  
16 in my files.

17 Q. Okay. So who was told about this restoration  
18 application that was going to be undertaken, to your  
19 knowledge?

20 A. Notice was provided to the Registrar.

21 Q. What about to the other people in the neighbourhood?  
22 You talked about discussions, so who did you discuss it  
23 with?

24 A. Well, the committee certainly discussed it.

25 Q. That's that informal subcommittee that you talked about

1 earlier?

2 **A.** Yeah.

3 **Q.** Six people?

4 **A.** And --

5 MS. EMBURY: Counsel, sorry, I'm having trouble  
6 because you're going quite fast. Can you just slow  
7 down a little bit?

8 MS. REICHEL: Sure.

9 COURT REPORTER: Okay, so the last question I got  
10 was "Six people?" And I didn't get an answer.

11 **A.** Yes, it would have -- it would have included the six  
12 people in our committee and I think probably members of  
13 the executive of the Elbow Park Residents Association.

14 **Q.** MS. REICHEL: And who are those people?

15 **A.** I'd have -- it would have been Jane Major -- Jane  
16 Virtue was the president, Margo Coppus was in charge of  
17 development, and I'd have to check the website for the  
18 executive members. But that would have all been done  
19 on an information-type basis and, you know, keeping up  
20 with activities and developments related to  
21 subdivisions and the issues in the community.

22 **Q.** To your knowledge -- well, let's start with you. You  
23 didn't tell the Tejpars about that application, did  
24 you?

25 **A.** No.

1 Q. And you also didn't -- to your knowledge it wasn't  
2 posted on the Elbow Park Association website or  
3 anything along those lines, correct?

4 A. Correct.

5 Q. Are you aware of anybody else telling the Tejpars about  
6 the restoration application?

7 A. I'm not.

8 Q. And what about notice being given to the other  
9 residents that have the Caveat on their title, was  
10 notice given to them?

11 A. No, I don't believe so. We were advised by counsel  
12 that notice was --

13 MS. EMBURY: I'm going to stop you right there.

14 THE WITNESS: Okay. I'm sorry.

15 Q. MS. REICHEL: Do you know if -- how Mr. Ferguson  
16 came to be involved in the restoration application,  
17 given you were the one that purportedly had the Caveat?

18 A. Yeah. In -- in our group discussions around our  
19 committee -- subcommittee discussions around the  
20 process that we would be following, we had a --  
21 Mr. Ferguson indicated that he would be the applicant  
22 on enforcement proceedings, and so it made sense for  
23 him, in those discussions, to be the applicant in the  
24 restoration proceedings.

25 Q. And at the time that the restoration application was

1           made, you were aware that the Caveat had a registration  
2           on a number of different titles in the neighbourhood;  
3           there was an indication on those titles that there was  
4           an instrument there registered --

5   **A.**    Yes.

6   **Q.**    -- that purported to be the Caveat, correct?

7   **A.**    Correct.

8   **Q.**    And you were also aware that at least from 2017, if not  
9           some time prior, the Land Titles Office had indicated  
10          that it was a lost or misplaced instrument, correct?

11  MS. EMBURY:                    Counsel, I'm not sure that's  
12           entirely accurate.

13  MS. REICHEL:                   He already testified that in 2017  
14          he found out it was lost, so how is that not accurate?

15  MS. EMBURY:                    You are saying that the Land  
16          Titles Office indicated, and it did not just say lost  
17          or misplaced, just because you --

18  MS. REICHEL:                   We can go to the direct wording.

19  MS. EMBURY:                    Thank you.

20  OBJECTION TAKEN to answering the question:  And you were  
21          also aware that at least from 2017, if not some time  
22          prior, the Land Titles Office had indicated that it was  
23          a lost or misplaced instrument, correct?

24  **Q.**    MS. REICHEL:            So by at least 2017, you were  
25          aware of -- and let me find the exact quote.

1 MS. EMBURY: I believe counsel, just to assist  
2 you, it is at Exhibit E to the Affidavit of  
3 Mr. Ferguson.

4 MS. REICHELTL: It's Exhibit D to Mr. Engbloom's  
5 Affidavit.

6 Q. MS. REICHELTL: By 2017 you were aware that  
7 according to the Land Titles Office Instrument Number  
8 7648 FT had been lost, mislaid, or destroyed and has  
9 not been micro photographed, correct?

10 A. Sorry, you're -- I'm getting mixed up between  
11 Affidavits and statements and whose Affidavit, so let's  
12 start this again just to be clear.

13 Q. Sure. So my question to you was, at the time that the  
14 restoration application was considered in November of  
15 2020, you personally, Mr. Engbloom, knew that from at  
16 least 2017 the Land Titles Office, as it related to the  
17 purported Caveat, Instrument Number 7648 FT, had been  
18 lost, mislaid and destroyed and had not been micro  
19 photographed, correct?

20 A. Well, no. As I -- as I said earlier, I became aware  
21 that it was lost in the 2017 review, and as part of  
22 that review, sent a -- counsel sent a letter to the  
23 Registrar with a copy of the Caveat requesting that it  
24 be filed, which I assumed it had been. So subsequent  
25 to that, I would have been aware that it had not been,

1 and I would have become aware of that prior to  
2 restoration application.

3 **Q.** So when prior to the restoration application did you  
4 become aware it had not been filed at the Land Titles  
5 Office?

6 **A.** Shortly before.

7 **Q.** So as I understand, the restoration application was  
8 filed in --

9 **A.** Let me pause for a moment.

10 **Q.** Sure.

11 **A.** No. That is -- so I -- after the 2017 initiative, the  
12 letter was written. I thought it was on title. Then  
13 right around the same time, it would have been late in  
14 2019, early 2020, I received -- we received notice from  
15 the owners of 1001 - 32nd Avenue seeking a discharge of  
16 the Caveat from their property. And I believe -- I  
17 believe in that conversation with counsel, they  
18 mentioned that the Caveat was missing, and I provided  
19 them with a copy of the Caveat. So that would have  
20 been the next time that I became aware that the Caveat  
21 may not have been restored as I had previously thought  
22 it had.

23 **Q.** So at that time you knew anybody that searched the Land  
24 Titles Office would get back that mislaid certificate?

25 **A.** Can't say I made all that linkage, but, yes, that would

1           have been -- that would have been the situation.

2   **Q.**   Do you have a copy of the notice that you received as  
3           it related to the discharge of the Caveat?

4   **A.**   I have a copy of one of the letters, yes.

5   MS. REICHELTL:                   I'm going to ask for an  
6           undertaking that you provide that?

7   **A.**   Okay.

8                    UNDERTAKING NO. 5 - With reference to  
9                    Exhibit D to Robert Engbloom's  
10                   Affidavit, to provide a copy of the  
11                   notice that he received as it related  
12                   to the discharge of the Caveat - See  
13                   Transcript For Clarification

14   **Q.**   MS. REICHELTL:           And what was your understanding of  
15           the purpose of the restoration application? It was  
16           brought, and then subsequently you brought the  
17           injunction, right, so --

18   **A.**   To find -- to find the missing -- to restore -- to find  
19           the missing document.

20   **Q.**   And to ground the injunction application that was filed  
21           shortly thereafter?

22   **A.**   To ground it?

23   **Q.**   So support it. Was it part of the strategy?

24   MS. EMBURY:                   Counsel, you're asking multiple  
25           questions. Let's just slow down. Is the question what

1 his understanding of the purpose of the --

2 MS. REICHELTL: Yes.

3 MS. EMBURY: So, again, let's finish it and go  
4 a little bit slower. I'm going to let you pose the  
5 question, but you're going really, really fast, and  
6 we're on Zoom, so we need to go slower.

7 Q. MS. REICHELTL: Sir, did you understand my  
8 question?

9 A. Please repeat it.

10 Q. What's your understanding of the purpose of the  
11 restoration application in November of 2020?

12 A. The purpose was so that it would be capable of being  
13 found when searched in the Land Titles Office.

14 Q. Okay. And at that time had it been decided to bring an  
15 injunction to enforce that Caveat?

16 MS. EMBURY: I think that that's bordering  
17 on -- well, it's not bordering on privilege. I'll let  
18 him answer that.

19 A. Yeah, we -- we were well advanced in the contemplation,  
20 planning for an injunction application but had not made  
21 the determination to proceed with the injunction  
22 application.

23 Q. Sir, I'm just going to take a quick three to five  
24 minutes, max, to see if I have any further questions,  
25 but I think I may be done. If you can give me a few



1 minutes to double-check with my clients and then we can  
2 hopefully wrap things up.

3 **A.** Are your clients on the call?

4 **Q.** They are, yes.

5 **A.** Oh, I didn't -- I didn't know that. Hello, Ali and  
6 Zahra. I wish we were meeting under different  
7 circumstances.

8 MS. REICHEL: So we're off the record.

9 (ADJOURNMENT)

10 MS. REICHEL: Mr. Engbloom, subject to the  
11 undertakings we requested today and the refusals, we  
12 would like to thank you for your time this afternoon,  
13 and we are complete. Thank you.

14

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15 (Proceedings ended at 1:07 p.m.)

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1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages  
4 1 to 77 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 19th day of April, 2021.

15

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Sandra Dreher, CSR(A)

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Official Court Reporter

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1 - I N D E X -

2 ROBERT ENGBLOOM

3 April 6, 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  
13 EXHIBIT 1 - An excerpt from the City of Calgary 57  
14 website 2020

15  
16 \*\*\*UNDERTAKINGS REQUESTED\*\*\*

17 UNDERTAKING NO. 1 - For Robert Engbloom to review 23  
18 his files and to produce a copy of the version of  
19 title that he had from the time of his purchase in  
20 1982

21  
22 UNDERTAKING NO. 2 - With reference to paragraph 11 49  
23 of Robert Engbloom's Affidavit, to provide a copy  
24 of the first transfer document

25

1	UNDERTAKING NO. 3 - For Robert Engbloom to review	64
2	his records, and if available, to produce a copy	
3	of the subdivision denial or decision as it	
4	related to the property referenced in paragraph 21	
5	of his Affidavit	
6		
7	UNDERTAKING NO. 4 - For Robert Engbloom to review	65
8	his records, and if available, to provide his	
9	comment letter or submissions in opposition to the	
10	subdivision referenced in paragraph 21 of his	
11	Affidavit	
12		
13	UNDERTAKING NO. 5 - With reference to Exhibit D to	74
14	Robert Engbloom's Affidavit, to provide a copy of	
15	the notice that he received as it related to the	
16	discharge of the Caveat - See Transcript For	
17	Clarification	
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\*\*\*OBJECTIONS\*\*\*

OBJECTION TAKEN to answering the question: And 17  
you're calling it a conditional approval, sir, but  
you'll agree with me that the subdivision has been  
approved, and the only step left to take is the  
removal of the house and then the two titles will  
be issued; isn't that correct?

OBJECTION TAKEN to answering the question: 25  
Because otherwise just looking at the title,  
you're not able to determine the nature of the  
Caveat or whether or not it's a Restrictive  
Covenant or has any development restrictions,  
correct?

OBJECTION TAKEN to answering the question: So if 27  
you grew up in the neighbourhood, you might  
understand that there might be Restrictive  
Covenant?

1	OBJECTION TAKEN to answering the question: And	40
2	you'll agree with me that neither of the comments	
3	that you've put in 5(c) and (d) have any	
4	application to whether or not this injunction	
5	should be permitted, correct?	
6		
7	OBJECTION TAKEN to answering the question: They	41
8	don't -- they don't have any application to	
9	compliance with the Restrictive Covenant, correct?	
10		
11	OBJECTION TAKEN to answering the question: And	53
12	are you aware what they reviewed in applying this	
13	coding, sir?	
14		
15	OBJECTION TAKEN to answering the question: The	58
16	injunction application doesn't have any reference	
17	to that because it's not applicable, correct?	
18		
19	OBJECTION TAKEN to answering the question: And	71
20	you were also aware that at least from 2017, if	
21	not some time prior, the Land Titles Office had	
22	indicated that it was a lost or misplaced	
23	instrument, correct?	
24		
25		

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