thestar.com

Bob Aaron bob@aaron.ca

January 13, 2007

Neighbours draw line over repairs

What happens if you need to do repairs to the side of your house, but you don't own enough space between the outside wall and the lot line?

Can you trespass onto your neighbour's property to do repairs to your own house?

Those were the questions facing an Ontario court in a case heard last September. Eric Parla and his wife own 60 Spruce St. in Toronto, and Nigel Pleasants owns the house to the west at 58 Spruce.

Their houses were built very close together in the late 19th century, and for many houses like this it is impossible to inspect the area between them without walking on both properties.

The property line between the two houses is only six to eight inches west of the west wall of the house at No. 60. (All measurements are imperial in the court's decision. Judges of my generation don't like the metric system any more than I do.)

By contrast, the east wall of No. 58 is two feet away from the same property line for the first 30 feet of the depth of the house leaving a total space between the two houses of about two feet, six inches.

At the 30-foot mark, the wall of the house at No. 58 is set back about four feet, leaving up to seven feet between the two houses from that point until the back walls of the two houses.

Of all this space, only a six-inch strip belongs to No. 60.

The Parlas discovered that the west foundation wall of their house required substantial repair due to compression of the foundation and rotting of the wooden sill plate used in the construction in Victorian times.

In order to make the repairs, a trench had to be dug along the northerly 18 feet of the west wall of No. 60. Since it is impossible to dig a trench in a space only six inches wide, it was necessary to encroach on the lands of No. 58.

Two contractors refused to start the work without the consent of Pleasants, but some considerable friction arose between the neighbours and permission could not be obtained.

Ultimately, the Parlas found it necessary to apply to the Superior Court in Toronto for an order allowing them onto the Pleasants property to make repairs to the west side of the foundation of their own house.

In their application, the Parlas relied on City of Toronto Bylaw 1994-0404, which reads:

"The owner or occupant of any building or other structure, or the agent or employee of the owner or occupant may enter upon any adjoining land for the purpose of making repairs, alterations or improvements to the building or other structure but only to the extent necessary to effect the repairs, alterations or improvements."

Another part of the bylaw requires anyone who enters under the authority of the bylaw to leave the land in the same condition as before the entry.

Justice Dennis Lane heard the evidence on Sept. 1, 2006 and delivered his decision on Sept. 19.

He noted that there was considerable debate about who said what to whom, none of which was very helpful except to indicate an unfortunate degree of bad feeling between the parties. The bottom line, wrote the judge, is that the bylaw gives the (Parlas) the right to access the (Pleasants) land in the circumstances before the court, subject to the obligation to restore the lands to their former condition ... The terms of the bylaw are clear.

But the dispute did not end there. The Parlas also asked the court to declare that they have a right of way over the Pleasants' land so that they can inspect, clean, maintain and repair the west side of their building. In law, what they were asking for was a right of way, or easement of necessity, which is implied by law in cases where it would otherwise be impossible for owners to enjoy their own property.

An easement of necessity can arise when one owner divides his or her property so that one part of it is left without any legally enforceable means of access.

In cases like this, the law will grant an easement of necessity, based on a presumption that access was intended to be given. Otherwise the land would be useless, a conclusion contrary to public policy.

In fact, the evidence before Justice Lane established that the same person once owned both houses.

When the title was divided, no one apparently gave any thought to the impossibility of performing even an inspection of, never mind repairs to, the Parla home without access to the neighbour's property.

Justice Lane refused to grant the Parlas an easement of necessity since the city bylaw already provides a legally enforceable means of access to inspect and, if necessary, to repair the foundation, wall, eaves or part of the Parla house.

The judge did, however, order that a gate and some stored materials which were blocking the passageway had to be removed by Pleasants.

The case of Parla v. Pleasants has prompted me to create Aaron's First Law of Neighbourliness: It's always better, and cheaper, to get along with your neighbours.

Unfortunately, it's not always possible.

***Bob Aaron** is a Toronto real estate lawyer. www.aaron.ca*