



CATARAQUI CEMETERY AND FUNERAL SERVICES

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RE: A statement from The Cataraqi Cemetery Company's Board of Trustees concerning Justice Mew's decision regarding The Cataraqi Cemetery Company's case against Reginald and Linda Cyr.

The Cataraqi Cemetery Company ("the Cemetery") was pleased to receive the decision of the learned Justice Mew, dated October 3, 2017 in their case against Reginald and Linda Cyr ("the Cyrs"). In summary, the Cemetery commenced an Application in the Kingston Superior Court of Justice against Mr. and Mrs. Cyr for a breach of their obligations and responsibilities as trustees of the Cemetery by obtaining personal and unauthorised benefits from the Cemetery.

Justice Mew made a number of findings which underscored the Cemetery's reasoned and reasonable position in advancing this litigation against the Cyrs. More particularly, Justice Mew found that it was not hard to see why the Cemetery Board of Trustees, when looking at this matter, "saw self-dealing and impropriety on the part of the Cyrs". Justice Mew found specifically that the actions of the Cyrs were "careless and ill considered" and that, as fiduciaries and sitting board members, it was the obligation of the Cyrs to act in the interests of the Cemetery. Justice Mew found specifically that the Cyrs should, both as a matter of prudence (or common sense) and by virtue of the responsibilities as directors and fiduciaries of the Cemetery, have made full disclosure to the board of the transactions they were entering into as those transactions "were almost certainly more favourable than would have been the case if they did not have a special relationship with the Cemetery".

Justice Mew concluded that as directors and fiduciaries, the Cyrs should have disclosed their exchange and transactions to the board. They failed to do so; and having regard to the nature of the Cemetery - a not-for-profit entity with an unpaid volunteer board of directors - the Cyrs' actions was found to be "unconscionable". This case echoes the long-standing common-law doctrine that unconscionable behaviour by a director or fiduciary who fails to disclose something which they were under a duty to do so gives rise to the doctrine of equitable fraud.

Notwithstanding these findings, the Cemetery's claim for reimbursement associated with the Cyrs' actions was defeated on a technicality, in that Justice Mew found that the Cemetery Board ought to have moved to court quicker than it did to recover monies from the Cyrs. More particularly, Justice Mew found that most of the substantial claims against the Cyrs had merit and it was only because of the Cemetery's delay in suing the Cyrs that it had been barred from obtaining a remedy. Given Justice Mew's comments on the substantive merits of the case, as reflected above, the Cemetery has appealed to the Court of Appeal of Ontario the finding with respect to the limitations period.

UPDATE: Pursuant to a decision made by the Cemetery Boards on December 14, 2017, a Motion to Abandon the Appeal was served and filed. The Cemetery Board was advised by its legal counsel that, likely, it would not be financially prudent for the Cemetery to continue the appeal. The advice was premised on the fact that The Cost Decision of Justice Mew did not award costs to either party.

The Cataraqi Cemetery Company Board of Trustees

The full decision can be found online at:

<https://www.canlii.org/en/on/onsc/doc/2017/2017onsc5819/2017onsc5819.html?autocompleteStr=Cataraqi%20Ceme&autocompletePos=5>

CATARAQUI CEMETERY and FUNERAL SERVICES

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