

COURT OF APPEAL FOR ONTARIO

CITATION: ~~\_\_\_\_\_~~ v. ~~\_\_\_\_\_~~, 2019 ONCA 331  
DATE: 20190424  
DOCKET: C65920

Tulloch, Hourigan and Fairburn JJ.A.

BETWEEN

~~Kyo Jeon Song~~ and ~~Sung Min Ryu~~

Applicants  
(Appellants)

and

~~Michael MacPhee~~ and ~~Leah Walker~~

Respondents  
(Respondents on Appeal)

Brian Diamond, for the appellant

Paul Gemmink, for the respondent

Heard and released orally: April 23, 2019

On appeal from the order of Justice Pollak of the Superior Court of Justice, dated August 30, 2018.

REASONS FOR DECISION

[1] The appellants seek to overturn the decision of the application judge dismissing their claim for adverse possession of a strip of land between two residences in the city of Toronto.

[2] The application judge found that the appellants did not meet their onus to establish a claim for adverse possession.

[3] According to the appellants, the application judge correctly articulated the test for adverse possession but erred in her factual findings and failed to properly consider all the evidence. We do not give effect to that submission.

[4] The application judge acknowledged that at one end of the disputed strip of land there is a gate that was locked by the appellant's predecessor in title, Ms. [redacted]. However, the application judge found that Ms. [redacted] recognized that the land in issue was owned by the respondents' predecessors in title. In addition, the application judge found that the appellants failed to establish that Ms. [redacted] intended to exclude the respondents' predecessors in title.

[5] These were findings open to the application judge on the record. Specifically they were supported by the evidence of Mr. [redacted], who owned the respondents' property, from approximately 1990 to 2008. His evidence was that he did not object to the gate being locked in order to provide some measure of security to Ms. [redacted]. Further, he testified that Ms. [redacted] granted access to the area when necessary to carry out a repair.

[6] Based on the record on the application we see no basis to interfere with the decision of the application judge. The appeal is dismissed. Costs are to the

respondents payable by the appellants in the amount of \$5,000, inclusive of disbursements and HST.

“M. Tulloch J.A.”

“C.W. Hourigan J.A.”

“Fairburn J.A.”