COURT FILE NO.: 07-DV-1363
DATE: 200812/10

SUPERIOR COURT OF JUSTICE – ONTARIO
(DIVISIONAL COURT)

RE: THE GREENSPACE ALLIANCE OF CANADA'S CAPITAL v. CITY OF OTTAWA, 1374537 ONTARIO LTD. and FINDLAY CREEK PROPERTIES LIMITED

BEFORE: Cunningham A.C.J., McKinnon J. and Bellamy J.

COUNSEL: Linda McCaffrey, Q.C. and Will Amos, for the Applicant

Timothy Marc, for the Respondent, City of Ottawa

William Hunter and Jennifer Mesquita, for the Respondent 1374537 Ontario Ltd. and Findlay Creek Properties Limited

HEARD AT: Ottawa, October 2, 2008

ENDORSEMENT RE COSTS

BY THE COURT:

[1] On October 2, 2008 we released our decision dismissing this application. The respondents seek their costs. The applicant argues that it is a non-profit environmental group of limited means and that it is a public interest litigant. Accordingly, they say they should not be responsible for costs. We disagree. Without tracing the history of this litigation, it had to be apparent to the applicant that it had little chance of success. The City of Ottawa passed By-Law 2008-250 on June 25, 2008, a by-law related to the subject land which repealed the two by-laws the applicant sought to have judicially reviewed. Neither the applicant nor anyone else appealed.

[2] Every opportunity was given to the applicant to withdraw its application, including a joint offer to settle from the respondents whereby the applicant could have withdrawn without costs. The applicant refused.

[3] The matter proceeded and the application was dismissed for mootness. The respondents achieved a result at least as, if not more, favourable than their offer and they are entitled to their costs.

[4] As to whether the applicant in this matter is a public interest litigant, we conclude it is not. To qualify as a public interest litigant one must be a party to public interest litigation (see

Incredible Electronics Inc. v. Canada (Attorney General) et al. (2006), 80 O.R. (3d) 723). We agree with the corporate respondents that this litigation, initiated and pursued by the applicant, does not meet the test set out in *Incredible, supra,* and accordingly is not a public interest litigant. There were no overriding public interest matters at stake.

[5] The corporate respondents have worked cooperatively for over 20 years with various governmental agencies in order to have their development fully comply with all environmental and other regulations. The applicant has caused the respondents to expend significant funds to respond to a moot application and must be responsible for its actions.

[6] The corporate respondents seek all their costs of $12,242.17 on the mootness motion; they have offered to reduce by 50% their costs on the application and the motion to quash, resulting in the amount of $54,974.94, for a total costs award of $67,217.11.

[7] In recognition of the applicant's limited means, we fix costs payable by the applicant to the respondent 1374537 Ontario Ltd. and Findlay Creek for the Motion to Quash and the Application at $25,000, all inclusive.

[8] The City of Ottawa is entitled to its costs, which we fix at $4,876.30 plus G.S.T.

ACJ

Cunningham A.C.J.S.C.J.

McKinnon J.

Bellamy J.

DATE: December 10, 2008