

Ferguson v. Tejpar et al

Thomas Ferguson
on Wednesday, April 7, 2021



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COURT FILE NUMBER 2101-00793

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT THOMAS H. FERGUSON



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

Transcript of Oral Questioning of

THOMAS FERGUSON

(On affidavit sworn January 25, 2021)

Held via videoconferencing

April 7, 2021

1 ALL PARTIES APPEARING VIA VIDEOCONFERENCING

2

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22 403-266-1744

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1 (Proceedings commenced at 9:58 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: Thomas, T-H-O-M-A-S, Ferguson
25 F-E-R-G-U-S-O-N.

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. REICHELTL: Yes, please.

7 THOMAS FERGUSON, sworn, questioned via videoconference
8 by Ms. Reichelt:

9 Q. MS. REICHELTL: Good morning, Mr. Ferguson.

10 A. Good morning.

11 Q. As we spoke off the record, you and I both know each
12 other from our previous life of working at a different
13 firm together at McCarthy Tétrault.

14 A. Yes, I do.

15 Q. And interestingly enough, your counsel, who is not
16 present today, Mr. Marble, also worked with us there as
17 well, so a lot of firm people in the room today.

18 Sir, you are the applicant to the originating
19 application for injunctive relief in Court of Queen's
20 Bench, Action Number 2101-00793; is that correct?

21 A. I am.

22 Q. And, sir, if I refer to that as "the injunction
23 application," you will understand what I am referring
24 to?

25 A. Yes.

1 Q. And you swore an Affidavit in support of that
2 injunction application on January 25th, 2021?

3 A. Yes, I did.

4 Q. I'm sorry, I just realized there are some pop-ups on
5 one of my screens, so I'm just going to close that.

6 And if I refer to that as "your Affidavit," you'll
7 understand what I mean?

8 A. Yes.

9 Q. And before --

10 MS. EMBURY: I'm just going to ask the witness
11 to put the Affidavit in front of him.

12 MS. REICHEL: That would have been my next
13 question.

14 Q. MS. REICHEL: Do you have a copy of your
15 Affidavit available?

16 A. Yes, I do.

17 Q. Thank you. Sir, prior to beginning today, you took --
18 you swore an oath to tell the truth?

19 A. Yes, I did.

20 Q. And I -- you can confirm for me that is binding on your
21 conscience?

22 A. It is certainly binding on my conscience.

23 Q. And you have a full copy of your Affidavit along with
24 the exhibits available to you?

25 A. Yes, I do.

1 Q. And at the time that you swore your Affidavit, the
2 contents of it were true to the best of your knowledge?

3 A. Yes, they were, and they are.

4 Q. Okay. Which would follow-up on my next question, do
5 you have any corrections you wish to make to your
6 Affidavit, sir?

7 A. No.

8 Q. And so two of the respondents in this application -- in
9 your application are Zahra Tejpar and Ali Tejpar,
10 correct?

11 A. Yes.

12 Q. And if I refer to the Tejpars collectively as "the
13 Tejpars," you'll understand who I am speaking of?

14 A. Yes.

15 Q. And likewise, you'll understand -- you understand that
16 the Tejpars to be registered owners of a property
17 legally described as Plan 3605FO, Block 91, Lot 1,
18 correct?

19 A. That's 10 -- that's municipal address 1023 - 32nd
20 Avenue?

21 Q. Yes.

22 A. I have a little trouble with all these numbers and
23 lots, so I have to refer to the address from time to
24 time.

25 Q. Right. Except unfortunately all of the materials are

1 done with using block and plan as opposed to municipal.

2 So also to confirm for you for ease of reference,
3 if you turn to Exhibit 6 of your Affidavit, that is a
4 copy of the -- at the time, I guess, you swore your
5 Affidavit, the title for the Tejpars' property,
6 correct?

7 **A.** Excuse me --

8 MS. EMBURY: Counsel, his exhibits are letters,
9 not --

10 **A.** Yeah, mine --

11 MS. EMBURY: -- numbers.

12 **A.** -- are letters.

13 **Q.** MS. REICHEL: Sorry, Exhibit C.

14 **A.** Yes, I have it.

15 **Q.** And in your Affidavit you've identified the Tejpars'
16 property as the respondents' lands, so if I refer to it
17 either as "the respondents' lands" or "the Tejpar
18 property," you'll know what I am referring to?

19 **A.** Yes.

20 **Q.** Thank you. And other than discussions with your legal
21 counsel, what did you do to prepare for today's
22 cross-examination?

23 **A.** Well, I've reviewed some documents that came to light
24 since yesterday.

25 **Q.** Which documents were those, sir?

1 **A.** Okay. The first one is a letter from Jane Virtue. I
2 think it's October 9th.

3 **MS. EMBURY:** Counsel, I don't want to interrupt
4 your cross. If I can assist, Mr. Engbloom gave a
5 number of undertakings yesterday, and the pile of
6 documents that my client is referring to is
7 Mr. Engbloom's undertaking responses.

8 **MS. REICHELTL:** Okay. Those are not documents
9 that have been produced to my clients or ourselves at
10 this point?

11 **MS. EMBURY:** Correct.

12 **MS. REICHELTL:** Okay.

13 (SIMULTANEOUS CROSS-TALK)

14 **Q.** **MS. REICHELTL:** Sorry, Mr. Ferguson, go ahead.

15 **A.** Well, I think I -- one document that I looked at, I
16 looked at it before Mr. Engbloom was examined, but I
17 didn't discuss it with him or with counsel. It is a
18 copy of an October 8th, 2000, [sic] letter to the
19 Tejpars and Zahra and Ali -- excuse me, I'm not
20 phonetically.

21 **Q.** Tejpar.

22 **A.** Okay. And to the real estate agent, Kamil Lalji. And
23 it's dated October 8, 2020, addressed to Dear Ali and
24 Zahra -- excuse me if I mispronounced their names --
25 from Jane Virtue.

1 Q. Okay. Well, given those documents haven't been
2 disclosed to us, we at this time are not going to speak
3 of them because I don't know even know what they are.
4 I've never seen them.

5 A. Fair enough.

6 Q. And you looked at some documents, but you've also
7 spoken to Mr. Engbloom in advance of today's
8 cross-examination?

9 A. We spoke after he was finished his cross-examination
10 yesterday.

11 Q. And you were present at his cross-examination, correct?

12 A. Yes, I was.

13 Q. Okay. And what did you discuss with Mr. Engbloom?

14 A. Oh, we discussed his testimony after his
15 cross-examination. We didn't have too many things
16 of -- we didn't discuss it in a lot of detail, as I
17 recall. I don't think anything came up that -- that
18 you didn't deal with in your cross-examination, and any
19 comments I made to him would have been generally
20 supportive.

21 Q. Did you speak with anybody else in preparation for your
22 cross-examination?

23 A. Today?

24 Q. Not necessarily today but in preparation, other than
25 your counsel, which I don't want to hear about.

1 **A.** I spoke to my wife.

2 **Q.** What did you discuss? About this upcoming injunction
3 application?

4 **A.** Yeah, just some of the events -- some of the events
5 that had taken place in the neighbourhood over the
6 years. But she -- she's keenly aware, but she's not
7 right at the centre of what I'm doing right now. So
8 she has a peripheral knowledge.

9 But I don't think I -- I don't think I talked to
10 anybody else. Oh, I did -- I did contact Risa Desa,
11 because I thought one of your questions of Mr. Engbloom
12 was about whether I or my wife had brought up the
13 caveat during the -- during the Zoom meeting of
14 September 20th, 2000 [sic]. And she confirmed that I
15 did not bring it. She sent me an email. I did not
16 bring it up, but Mike Major had apparently discussed it
17 with the Tejpars. So I was anticipating what you would
18 ask, so I did speak to her about that. She was at --
19 she was on the Zoom meeting.

20 **Q.** Okay. And you were also on that meeting, correct?

21 **A.** Yes, I was on the meeting.

22 **Q.** And I will have some questions for you about that later
23 today.

24 So let's turn back to your Affidavit. At
25 paragraph 3, you note that you owned the land legally

1 described as Plan 3605FO, Block 92, Lot 9 in joint
2 tenancy with your wife Dianne Elizabeth Ferguson,
3 correct?

4 **A.** Correct.

5 **Q.** What's the municipal address of your property, sir?

6 **A.** Pardon?

7 **Q.** What's the municipal address?

8 **A.** 1013 - 32nd Avenue Southwest.

9 **Q.** And if I refer to the -- your property as either "the
10 Ferguson property" or "your property," you'll
11 understand what I am referring to?

12 **A.** Yes.

13 **Q.** And your property is located on the corner of 32nd
14 Avenue and 9th Street Southwest; is that correct?

15 **A.** Yes.

16 **Q.** And it's located across the street from the Tejpar
17 property to the west, correct?

18 **A.** Yes.

19 **Q.** And according to your Affidavit, you purchased your
20 property in 1977?

21 **A.** Yes.

22 **Q.** And you've continuously owned that property since that
23 time?

24 **A.** Yes.

25 **Q.** At paragraph 4 of your Affidavit, you note that at the

1 time you purchased your property, Instrument Number
2 7648 F2 [sic] was registered on the Certificate of
3 Title as a caveat; is --

4 **A.** Yes.

5 **Q.** -- that correct?

6 **A.** Yes. Sorry I -- yes.

7 **Q.** And so if I refer to Instrument Number 7648 F2 as "the
8 purported Caveat," you'll know what I'm referring to,
9 sir?

10 **A.** Yes.

11 **Q.** Sorry, I was just attempting to turn up my speaker to
12 hear you better, but that's not working for me.

13 **A.** My answer was yes.

14 **Q.** And to clarify, when I refer to "the purported Caveat,"
15 I'm referring to the document that you've attached as
16 Exhibit B to your Affidavit.

17 **A.** Exhibit B, I'm sorry.

18 MS. EMBURY: B as in Bob.

19 **A.** Did you ask me whether it was Exhibit B in my
20 Affidavit?

21 **Q.** MS. REICHEL: I said when I'm referring to "the
22 purported Caveat," the actual Caveat document, you'll
23 understand I'm referring to Exhibit B to your
24 Affidavit?

25 **A.** Yes.

1 Q. Okay. And, sir, can you tell me, Exhibit B in your
2 Affidavit, that document, you obtained that from
3 Mr. Engbloom, correct?

4 A. Yes.

5 Q. Were you aware that the purported Caveat was registered
6 on your title at the time of your purchase in 1977?

7 A. Yes.

8 Q. So when you purchased your property in 1977, was the
9 Caveat registered in the same manner as it's registered
10 on the title to your property indicated at Exhibit A to
11 your Affidavit?

12 So if we just turn to Exhibit A and at the bottom
13 of the page, sir, the Caveat or the purported Caveat,
14 the Instrument Number is noted, and it's registered.
15 The particulars are "Caveat Re: See Caveat," and it
16 mentions the caveator being Canadian Pacific Railway
17 Company and an address. Was that how the registration
18 appeared on your title at the time you purchased your
19 property in 1977?

20 A. To the best of my recollection, yes. I do not have a
21 file containing the documents I received by my
22 solicitors for carrying out this transaction.

23 Q. Okay. And do you have a copy of your title as it
24 existed as of that time?

25 A. I think we exhibited it. Just a minute.

1 Q. Just to clarify, sir, I believe the copy of the title
2 that you've exhibited is one that was pulled, I would
3 suspect, recently. I'm asking if you have a copy of
4 the title that was pulled -- yes, it was pulled, sorry,
5 on November 11th, 2020, at 3:34 p.m. Do you have a
6 copy of what your title looked like in 1977?

7 A. I thought that that was covered by Exhibit C.

8 Q. Exhibit C is Tejpars' property.

9 A. Exhibit A, I'm sorry.

10 Q. If the answer is no, that's fine, sir.

11 A. It's my -- my recollection is that Exhibit A is what my
12 title was at the time, but that -- that's the best of
13 my information.

14 Q. And as we just discussed, your -- the best of your
15 recollection is that the instrument registration was
16 described the same way as it is on Exhibit A at the
17 time you purchased?

18 A. Yes.

19 Q. And prior to completing the purchase of your property,
20 did you obtain a copy of Instrument Number 7648 F2?

21 A. I'm sure that we received a copy from your solicitors,
22 who were MacKimmie Matthews at the time.

23 Q. That was your law firm at the time, sir?

24 A. Yeah. And they were also my solicitors.

25 Q. And so you said "I'm sure," but what I'm asking is, do

1 you recall as you sit here today whether or not you
2 obtained a copy of Instrument Number 7648 F2 from your
3 solicitor?

4 **A.** I'm sure I did.

5 **Q.** But can you tell me whether or not you reviewed it and
6 read it?

7 **A.** I'm sure I did.

8 **Q.** Do you recall as you sit here today when you actually
9 did that back in 1977?

10 **A.** Yes. You got to expect -- this was a very major
11 investment for us, so I very carefully reviewed all the
12 documents, the mortgages, all the documents relative to
13 the closing.

14 **Q.** But you can't tell me whether you have an actual
15 recollection now of reading that caveat and having a
16 physical copy of it?

17 MS. EMBURY: He's given you the same answer
18 three times.

19 MS. REICHEL: Yeah, which is I assume, not yes.

20 MS. EMBURY: No. The answer is I am sure I
21 did.

22 OBJECTION TAKEN to answering the question: But you can't
23 tell me whether you have an actual recollection now of
24 reading that caveat and having a physical copy of it?

25 **Q.** MS. REICHEL: So, sir, can you tell me when you

1 got a copy of the Caveat, did you make a copy to keep
2 in any files? I know you told me you don't currently
3 have one, but did you make a copy at the time?

4 **A.** No. You might be able to appreciate in 2000 -- 1980,
5 '81 -- excuse me -- 1977 on, it was incredible high
6 interest rates. And we -- so we had -- like, maybe to
7 understand why we don't have a file is we went through
8 years of refinancing of my wife's business to help me
9 cutback taxes. So we just -- you just can't believe
10 the number of -- two or three renovations. You can't
11 believe the number of documents we had, so we just
12 didn't keep them.

13 **Q.** Just to be clear, I wanted to confirm, I actually keep
14 dropping the T on the instrument number. It's actually
15 7648 FT.

16 **A.** I understand the question.

17 **Q.** I also like to reverse numbers too, so I apologize if I
18 do that in the future.

19 Did you contact the caveator, CP Rail, at the time
20 that --

21 **A.** No.

22 **Q.** -- you purchased the property?

23 **A.** Sorry, I should have waited for your question. No.

24 **Q.** Did you see the discharge from the sellers of the
25 Caveat on your property at the time?

1 **A.** No.

2 **Q.** At the time in 1977, did you understand what type of
3 interest the Caveat related to?

4 **A.** Yes.

5 **Q.** At paragraph 4 of your Affidavit -- and I'll give you
6 time to read that if you would like.

7 **A.** Paragraph 4 of my Affidavit. That's Bob's Affidavit.

8 **Q.** If it helps you, I don't intend to ask you any
9 questions about Bob's Affidavit.

10 MS. EMBURY: I think he'd prefer to have the
11 paragraph in front of him.

12 **A.** I found my Affidavit. What -- which paragraph were you
13 questioning me on?

14 **Q.** MS. REICHEL: Four.

15 **A.** What was your question, again?

16 **Q.** At that paragraph 4, you stated: (as read)

17 The purported Caveat is a Restrictive
18 Covenant.

19 My question to you is, when did you become aware that
20 the purported Caveat was allegedly a Restrictive
21 Covenant.

22 **A.** Well, I was aware when I read it back in 1977.

23 **Q.** And sir, I appreciate that given it was 1977, it might
24 be difficult to recall the nature of the document that
25 you read. So the only information you currently have

1 as to what the Caveat or purported Caveat represented
2 was from a document you received from Mr. Engelbloom
3 [sic]; is that correct?

4 **A.** Mr. Engbloom.

5 MS. EMBURY: So you just said the only
6 information you currently have as to what the Caveat or
7 purported Caveat represents is the document that he
8 received from Mr. Engbloom recently?

9 MS. REICHEL: Yes.

10 **A.** Yes. Well, let's -- I received a copy of the Caveat
11 7648 FT from Mr. Engbloom. I didn't have one -- I
12 didn't have -- I still didn't have a copy of my own.
13 His was the copy I received.

14 **Q.** Okay. So you're relying on the purported Caveat that
15 you received from Mr. Engbloom?

16 **A.** Yes. And my recollection of having read the Caveat at
17 the time when I purchased the property.

18 **Q.** In 1977?

19 **A.** Yes. I knew I had a -- there was a Restrictive
20 Covenant against subdividing the lot.

21 **Q.** Tell me this, sir: When you saw that document, did you
22 recognize it?

23 **A.** Yes.

24 **Q.** You reference at paragraphs 6 and 7 of your Affidavit:
25 (as read)

1 The purported Caveat was registered
2 against other properties in the Elbow
3 Park neighbourhood.

4 Do you see that?

5 **A.** Yes.

6 **Q.** You define them as "the neighbouring properties," and
7 I'll refer to them as the same way, if that's okay?

8 **A.** Yes.

9 **Q.** When did you learn that the purported Caveat placed
10 development restrictions on the neighbouring
11 properties?

12 **A.** Well, I understood it generally at the time that I read
13 the Caveat back in 1977.

14 **Q.** Did you recall consistently throughout that time which
15 parcels of land the Caveat applied to?

16 **A.** I knew it applied to Dick Schulli's lot which is 1053
17 -- or 1023 - 32nd Avenue.

18 **Q.** Sorry, could you give me those names again? Did you
19 say Dick and Julie?

20 **A.** No, Dick Schulli. I knew it applied to Dick Schulli's
21 lot.

22 **Q.** Sorry, one second, sir. Sir, how did you know it
23 applied to that lot?

24 **A.** Well, I'm going to take a moment and give you some
25 history. In the early 1980s, Dick Schulli called me to

1 attend a meeting at his home with John Poole, the
2 president of the Elbow Park Residents Association, and
3 another gentleman who I can't remember. The reason why
4 Dick called the meeting was because a subdivision had
5 taken place on the adjacent lot to the north. He had
6 not had notice of it, and he was very excited and
7 wanted to bring legal action. At that time all of us
8 reviewed the Caveat in some detail. So I have -- I
9 clearly have -- I have a clear knowledge of what the
10 restrictions were.

11 **Q.** And who was in the possession of the Caveat in the
12 1980s? And what year was this?

13 **A.** It's difficult to be specific. It's early 1980s. I
14 think the -- I haven't done the reconstruction as to
15 when those two subdivided lots the titles were issued,
16 but it would have been after that, shortly after that.
17 And he was very, very excited that the subdivision had
18 taken place without his notice. He understood that the
19 Caveat had been removed ex parte without notifying him.

20 **Q.** Sir, at paragraph 8 of your Affidavit, you include
21 copies -- well, paragraph 8, do know that you include
22 copies of Land Title searches that you understand to be
23 titles of each of the neighbouring properties at
24 Exhibit D of your Affidavit?

25 **A.** Yes. They are part of my Affidavit, you're correct.

1 Q. Right. And then I see in Exhibit D, you've included a
2 title for Plan 3605, Block 93 and Lot 2 in Exhibit D?

3 MS. EMBURY: Which page of Exhibit D? Exhibit
4 D is large.

5 MS. REICHELTL: The page numbers -- the Affidavit
6 isn't numbered.

7 MS. EMBURY: So I wonder, if you want to take
8 him to a specific page, just tell me which --

9 Q. MS. REICHELTL: Mr. Ferguson, it's 15 pages from
10 the back.

11 A. Okay. I think I can still count.

12 Q. I'm sure you can.

13 A. Which one is it?

14 Q. It's 15 pages from the back, and if it helps, the title
15 number which is on the right-hand page, which is sort
16 of --

17 A. I'll get there.

18 Q. -- the most obvious, it's 031240759.

19 A. I'm going to ask my counsel to help find it for me.

20 MS. EMBURY: I'll help him.

21 MS. REICHELTL: Yeah, no problem. Let us know
22 when you're there.

23 MS. EMBURY: Counsel, can you read out that
24 title number, again?

25 MS. REICHELTL: Sure. 031240759.

1 **A.** We've got the right one. You've got to -- I'm sort of
2 an old crock, that not only have I got hearing aids,
3 I've had cataract operations. And the other cataract
4 operation, your sight improves, but she didn't run it
5 by that I need new glasses to read. So I'm little
6 slow. Okay, we found it.

7 What's your question, please?

8 **Q.** MS. REICHEL: Sure. My question actually maybe
9 was not worth all the effort it took for you to get
10 there. But that title, based on the search you
11 provided, is a cancelled title that was cancelled on
12 September 22nd, 2003; do you see that at the top?

13 **A.** Yes.

14 **Q.** Do you know why you included a cancelled title in your
15 Affidavit?

16 **A.** I don't. But my counsel prepared the -- the exhibits
17 to the Affidavit.

18 **Q.** Okay. Can you turn to Exhibit B, please, sir, of your
19 Affidavit?

20 **A.** Yes.

21 **Q.** That's a copy of the purported Caveat which you say is
22 filed on your property?

23 **A.** Yes.

24 **Q.** And you also state at paragraph 7 of your Affidavit
25 that this purported Caveat is filed on other

1 properties, correct?

2 **A.** Yes.

3 **Q.** And the first two pages of the Caveat are titled --
4 starts off with a title of "The Caveat," and then
5 page 2, and the page numbering starts again at 1, and
6 it is followed by a ten-page agreement that is
7 associated to the Caveat; do you see that, sir?

8 And just so we're clear, the top of page 1 is:
9 (as read)

10 This Agreement is made in duplicate the
11 28th of April, A.D., 1948 between
12 Canadian Pacific Railway Company -- [on
13 the first part] -- and Joseph J. Greenan
14 and Mary P. Greenan -- [on the second
15 part].

16 **A.** Yes.

17 **Q.** If I refer to this agreement as the "associated
18 agreement," you'll understand what I am referring to?

19 **A.** How did you describe it again?

20 **Q.** The associated agreement. I can call it the Caveat
21 agreement, whatever is easiest for you.

22 **A.** I'll call it the Caveat agreement, if you don't mind.

23 **Q.** Sure. That's fine. And, sir, you reviewed both the
24 purported Caveat and the Caveat agreement that's
25 attached at Exhibit B of your Affidavit?

1 **A.** Yeah, I reviewed them both.

2 **Q.** And is this the only copy of those documents that
3 you've reviewed?

4 **A.** Excuse me for the minute. You mean -- I think I've
5 told you I reviewed it at Dick Schulli's home, and I
6 also reviewed it when the closing of our house purchase
7 took place in November/December 1977.

8 **Q.** Was it the exact same document, sir?

9 **A.** Yes.

10 **Q.** Did it have the same Caveat agreement attached for
11 CP Rail and the Greenans, sir?

12 **A.** Yes.

13 **Q.** When you received a copy of the agreement from
14 Mr. Engbloom, did you contact CP Rail to ask about the
15 authenticity of the agreement and the --

16 **A.** No.

17 **Q.** -- purported Caveat?

18 **A.** Excuse me. I think I -- why don't you give me the
19 whole question because I started answering before you
20 finished. Would you please give me the whole question
21 again?

22 **Q.** Sure. I said when you received the purported Caveat
23 from Mr. Engbloom, did you contact CP Rail to ask about
24 the authenticity of the purported Caveat and the Caveat
25 agreement?

1 **A.** No.

2 **Q.** Okay. And, sir, have you seen a copy of the purported
3 Caveat that had a Caveat agreement that references your
4 particular property block?

5 **A.** Maybe you could tell me what -- what block you're
6 looking for?

7 **Q.** Well, if you just look in the first -- the preamble,
8 "in consideration of the sum of \$900 paid to the
9 purchaser," and it references a particular block which
10 is not your property. I'm asking if you're aware, for
11 example, at the time that you purchased your property
12 if you saw a Caveat agreement similar in nature but
13 that referenced your actual property?

14 **A.** Yes, I did.

15 **Q.** So there was a different agreement between CP Rail and
16 somebody else that attach -- that referenced your
17 property?

18 **A.** I'm sorry, I must have misunderstood your question. I
19 was referring to your questioning with Exhibit B.

20 MS. EMBURY: I'm also not sure the question is
21 entirely fair because it assumes that this document
22 does not reference my client's property, which it does
23 in paragraph 3.

24 **Q.** MS. REICHEL: Right. Where it says: (as read)
25 The owner hereby agrees to insert in all

1 agreements for sale entered into for the
2 following.

3 It's not actually in relation to this property. So what
4 I'm asking -- and if the answer is no, so be it, but I'm
5 entitled to know because there are questions about the
6 authenticity of this document -- is that if the
7 documents you saw or if you've ever seen a copy of the
8 purported Caveat that include a Caveat agreement that is
9 in direct reference to your property, sir? So if we
10 look at the "in the consideration of the sum," this
11 agreement is in relation to the purchase of Lot 7,
12 Block 90, and as I understand it, your property, sir, is
13 Block 92, Lot 9.

14 **A.** I think that's correct. I realize that we did get a
15 caveat that specifically referred in the preamble to
16 our lot.

17 **Q.** So that existed at the time you bought the property in
18 1977?

19 **A.** Yes.

20 **Q.** So it's not this actual agreement that we're looking at
21 today, a different agreement?

22 **A.** Well, it's the same agreement but with a different lot
23 number, my lot number.

24 **Q.** Were the purchasers the Greenans?

25 **A.** Excuse me, I don't understand the question.

1 Q. Well, on the second part defined as "the purchasers" in
2 the agreement is the Greenans. Were the purchasers in
3 the Caveat agreement in relation to your particular lot
4 that you saw in 1977, were they the Greenans?

5 A. Yes.

6 Q. But you don't have a copy of that anymore, correct?

7 A. No, I don't.

8 Q. And have you ever seen a copy of the agreement
9 associated with the Caveat that includes a legal
10 description for the Tejpars' property, sir?

11 A. Yes. I've already testified that I attended at Dick
12 Schulli's house in -- early in the 1980s, and we all --
13 all of us that were there, John Poole, myself, Dick,
14 and somebody else, we all looked at the Caveat.

15 Q. Right. And I'm asking you to confirm that you have a
16 distinct memory that the Caveat you referred in 1980
17 had a Caveat agreement associated with it between
18 Canadian Pacific Railway and some purchaser that
19 specifically referenced Block 91, Lot 1?

20 A. If that's Dick Schulli's lot or the Tejpars' lot, I
21 definitely saw that caveat.

22 Q. And you saw the Caveat agreement associated with it?

23 A. Yes.

24 Q. Do you know why Mr. Engbloom doesn't have a copy of the
25 Caveat or has a Caveat agreement referencing his own

1 lot?

2 **A.** I really don't know.

3 **Q.** At paragraph 9 of your Affidavit, you state that:

4 (as read)

5 Your counsel has completed a search of

6 Land Titles Office on November 11th,

7 2020, for a copy of the purported

8 Caveat.

9 Do you see that sir?

10 **A.** Yes.

11 **Q.** (as read)

12 And the search results revealed that the

13 Registrar of Land Titles issued a

14 certificate pursuant to Section 21 of

15 the LTA.

16 Correct?

17 **A.** Yes

18 **Q.** And that certificate is attached as Exhibit E --

19 **A.** Yes.

20 **Q.** -- to your Affidavit?

21 **A.** Yes.

22 **Q.** And that certificate states that: (as read)

23 The Caveat has been lost, mislaid or

24 destroyed and has not been micro

25 photographed.

1 Correct?

2 **A.** The -- the exhibit will speak for itself. Yes.

3 **Q.** Why did you attempt to obtain a copy of the purported
4 Caveat on November 11th, 2020, sir?

5 **A.** Actually, it was my counsel who obtained a copy.

6 **Q.** Why were you looking for the Caveat on that day, sir?

7 **A.** Well, I think we already knew that there was a
8 certificate, Exhibit E, against the title.

9 **Q.** How were you aware of that, sir?

10 **A.** Pardon?

11 **Q.** How were you aware of that, sir?

12 **A.** Well, when all of this broke, I asked my
13 daughter-in-law, Jennifer Biernaskie, a lawyer, to get
14 me a copy of my title because I was curious as to what
15 had happened to the Caveat, and I did this in September
16 of 19 -- September of 2020.

17 **Q.** When you say "when all of this broke," what do you mean
18 by that, sir?

19 **A.** Well, we -- we -- we were unaware of what was happening
20 across the street at the Schulli residence. I knew
21 Dick had died. I went to his funeral. I knew he had a
22 surviving son. And the property was really unkempt.
23 At one stage the grass was so high in the spring/summer
24 that I wanted someone to come and cut the hay. The
25 property was not really looked after at all. But I

1 just thought, oh, that Dick's son. So I didn't know
2 anybody had purchased it, and I wasn't paying a lot of
3 attention or any attention. But I saw a for sale sign,
4 and I didn't look at any details.

5 So to get -- bring the matter to -- we came back
6 from Kelowna on the 31st of August, and at that stage,
7 my neighbour, Hector McFadyen, left a urgent note for
8 me to contact him. And that's when I learned that
9 something had happened with this Schulli property.

10 **Q.** Okay. Why were you curious what had had happened to
11 the Caveat?

12 **A.** Because I didn't -- I thought we had a caveat -- well,
13 excuse me. I considered my rights to enforce a caveat
14 against a Restrictive Covenant applied to Mr. Schulli's
15 lot.

16 **Q.** Had someone told you that the Caveat was missing from
17 the Land Titles Office?

18 **A.** Other than the Exhibit E, the results of my
19 daughter-in-law's title examination, I don't have any
20 other information.

21 **Q.** And was that when your daughter-in-law pulled a copy of
22 the instrument for you, and when was that, early
23 September 2020?

24 **A.** It was about September 16th, a day or so.

25 **Q.** That's when you first learned of the missing --

1 **A.** Yeah. Well, that's the first I learned that the --
2 yes.

3 **Q.** Did Mr. Engbloom tell you that he was aware of the
4 missing caveat?

5 **A.** Well, I met with Mr. Engbloom I think shortly before
6 the September 20th, 2000 [sic], zoom meeting. I
7 recollect my dates aren't exactly, but I understood he
8 had a copy of 7648 FT.

9 **Q.** My question was, did Mr. Engbloom tell you that he was
10 aware that the instrument had been missing in the Land
11 Titles Office some years before that?

12 **A.** Yes, I think he -- he said that -- he told me something
13 about the -- you know, the entry on the title,
14 Exhibit E, lost, destroyed or missing.

15 **Q.** So he told you that prior to you receiving the title
16 search back from your daughter-in-law?

17 **A.** No, after.

18 **Q.** What did he tell you about the missing certificate?

19 **A.** He told me he had a copy of 7648 NT [sic].

20 **Q.** What did he tell you about his knowledge about the
21 missing certificate and when he found out?

22 **A.** I don't -- he didn't give me any information about what
23 previously he had done prior to the meeting we had in
24 September of 2020.

25 **Q.** Sir, December 2020 you brought an application to change

1 the status of the purported Caveat at Land Titles
2 Office, correct?

3 **A.** Can you repeat that question, again, please? There was
4 an interruption here.

5 **Q.** Absolutely. So in December 2020 you brought an
6 application, you as the applicant, to change the status
7 of the purported Caveat at Land Titles, correct?

8 **A.** Yes, I brought an application to have the Caveat
9 restored to the title.

10 **Q.** Okay. When you were preparing for that application,
11 you reviewed the purported Caveat, correct?

12 **A.** Yes. I think it's exhibited to my Affidavit for that
13 proceeding.

14 **Q.** And in that proceeding -- you're right, it is
15 Exhibit F.

16 **A.** Excuse me, give me one moment, please.

17 MS. EMBURY: Tab 2.

18 THE WITNESS: I thought it was tab F.

19 MS. EMBURY: She's referring to the Affidavit
20 you swore in November of 2020.

21 **Q.** MS. REICHEL: Which is attached at Exhibit F to
22 your Affidavit. The first couple pages are the
23 originating application followed by your Affidavit,
24 sir.

25 **A.** My Affidavit, okay. What exhibit is it in my first

1 Affidavit of November --

2 Q. I'm just actually referring you to the actual
3 Affidavit, sir, paragraph 6.

4 A. This is Affidavit sworn by me on November 25th, 2020?

5 Q. Yes.

6 A. Okay. Yes, I see that.

7 Q. And at paragraph 6, you attest that "the Caveat is also
8 registered against the following properties," which
9 you've defined as "the neighbouring properties"; do you
10 see that?

11 A. Yes.

12 Q. And that list of the neighbouring properties that
13 you've noted in there is not the entirety of the list
14 of properties that are noted in the actual purported
15 Caveat, correct, sir?

16 A. I haven't done a comparison. I trust that my solicitor
17 did.

18 Q. Well, it's your Affidavit, so -- and you swore it. Do
19 you know why some of the properties are left off?

20 A. Can you advise me which properties are left off?

21 MS. EMBURY: Counsel, if I can assist?

22 MS. REICHELTL: Yes.

23 MS. EMBURY: The Affidavit is sworn in the
24 present tense. It refers to the properties against
25 which this Caveat is registered in November of 2020,

1 and copies of the Land Titles searches for those
2 properties are attached as Exhibit D to that Affidavit
3 which was sworn in November of 2020.

4 **Q.** MS. REICHELTL: Okay. So, sir, is the reason why
5 some of the properties noted in the original Caveat
6 document aren't included in paragraph 6 of your
7 Affidavit is because the Caveat has been discharged
8 from those properties or is no longer registered on
9 them?

10 **A.** I'm not sure what -- what Mr. Marble was doing when he
11 did this, but I'll accept that the properties that are
12 listed are the ones that are identified as Exhibit D,
13 and what other ones, I don't know.

14 **Q.** And so you do know why some of the properties
15 originally listed in the purported Caveat no longer
16 have the Caveat registered, so you don't know whether
17 it was never registered or whether it was discharged;
18 is that accurate?

19 **A.** Well...

20 **Q.** I'm just asking your knowledge, sir?

21 **A.** Well, my knowledge -- I'd have to take a moment to look
22 at paragraph 6. There was one discharge dealing
23 with Sheila Irving's property.

24 **Q.** Why don't we do this, sir: Of course not speaking with
25 your counsel about your evidence, but why don't we take

1 a short break, and you can take a look at paragraph 6
2 of your Affidavit I'm taking you to and the Caveat or
3 whatever other documents would assist you, and then we
4 can all follow-up after the break?

5 **A.** Just let's be clear, you're telling -- you're asking me
6 to determine whether certain properties were left out
7 of paragraph 6 of my November 25th, 2020, Affidavit?

8 **Q.** Right. And your counsel has purported to give some
9 evidence on that point, which I'm prepared to accept,
10 which is your Affidavit at -- your paragraph 6 is
11 referencing the properties that at that date have the
12 Caveat registered on them, so fine. Although it's your
13 evidence and if you're adopting that evidence, fine.

14 And then my further question was, is the reason
15 why you left off the other properties that are listed
16 in the original 1946 Caveat document is because the
17 Caveat was either never registered against those
18 properties or alternatively has been discharged. Do
19 you know?

20 **A.** Well, let's -- you're inviting us to go off the record
21 for a moment?

22 **Q.** I'm inviting you to take a break, but I want to give
23 you an opportunity to look at the documents and
24 consider my question.

25 **MS. REICHEL:** So we'll take a few minutes. Is

1 five long enough or ten? It's time for a break in any
2 event. I'm at least halfway through.

3 MS. EMBURY: If we're going off, I obviously
4 can't talk to the witness on the break. I think all
5 she's asking is do you know whether certain properties
6 have either had the Caveat discharged against them or
7 alternatively the Caveat was never registered against
8 them; do you know?

9 A. That's really two questions. And I do know -- I do
10 know that -- again, I'll have to look through the -- I
11 do know that the -- the two properties next to Dick
12 Schulli's, that the Caveat obviously came off, and it
13 came off because it was taken off on an ex parte order.
14 The only other one I know about --

15 Q. MS. REICHEL: Actually, sir, are you talking
16 about Mike Major's property?

17 A. Mike Major's and Schulli's properties, whatever numbers
18 they are. Those two, obviously the caveats had been
19 discharged by virtue of an ex parte order. The only
20 other one I know of is the property that Sheila Irving
21 owned at I think 1501, and I can get the specifics if
22 you want to give me a moment here.

23 Now, this is -- I'm relying on a letter that you
24 don't have yet, and it's a letter from Glenn & Card Law
25 LLP dated January 16, 2020, addressed to Nancy Stafford

1 Engbloom. This was a request to consent to a discharge
2 of Caveat 7648 FT. I know I got the same letter, and
3 as usual, I didn't hang on to it. But I did consent to
4 a discharge because I was -- I was informed that there
5 -- the title wasn't going to be subdivided. And for
6 that reason, since I knew the family that owned the
7 house previously, I consented to the discharge. And
8 the house has gone ahead, and it's a single-family
9 house on one lot.

10 So that's the extent of my knowledge of why those
11 things -- I could go through them with the fine-tooth
12 comb, but that's -- that's the only knowledge I would
13 have had, to answer your question, and why those
14 properties aren't included under paragraph 6.

15 **Q.** So to try and sum up: In fairness to you, if there are
16 properties in the Elbow Park neighbourhood that are
17 listed in the original 1946 Caveat that today don't
18 have the Caveat, you know of some instances but not all
19 as to why it's not there. So it may never have been
20 registered or it may have been discharged, but in
21 fairness, you don't know the details of each of those
22 occurrences?

23 **A.** I don't know of any other properties, and I don't know
24 of any other circumstances.

25 MS. EMBURY: Counsel, do you still want a

1 break?

2 MS. REICHELTL: Sure. That makes sense.

3 (ADJOURNMENT)

4 Q. MS. REICHELTL: Sir, if you can refer to
5 paragraphs 13 of your Affidavit for me?

6 A. I don't think I have the right Affidavit. Excuse me.

7 Q. No problem. Just let me know when you've had an
8 opportunity to read it.

9 A. This is the Affidavit of January 20th?

10 Q. Yes, in support of your injunction application.

11 A. Okay. Just about there. There I am, January 25th,
12 2021.

13 Q. Paragraph 13.

14 A. Okay.

15 Q. And so, sir, your Affidavit starts with a sentence:
16 (as read)

17 In breach of the Caveat, the Tejpars
18 applied for and were granted approval
19 from the City of Calgary to subdivide
20 the respondent lands.

21 Do you see that, sir?

22 A. Which paragraph are we at now?

23 Q. 13, the first sentence.

24 A. Yes, I see it.

25 Q. Okay. And you'll agree with me, sir, that the

1 allegation of a breach of the Caveat has not been
2 judicially determined, correct?

3 **A.** No. It's my judgment that there has been a breach of
4 it, but it hasn't been judicially determined.

5 **Q.** Right. It's your personal opinion, correct?

6 **A.** Yes, it's a personal opinion. It's sort of a factual
7 thing, but it's an opinion.

8 **Q.** Right. And you're not purporting to provide a legal
9 opinion in this Affidavit, correct?

10 **A.** No. But I think factually it's -- it's a breach, so
11 it's pretty simple.

12 **Q.** We'll let the Court determine whether or not it's
13 pretty simple, right, sir?

14 **A.** Sure, we can leave that up to the judges.

15 **Q.** Yes. That's usually what we do as litigators.

16 So now you've lived at 1013 - 32nd Avenue
17 continuously since 1977, correct?

18 **A.** Yes.

19 **Q.** And so by implication, you resided there in January of
20 1984?

21 **A.** Was I residing here in January 1984? Yes.

22 **Q.** I said by implication, you resided there in 1984?

23 **A.** Excuse me, can you re-ask that question? I didn't
24 understand it.

25 **Q.** Sure. I asked you first if you lived at the residence

1 continuously from 1977, and thereby by implication, you
2 resided there in January of 1984?

3 **A.** I think that's a safe statement.

4 **Q.** Yes. And likewise, for the remainder of 1984, '85,
5 correct?

6 **A.** Yes.

7 **Q.** In 1977 and 1978 when you first began residing in your
8 residence, were you aware of what type of home was on
9 the lot to the east of the Tejpar property?

10 **A.** To the east?

11 **Q.** To the east of the Tejpar property, which is Lot 11,
12 Block 91.

13 MS. EMBURY: Counsel, I wonder if it will
14 assist if you put that exhibit that you had put to
15 Mr. Engbloom yesterday, if he could look at that to
16 assist in understanding exactly which lot you are
17 talking about?

18 MS. REICHEL: I think the objection to that was
19 it had residential addresses on it, it but that's fine,
20 we'll put it up.

21 **Q.** MS. REICHEL: We'll put the document up on the
22 screen, sir. We have one with legal and with -- with
23 residential, but...

24 MS. EMBURY: Again, counsel, that was
25 Mr. Engbloom's issue. I am not sure that this witness

1 has the same issues vis-à-vis the lot numbers and the
2 house numbers.

3 THE WITNESS: I really have trouble with the lot
4 numbers.

5 MS. EMBURY: I'm going to suggest that you use
6 the exhibit from yesterday which has the house numbers.

7 MS. REICHEL: Just bear with us while we find
8 it.

9 MS. EMBURY: My client does have a copy in
10 front of him.

11 Q. MS. REICHEL: So, sir, we're going to bring up
12 on the screen for you to look at off of the City of
13 Calgary website, the area plan.

14 A. Yes, I see a plan.

15 Q. You see in gray and there's an arrow, that's the
16 Tejpars' property; does that -- do you recognize that?

17 A. Yes.

18 MS. REICHEL: And for ease of reference, perhaps
19 we can mark this as well as Exhibit 1?

20 MS. EMBURY: Certainly. Why don't we use the
21 same description that we made yesterday?

22 MS. REICHEL: Agreed.

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

25 Q. MS. REICHEL: So your property is across the

1 street from the Tejpars, which is the municipal address
2 of 1013 - 32nd Avenue, correct?

3 **A.** Yes.

4 **Q.** So I was asking you when you moved into the property in
5 1977 or in 1978 if you were aware of what type of home
6 was on the lot to the east of the Tejpar property,
7 which is Lot 11, Block 91, and it is -- you can see it
8 on the map, it is now bearing residential addresses
9 1033 - 32nd Avenue Southwest and 1035 - 32nd Avenue
10 Southwest; do you see those properties?

11 **A.** Yes.

12 **Q.** Now, to be clear this is the area property as it exists
13 currently in 2020 or 2021, and so what I'm asking is in
14 1977 or 1978 when you moved in, do you recall what type
15 of house was on that lot at the time?

16 **A.** I don't recall. I don't really -- there was only one
17 house. I don't really recall what kind of house it
18 was.

19 **Q.** Okay. And you'll agree with me now that on that
20 original Lot 11, there are now two dwelling houses,
21 correct?

22 **A.** Yes.

23 **Q.** Both of which are single-family homes?

24 **A.** Yes.

25 **Q.** Okay. And you're -- I believe you've spoken about it

1 earlier. You are aware this property was subdivided,
2 correct?

3 **A.** Yes.

4 **Q.** And when did you become aware of that subdivision?

5 **A.** I think earlier in my testimony today, I indicated that
6 early in the 1980s I had a telephone call from Dick
7 Schulli, who invited me to his home for a meeting and
8 John Poole was there as well and another gentleman, and
9 that's when I first learned of the subdivision.

10 **Q.** Okay. And you didn't oppose the subdivision at the
11 time because it had happened by the time you learned of
12 it; is that -- is that --

13 **A.** It was a fait accompli. Dick wanted to litigate, and
14 I'm embarrassed to this day, I couldn't afford to
15 litigate at that time. I had a 19 percent mortgage.
16 So he may have gone ahead and litigated himself. But
17 the understanding I had was the Caveat had been
18 discharged as a result of an ex parte application.

19 **Q.** Are you aware of a proposed subdivision in 2017 for the
20 residential address of 3512 - 10th Street Southwest?

21 **A.** I was not really aware of that until I received
22 Mr. Engbloom's Affidavit last week. I was not involved
23 in that at all. I didn't know what was going on, quite
24 frankly.

25 **Q.** So briefly touched on earlier at paragraph 10 of your

1 Affidavit where we talk about the restoration
2 application?

3 **A.** Yes.

4 **Q.** At the time that you brought the restoration
5 application, you understood that the purported Caveat
6 that you were seeking to bring back on -- or restore on
7 title was a Restrictive Covenant?

8 **A.** Yes.

9 **Q.** And in the restoration application in your associated
10 Affidavit, you again referenced neighbouring
11 properties? We looked at that earlier at paragraph 6.

12 **A.** Just give me a moment, please. Paragraph 6?

13 **Q.** We were looking at that paragraph right before the
14 break.

15 **A.** There's a whole list of properties here.

16 **Q.** And it's been defined in your Affidavit for the
17 restoration property as "neighbouring properties," and
18 you also refer to the "neighbouring properties" in this
19 injunction application, the same properties?

20 **A.** I'm sure I do.

21 **Q.** And prior to the restoration application, you would
22 agree that the status of the purported Caveat as it
23 related to the neighbouring properties would have been
24 recorded by the Registrar as a lost instrument, right?

25 **A.** Yeah, I think it's -- if you look at photograph 4 of my

1 November 25th Affidavit that I refer to the Exhibit B,
2 and that's the notice, right?

3 Q. And that same notice would have appeared on all of the
4 neighbouring properties as well if you tried to pull
5 the instrument, correct?

6 A. I didn't inspect them all, but I believe it did.

7 Q. And so the purpose of the restoration application was
8 that change or modify the status of the caveat
9 instrument, which you state is a Restrictive Covenant
10 from missing to a document being available, correct?

11 A. Yeah, to restore it. It's no longer missing. Restore
12 it.

13 Q. Right. No other purposes for the restoration
14 application, correct?

15 A. Well, that was what the restoration application was to
16 do was to restore it, yeah.

17 Q. And then to follow-up, you brought the restoration
18 application so that the Caveat was back on all of the
19 titles, correct?

20 A. Yes.

21 Q. And then you can bring this injunction application,
22 correct?

23 A. Well, it was a preliminary step towards the injunction
24 application.

25 Q. And you'll agree that the restoration application

1 changed or modified the purported Caveat to all of the
2 titles, not just yours?

3 **A.** Yes.

4 **Q.** That restoration application was heard on December
5 16th, 2020, correct?

6 **A.** Yes.

7 **Q.** And prior to December 16th, 2020, which of the owners
8 or the neighbouring properties did you let know about
9 your intention to bring the restoration application?

10 **A.** I did not let any neighbours know, other than the five
11 people or six people on our committee.

12 **Q.** And when you say "on our committee," is that the caveat
13 subcommittee that is part of the Elbow Park Community
14 Association?

15 **A.** Yes.

16 **Q.** And those people, can you tell me who those people are,
17 again, sir?

18 **A.** Well the Hugoline Morton, Risa Desa, Bob Engbloom,
19 Hector McFadyen, and Wayne Gambell.

20 **Q.** Okay. So prior to the restoration application, you
21 told all of those people that the application was being
22 brought?

23 **A.** Yes. Yes.

24 **Q.** And did your counsel or anyone on your behalf as the
25 applicant let the Tejpars know about the restoration

1 application?

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

3 **Q.** What about any of the other properties that had the
4 instrument indicated on their title, sir?

5 **A.** None other than properties owned by members of the
6 committee.

7 **Q.** And as of November 26, 2020, when you sought to bring
8 the restoration application, you were aware that the
9 Tejpars had an approved subdivision in place to
10 subdivide the Tejpar property, correct?

11 **A.** I refer to that in my Affidavit as an exhibit, the City
12 of Calgary -- I don't know where to find it. We did
13 have the City of Calgary approval.

14 **Q.** Right. It's Exhibit H to your Affidavit sworn on
15 January 25th, 2021.

16 **A.** We had that exhibit.

17 **Q.** Right. So my question was, when you swore your
18 Affidavit on November 25th, 2020, you knew that the
19 Tejpars had an approved subdivision at that time,
20 didn't you, sir?

21 **A.** Well, I knew that we had the instrument, which is
22 Exhibit H to my Affidavit, which --

23 **Q.** Which is the conditions for approval of subdivision by
24 plan?

25 **A.** Yeah.

1 Q. Okay. And you didn't include that in your -- in the
2 notice to the Court that there was a subdivision
3 approval that the Caveat was effected on one of the
4 neighbouring properties, correct?

5 A. Certainly not in the application to have the Caveat
6 restored.

7 Q. Right. At paragraph 12 of your Affidavit sworn in
8 January of this year, you state you believe the order
9 was served on the Registrar, meaning the restoration
10 order was served on the Registrar of Titles; do you see
11 that, sir?

12 A. Yes, I see that paragraph.

13 Q. Do you know when the order was served on the Registrar
14 of Titles?

15 A. Not exactly.

16 Q. And your counsel would have done that?

17 A. Yes.

18 MS. REICHEL: I'm going to ask for an
19 undertaking that you produce the documents related to
20 the service of Justice Malik's December 16th, 2020,
21 order being served on the Registrar of Land Titles?

22 MS. EMBURY: We will review our files and do
23 that.

24 UNDERTAKING NO. 1 - To produce the
25 documents related to the service of

1 Justice Malik's December 16, 2020,
2 order being served on the Registrar of
3 Land Titles

4 **Q.** MS. REICHELTL: And after Justice Malik granted
5 the order on December 16th, 2020, did you serve the
6 order on anybody else?

7 **A.** Not that I'm aware of. I'd have to give an undertaking
8 as to whether Mr. Marble did, but I'm not aware of
9 anybody else.

10 **Q.** You're not aware that it was served on the Tejpars, for
11 example?

12 **A.** No, I'm not aware.

13 MS. REICHELTL: Okay. I'm going to ask for an
14 undertaking to make inquiries and advise if the order
15 was served on any other parties, and if so, when, who,
16 and how?

17 MS. EMBURY: What do you mean "parties"?

18 MS. REICHELTL: Well, any other people or
19 companies or anyone other the Land Titles Office and
20 copies of the correspondence related to that service.

21 MS. EMBURY: I can advise you that it wasn't,
22 but if that answer changes, we'll let you know by
23 undertaking.

24 UNDERTAKING REQUEST NO. 2 - To make
25 inquiries and advise if Justice Malik's

1 December 16, 2020, order was served on
2 any other parties, and if so, to advise
3 when, to whom, and how
4 RESPONSE TO UNDERTAKING REQUEST NO. 2 -
5 Advised that Justice Malik's
6 December 16, 2020, order was not served
7 on any other parties, but if that answer
8 changes, to advise of same

9 **Q.** MS. REICHELTL: Sir, are you aware when the
10 Registrar changed the status of the purported Caveat
11 from lost, mislaid or destroyed and had not been
12 microfiche to including a copy of the purported Caveat
13 that you've included at Exhibit B of your Affidavit?

14 **A.** No.

15 MS. REICHELTL: I'm going to ask for an
16 undertaking that you review and make inquiries to
17 determine when that happened?

18 MS. EMBURY: You're asking us to undertake --
19 or you're asking my client to undertake when the
20 Registrar -- sorry -- to undertake to advise you what
21 he knows about when the Registrar changed the status?

22 MS. REICHELTL: Yes.

23 MS. EMBURY: I'm not sure that we can give you
24 that undertaking. He's answered he does not know.

25 MS. REICHELTL: I'm asking him to make inquiries

1 to determine. It was based on his application and
2 service of his order.

3 MS. EMBURY: I'll take that under advisement.

4 UNDERTAKING NO. 3 - To make inquiries
5 and to advise when the Registrar
6 changed the status of the purported
7 Caveat from lost, mislaid or destroyed
8 and had not been microfiche to
9 including a copy of the purported
10 Caveat that is included at Exhibit B of
11 Thomas Ferguson's Affidavit -
12 TAKEN UNDER ADVISEMENT

13 Q. MS. REICHEL: Sir, were any attempts made prior
14 to you bringing the restoration application to have the
15 Registrar of Land Titles replace the mislaid -- lost or
16 mislaid certificate that you've produced at Exhibit E
17 with the purported Caveat that you have at Exhibit B
18 that you received from Mr. Engbloom?

19 A. I don't have any personal knowledge. I understood that
20 Mr. Engbloom was examined on that issue yesterday
21 because I sat in on his cross-examination. That --
22 that was all news to me. I never discussed that
23 specifically with Mr. Engbloom.

24 Q. Did you make attempts prior to bringing that
25 application to have the Land Titles Office replace the

1 missing certificates?

2 **A.** I think the application was to restoration the Caveat.

3 **Q.** Right. Did you make any application -- any efforts
4 outside of that application to have Land Titles Office
5 restore the Caveat?

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

7 **Q.** Okay. And other than what Mr. Engbloom, that you heard
8 about yesterday, are you aware of anybody else on your
9 subcommittee making efforts to do so?

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

11 **Q.** In making the application, did you advise the Court
12 that you would be subsequently filing an injunction
13 application to enforce the Caveat?

14 **A.** I did not appear. I believe it was Mr. Marble who
15 represented me on that application. I'm not aware of
16 what he would have told the Court.

17 **Q.** You would agree with me your Affidavit makes no mention
18 of it?

19 **A.** It certainly doesn't.

20 **Q.** Just bear with me. I'm eliminating questioning that
21 we've covered.

22 **A.** If you want to take a little break, I can stand outside
23 for ten minutes.

24 **Q.** I'm happy to do so, sir. I think it's always in our
25 best interests to shorten these whenever possible.

1 **A.** I used to be doing your kind of work myself for 40
2 years, so I know what it's like.

3 MS. REICHEL: Let's take a quick break. Thank
4 you.

5 (ADJOURNMENT)

6 **Q.** MS. REICHEL: Sir, I just wanted to clarify
7 something. A couple times when you were testifying --
8 and this is something I would do all the time as well
9 -- you used the reference to the year 2000 and then
10 sometimes would say the year 2020. Based on the events
11 you were describing, I believe you were referring to
12 the year 2020 and not referring to anything in the year
13 2000; would that be accurate?

14 **A.** You're right. I'm sorry. It's 2020.

15 **Q.** I promise I'm going to make lots more number mistakes
16 as we go along. I just wanted to make that
17 clarification.

18 Now, sir, you spoke earlier today about receiving
19 a copy of the purported Caveat which is Exhibit B to
20 your Affidavit from Mr. Engbloom in or around
21 September 16th, 2020; that's correct?

22 **A.** I don't know what date I received it. I think -- I
23 think our committee had one meeting before the Zoom
24 meeting where Bob Engbloom explained he had a copy of
25 the Caveat, but I think it was sometimes after the Zoom

1 meeting that I actually saw Caveat 7648 NT [sic] . I
2 didn't have it before the Zoom meeting, I know that.
3 He just told me he had it.

4 Wait for a minute. I have to get my glasses.
5 Sorry, for the interruption, but that pair of loaners
6 from my spouse are not worth a lot.

7 **Q.** No problem, sir.

8 So you attended a Zoom meeting with the Elbow Park
9 Community Association, the Tejpars, and other
10 individuals on August 27th, 2020, correct?

11 **A.** The Zoom meeting was September 20th, 2020.

12 **Q.** That was the second one. But as I understand it, the
13 August 27th one was where the Tejpars' proposed
14 subdivision was discussed; do you recall that?

15 **A.** I wasn't at that meeting. I didn't even know about
16 this whole issue of subdivision at that time.

17 **Q.** Okay. And then you were aware that the subdivision was
18 approved or was granted on September 11th, 2020?
19 That's the exhibit that you included at Exhibit H of
20 your Affidavit.

21 **A.** Yes, I have that at Exhibit H. Correct.

22 **Q.** And did you oppose the approval before September 11th,
23 2020?

24 **A.** No. I didn't know there had been an application.

25 **Q.** When did you become aware of the approval?

1 **A.** I became aware that it had been -- the City had granted
2 this document, which we are looking at H(i) --
3 Exhibit H. Before the Zoom meeting, Hugoline Morton
4 told me that she had -- was appealing it, that
5 particular -- that particular document. So that's --

6 **Q.** The document is conditional subdivision approval from
7 the City of Calgary, correct?

8 **A.** That's what -- she told me she was appealing that, and
9 that was the first I had heard about it, and that was
10 before the Zoom meeting sometime in September.

11 **Q.** And the Zoom call that you're taking about was the Zoom
12 call with the Elbow Park Community Association on
13 September 22nd, 2020, about the Tejpars' subdivision,
14 correct?

15 **A.** That's correct.

16 **Q.** The Tejpars were also in attendance on this call?

17 **A.** I understood they were. I don't know whether
18 Mr. Tejpar spoke.

19 **Q.** I just said they were present?

20 **A.** I knew Mrs. Tejpar was. I didn't know whether
21 Mr. Tejpar was. I didn't see him.

22 **Q.** Okay. And who else was on the call that you recall?

23 **A.** Well, there was Risa Desa was on it. I was on it.

24 **Q.** Your wife?

25 **A.** Intermittently.

1 Q. Okay.

2 A. And Margo Coppus from the Elbow Park. Mike...

3 Q. Major?

4 A. Major, he was in on it. And I can't remember all of
5 the parties. I found the call rather confusing, to say
6 the least. I was getting a huge amount of information
7 that I hadn't -- wasn't aware of.

8 Q. Okay. The purported Caveat was raised during this
9 call, correct?

10 A. You know, we have a -- I have checked that out with
11 Risa Desa, because I couldn't recall saying anything
12 myself about the Caveat, nor did Dianne when she was on
13 there. But Risa Desa thought that Mike had raised it.
14 And the meeting was rather confusing at this stage, to
15 say the least. But I do have the letter I referred to
16 earlier that hasn't been provided to you of October
17 8th, 2020, which is Jane Virtue, she -- she apparently
18 wrote this letter to your clients and the real estate
19 agent on October 8th, 2020, and in it, she said the
20 issue of Caveat 7648 was raised, and you were provided
21 with an electronic copy of the Caveat. But that's --

22 Q. Okay. So --

23 A. I didn't know that they got -- that this electronic
24 copy was forwarded to your clients.

25 Q. Well, isn't it true, sir, that you asked them if the

1 email had receive -- had been received in their inbox?

2 **A.** I didn't ask them.

3 **Q.** To your knowledge when was the first time this
4 purported Caveat was raised with the Tejpars by anybody
5 in your committee or on the Elbow Park development --

6 MS. EMBURY: Elbow Park --

7 (SIMULTANEOUS CROSS-TALK)

8 **Q.** MS. REICHEL: -- application?

9 **A.** Sorry, could you ask the question again, please?

10 **Q.** Sure. To your knowledge was this Zoom call on
11 September 22nd, 2020, the first time the purported
12 Caveat was raised with the Tejpars?

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

14 **Q.** Do you recall on the Zoom call in September -- on
15 September 22nd, 2020, that Ms. Tejpar asked where this
16 document that had been emailed to her had been
17 obtained?

18 **A.** Could you ask the question again, please?

19 **Q.** Do you recall that on the September 22nd, 2020, Zoom
20 call that Ms. Tejpar asked where the copy of the
21 purported Caveat that had been emailed to her had been
22 obtained?

23 **A.** No.

24 **Q.** Okay. Do you recall her asking numerous times about
25 where the document had come from?

1 **A.** No.

2 **Q.** Do you recall Margo replying that they had just come
3 across it?

4 **A.** No.

5 **Q.** At paragraph 14 of your Affidavit, you note that:
6 (as read)

7 The Tejpars' subdivision of the subject
8 property was appealed to the Calgary
9 Subdivision and Development Appeal Board
10 and heard on October 22nd, 2020.

11 Do you see that, sir?

12 **A.** Yes, that's correct.

13 **Q.** And if I refer to that as "the subdivision appeal
14 hearing," you'll understand what I'm speaking about?

15 **A.** Yes.

16 **Q.** Did you personally appeal the subdivision -- the
17 proposed subdivision, sir?

18 **A.** I had status to speak. I think Hugoline Morton did not
19 have status. But I had status because houses that are
20 adjacent do have a status to speak, so I spoke, but I
21 didn't file any material.

22 **Q.** You made submissions at the appeal hearing?

23 **A.** I think my submission was very simple, that there was a
24 Caveat 7648 NT, and that I intended to enforce it.

25 **Q.** Okay. The overall basis -- the overall objective of

1 your submission was that the appeal should be dismissed
2 -- or, sorry, not the appeal, the approval should be
3 dismissed? I apologize.

4 **A.** Well, really I was just letting the board know that I
5 had a solid -- that I had an objection based on the
6 Caveat which I intended to enforce.

7 **Q.** And the Subdivision and Appeal Board denied the appeal,
8 correct?

9 **A.** Yes, they did. They denied it on jurisdictional
10 grounds. I don't think -- they didn't mention anything
11 about the Caveat in their denial.

12 **Q.** So at the appeal, you stated there was a Restrictive
13 Covenant on the title of your property, that you
14 intended to enforce the covenant on the Tejpar
15 property, correct?

16 **MS. EMBURY:** I don't think that was his
17 evidence.

18 **A.** My evidence was that there was a Restrictive Covenant
19 which affected the Tejpars' ability to subdivide.

20 **Q.** **MS. REICHEL:** And you told the appeal board that
21 you intended to enforce that covenant -- Restrictive
22 Covenant?

23 **A.** Yes, I did.

24 **Q.** At paragraph 20 of your Affidavit, you talk about a
25 letter that you've appended as Exhibit J from

1 Mr. Marble; do you see that paragraph?

2 **A.** Yes.

3 **Q.** And you refer to this as "deemed notice"; do you see
4 that, sir?

5 **A.** Just let me look at my Affidavit, please. Yes, I refer
6 to it as "deemed notice." That's what my Affidavit
7 says.

8 **Q.** Right. You'll agree with me there's been no judicial
9 determination of deemed notice to the Tejpars of a
10 Restrictive Covenant, correct?

11 **A.** Not yet.

12 **Q.** So it's your personal opinion that that letter equated
13 deemed notice, correct?

14 **A.** Yes.

15 **Q.** And this letter sent by Mr. Marble was sent
16 approximately ten months after the Tejpars had
17 purchased the property?

18 **A.** I'm not sure the exact date they purchased it.

19 **Q.** This letter was sent well after they had purchased the
20 property?

21 **A.** I think that's fair to say.

22 **Q.** And oddly enough a copy of the letter wasn't sent to
23 the Tejpars directly. Why not?

24 **A.** Well, okay, you got cut-out. Do you want to put the
25 whole question to me and make sure I've got the

1 question before I answer, please?

2 **Q.** Absolutely. I said oddly enough the letter by
3 Mr. Marble dated October 27th, 2020, was not sent to
4 the Tejpars directly. Why not?

5 **A.** You'd have to ask Mr. Marble that. I -- I don't know
6 why not. I suspect he didn't have their address, but
7 I'm not fully aware of that.

8 **Q.** Well, do you know why that 10th Avenue address of a
9 realtor was selected as opposed to the address on the
10 title?

11 **A.** No. Mr. Marble did it.

12 **Q.** So -- okay. Paragraph 22 of your Affidavit, you state:
13 (as read)

14 There's been significant redevelopment
15 in the neighbourhood over the last 20
16 years.

17 Correct?

18 **A.** Yes.

19 **Q.** And you state that: (as read)

20 The redevelopments over the past 20
21 years have been in compliance with the
22 one resident, one lot rule.

23 Correct?

24 **A.** Yes.

25 **Q.** How do you know that, sir?

1 **A.** Partly by living here and being aware that there --
2 there was no other subdivisions that I am aware of,
3 apart from the -- no, I'm not aware of any other
4 subdivisions.

5 **Q.** But, sir, we've talked about residential addresses 1033
6 and 1035 - 32nd Avenue Southwest earlier this morning.
7 That was a subdivision, correct?

8 **A.** Yeah, but that was -- that was in the early '80s. This
9 question says the last 20 years.

10 **Q.** So you are only counting subdivisions from the year
11 2000 on?

12 MS. EMBURY: He's counting subdivision from the
13 last 20 years, and the subdivision that you were
14 referring to was 40 years ago, counsel.

15 **Q.** MS. REICHEL: Are you aware of any other
16 subdivisions in the area, sir?

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

18 **Q.** You'll agree with me that the subdivision you spoke
19 about in the '80s, that both of those lots each have
20 one house on them, correct?

21 **A.** Yes.

22 **Q.** And you'll agree with me that the development approval
23 sought by the Tejpars is for one house, correct?

24 **A.** So far. I haven't applied to the west -- the west lot
25 that they sold.

1 Q. That you believe they sold. Do you have any personal
2 knowledge of that sale, sir?

3 A. Well, no personal knowledge. I think a realtor
4 informed someone in our group that there's been a sale.

5 Q. You appreciate you're seeking a permanent injunction
6 and, therefore, first-hand knowledge is required?

7 A. Yes.

8 Q. You've already spoken about your involvement with the
9 Elbow Park Residents Association, in particular the
10 sub- -- the caveat subcommittee, correct?

11 A. Yes.

12 Q. Prior to Mr. Engbloom locating or providing a copy of
13 the purported Caveat, was your subcommittee group
14 looking for ways to the prevent the Tejpars from
15 subdividing or developing that property?

16 A. I'm not sure when we had -- when we had -- when
17 Mr. Engbloom provided the subcommittee with the copy of
18 the Caveat.

19 Q. Well, prior to receiving a copy of the caveat from
20 Mr. Engbloom, were you and others looking for ways to
21 prevent the Tejpars from subdividing or developing the
22 property?

23 A. We were seeking legal advice.

24 Q. Isn't it true, sir, that your wife told the Tejpars
25 during a call of the Elbow Park Community Association

1 that, We won't let them get away with this?

2 MS. EMBURY: Objection.

3 MS. REICHELT: Why? What the basis of the
4 objection?

5 MS. EMBURY: You need to establish whether or
6 not -- because I believe that he testified that Dianne
7 was in and out of that call, so you can ask him if he
8 recalls that statement being made during the portion
9 that she was in.

10 MS. REICHELT: Right.

11 **A.** I don't recall this statement being made. But I won't
12 deny that she -- we were getting these plans to build a
13 very large house on a tiny lot and that our -- her
14 reaction, if I recall correctly, was she thought
15 compared to our -- she thought the development was
16 monstrous. But --

17 **Q.** Did you -- sorry, did you have something further. I
18 didn't mean to interrupt that.

19 **A.** No.

20 **Q.** Are you familiar with the Elbow Park Residents
21 Association's development committee?

22 **A.** Not really.

23 **Q.** Did you discuss with anybody at the Elbow Park
24 Residents Association putting a copy of the purported
25 Caveat on the developing committee's website?

1 **A.** Would you ask that question again, please?

2 **Q.** Sure. Did you discuss with anybody at the Elbow Park
3 Residents Association putting a copy of the purported
4 Caveat on the website?

5 **A.** No.

6 **Q.** Are you aware of the purported Caveat being placed on
7 the website?

8 **A.** No. I'm not really -- I don't really follow websites
9 in my little world in retirement.

10 **Q.** And, sir, are you aware of fundraising efforts by the
11 residents association caveat subcommittee?

12 **A.** I am. But I think it's solicitor prejudiced.

13 MS. EMBURY: The question is proper. Are you
14 aware of fundraising efforts by residents association
15 caveat subcommittee right now?

16 **A.** Yes.

17 **Q.** MS. REICHEL: Okay. And what efforts -- what
18 did these efforts entail?

19 **A.** What did they entail? We just asked for support.

20 **Q.** And they asked for money?

21 **A.** Not necessarily money. We asked for support from
22 various neighbours.

23 **Q.** And how do you ask for support?

24 **A.** I wasn't the only one who asked for support. I tell
25 people what's -- what the -- there's a development out

1 there, and there's a caveat that restricts the
2 development on the lot.

3 **Q.** So how are those communications happening, sir, that
4 you're aware of?

5 **A.** How do they happen?

6 **Q.** Yes.

7 **A.** Well, I think there was a notice sent out to the people
8 in the neighbourhood.

9 **Q.** What form of notice?

10 **A.** It was notice of the -- that there was -- there
11 appeared to be a breach of Restrictive Covenant 7648.

12 **Q.** Was the notice a flier? A mail? An email? Posted on
13 the website? That's what I'm trying to get at, sir.

14 **A.** I'm not sure if it was ever posted on a website. I
15 think an email was probably sent. I didn't look after
16 that myself.

17 **Q.** Do you know who was responsible for that, sir?

18 **A.** I think Risa Desa did most of the work on it.

19 **Q.** Okay. Have funds been collected, sir?

20 **A.** I'm not going to answer that question. That's
21 privileged. I don't have to disclose how my lawsuit is
22 going to be funded.

23 **Q.** That's not a proper response, sir. Your lawyer hasn't
24 objected. I asked if funds were collected?

25 MS. EMBURY: What I'm going to say is that it

1 is entirely privileged who is paying our legal fees.
2 Whether or not there is a community -- a group of --
3 whether or not funds have been collected from concerned
4 residents in the community in my opinion is a proper
5 question, and if you want to put it in that way, that's
6 fine.

7 MS. REICHEL: Sure, which I think I did.

8 Q. MS. REICHEL: I didn't ask who was paying your
9 lawyer's legal fees. I asked you if funds had been
10 collected pursuant to your fundraising campaign with
11 respect to the Restrictive Covenant and opposing the
12 Tejpars' property?

13 A. Yes.

14 Q. Sir, earlier today you made mention of a situation in
15 which you consented to the discharge of the Caveat on
16 an address recently, but I didn't get the residential
17 address that you provided. You said you had known the
18 family and you consented to the discharge.

19 A. To clarify that, I believe the address was 1002 - 32nd
20 Avenue Southwest.

21 Q. Okay. Thank you.

22 MS. REICHEL: I'm just going to take a quick
23 two-minute break. I believe that those are my
24 questions for you, but I just want to check my notes.
25 We'll be back to you in let's say five minutes.

1 (ADJOURNMENT)

2 Q. MS. REICHELTL: So I think I only have one more
3 question for you. Famous last words for a litigator.
4 Sir, as I understand it, on September 11th, 2020, you
5 were a signatory of a letter of objection as it related
6 to the subdivision of the Tejpars' property; do you
7 recall that?

8 A. I don't really recall that. I don't have a copy of it.

9 Q. I'm going to suggest to you that in that letter of
10 objection, no mention is made of a caveat or a
11 Restrictive Covenant; do you recall that, sir?

12 MS. EMBURY: Objection. He just said that he
13 doesn't recall it, and he doesn't have a copy of it, so
14 unless you --

15 MS. REICHELTL: I'm seeing if my additional
16 information twigs his memory, counsel.

17 MS. EMBURY: So you are asking him about his
18 recollection of the document and what was in it -- or
19 what was not in it; is that correct?

20 MS. REICHELTL: Oh, and I apologize, September 7th
21 was the date. I got that wrong. I knew I'd get one
22 wrong.

23 Q. MS. REICHELTL: So a letter of objection as
24 related to a subdivision on September 7th, 2020, of
25 which you are a signatory; do you recall that, sir?

1 **A.** No, I really don't.

2 **Q.** Okay. Do you recall if in any letter of objection that
3 you made as it related to the subdivision of the
4 Tejpars' property in or around that time frame raising
5 the Caveat or the Restrictive Covenant?

6 **A.** To whom?

7 **Q.** To the -- in your objection to the subdivision.

8 MS. EMBURY: I don't think you've established
9 that my client made an objection to the subdivision
10 application.

11 MS. REICHEL: Which is why I asked him if there
12 was any.

13 MS. EMBURY: Again, why don't you -- why don't
14 you lay the foundation? Why don't you start again?
15 Because I think he's a little bit confused about the
16 question.

17 THE WITNESS: I am confused, because I can't
18 recall.

19 **Q.** MS. REICHEL: So, sir, do you recall being a
20 signatory to a letter of objection as it related to the
21 Tejpars' subdivision in September of 2020?

22 **A.** No.

23 **Q.** Do you recall being a signatory to a letter of
24 objection to the Tejpars' property being subdivided at
25 any other time outside of September 2020?

1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages
4 1 to 71 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

16

17



18

19

Sandra Dreher, CSR(A)

20

Official Court Reporter

21

22

23

24

25

1 - I N D E X -

2 THOMAS FERGUSON

3 April 7, 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 EXHIBIT 1 - An excerpt from the City of Calgary 41
13 website 2020

14
15 ***UNDERTAKINGS REQUESTED***

16 UNDERTAKING NO. 1 - To produce the documents 48
17 related to the service of Justice Malik's December
18 16, 2020, order being served on the Registrar of
19 Land Titles

1	UNDERTAKING REQUEST NO. 2 - To make inquiries and	49
2	advise if Justice Malik's December 16, 2020, order	
3	was served on any other parties, and if so, to	
4	advise when, to whom, and how	
5	RESPONSE TO UNDERTAKING REQUEST NO. 2 - Advised	
6	that Justice Malik's December 16, 2020, order was	
7	not served on any other parties, but if that	
8	answer changes, to advise of same	
9		
10	UNDERTAKING NO. 3 - To make inquiries and to	51
11	advise when the Registrar changed the status of	
12	the purported Caveat from lost, mislaid or	
13	destroyed and had not been microfiche to including	
14	a copy of the purported Caveat that is included at	
15	Exhibit B of Thomas Ferguson's Affidavit -	
16	TAKEN UNDER ADVISEMENT	
17		
18	***OBJECTIONS***	
19	OBJECTION TAKEN to answering the question: But	15
20	you can't tell me whether you have an actual	
21	recollection now of reading that caveat and having	
22	a physical copy of it?	
23		
24		
25		

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