In the Court of Appeal of Alberta

Citation: Cochrane (Town) v Austech Holdings Inc, 2022 ABCA 377

Date: 20221121
Docket: 2101-0247AC;
2101-0249AC
Registry: Calgary

Docket: 2101-0247AC

Between:

The Town of Cochrane

Appellant
(Plaintiff)

- and -

Austech Holdings Inc., Austech Consulting Limited, 641269 Alberta Ltd., 593267 Alberta Ltd., Whissell Contracting Ltd., Whissell Contracting Calgary Ltd., Whissell Contracting Ltd. carrying on business as Whissell Contracting, Whissell Contracting Calgary Ltd. carrying on business as Whissell Contracting, the said Whissell Contracting, 593267 Alberta Ltd. carrying on business as Bow Ridge Investments, the said Bow Ridge Investments, 641269 Alberta Ltd. carrying on business as Bow Ridge Developments, the said Bow Ridge Developments, Austech Holdings Inc., Austech Consulting Limited, 641269 Alberta Ltd. and 593267 Alberta Ltd. carrying on business as Austech Group and/or Bow Ridge Investments and/or Bow Ridge Developments, the said Austech Group, Reid Crowther & Partners Ltd., Earth Tech Inc., Jim Clark, D. Wayne Tomlinson, Rob Johnston, Robin J. Fitzgerald, G.A. Geoffrey, Robert Saunders, M. Stepanek

Respondents
(Defendants)

-and-

KTA Structural Engineers Ltd.

Respondent
(Third Party Defendant)

-and-

Geo-Engineering (MST) Ltd., G. Douglas Dey, G. Douglas Dey carrying on business as G. Douglas Dey Engineering, the said G. Douglas Dey Engineering, 620208 Alberta Limited, Reid Built Homes Calgary Ltd., Reid-Built Homes Ltd., Lincolnberg Homes Ltd., Lincolnberg Homes (Calgary) Inc., Bay-Cor Developments Inc., Hilltop Developments Ltd., Hilltop Developments Ltd. carrying on business as Hilltop Homes, and the said Hilltop Homes and Can-Cor Enterprises Ltd

Not Parties to the Appeal
(Defendants)

Docket: 2101-0249AC

And Between:

Laura Akitt, Gary Arsenault, Kim Arsenault, Giovanni Bastone, Elizabeth Bastone, Chloe Cartwright, Condo Corp. 0113522, Patsy Cowan, Dean Schultz, Russell Coulter, Arlene Coulter, Nikki Coward, Simon Coward, Jason Crone, Beverly Crone, Milton Da Silva, Tereza Da Silva, Andrew Davies, Susan Davies, Jeffrey Goodman, Russ Doell, Jenn Doell, James Gordon, Donna Winter Gordon, Niel Graham, Jamie Grant, Amanda Harwood, Charlotte Henderson, Al Hinger, Bonnie Hinger, Carl Hulsemann, Susan Hulsemann, Cyril Jenniex, Lucy Jenniex, Jessie Jonassen, Sandra Scott, Richard Keller, Caroline Keller, Kent Kennedy, Micheline Kennedy, Kelly Matheson-King, Loran King, Art Laurenson, David Loader, Barbara Atkinson, Paul Lord, Alice Lord, Marggie Marks, Gradey McMahon, Treena McMahon, Tyler Orton, Faye Orton, Mark Seaman, Angela Seaman, Susanna Roberts, Charles Scott, Ronald Skaalid, Elaine Skaalid, Donald Bradley Smith, Lorna Smith, Darren Thompson, Jennifer Thompson, Ronald Melanson, Doreen Wilson, Trevor Wiebe, Debra Wiebe, Jeff Yaremichuk, Pauline Yaremichuk and Franklin Young

Appellants
(Plaintiffs)

-and-

Austech Holdings Inc., Austech Consulting Limited, 641269 Alberta Ltd., 593267 Alberta Ltd., Whissell Contracting Ltd., Whissell Contracting Calgary Ltd., Whissell Contracting Ltd. carrying on business as Whissell Contracting, Whissell Contracting Calgary Ltd. carrying on business as Whissell Contracting, the said Whissell Contracting, 593267 Alberta Ltd. carrying on business as Bow Ridge Investments, the said Bow Ridge Investments, 641269 Alberta Ltd. carrying on business as Bow Ridge Developments, the said Bow Ridge Developments, Austech Holdings Inc., Austech Consulting Limited, 641269

Alberta Ltd. and 593267 Alberta Ltd. carrying on business as Austech Group and/or Bow Ridge Investments and/or Bow Ridge Developments, the said Austech Group, Reid Crowther & Partners Ltd., Earth Tech Inc., Jim Clark, D. Wayne Tomlinson, Rob Johnston, Robin J. Fitzgerald, G.A. Geoffrey, Robert Saunders and M. Stepanek

Respondents
(Defendants)

-and-

KTA Structural Engineers Ltd.

Respondent
(Third Party Defendant)

-and-

The Town of Cochrane, Geo-Engineering (MST) Ltd., G. Douglas Dey, G. Douglas Dey carrying on business as G. Douglas Dey Engineering, the said G. Douglas Dey Engineering, 620208 Alberta Limited, Lincolnberg Homes Ltd., Lincolnberg Homes (Calgary) Inc., Bay-Cor Developments Inc., Hilltop Developments Ltd., Hilltop Developments Ltd. Carrying on business as Hilltop Homes, and the said Hilltop Homes and Can-Cor Enterprises Ltd

Not Parties to the Appeal
(Defendants)

The Court:

The Honourable Justice Jack Watson
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Bernette Ho

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice G.A. Campbell
Dated the 20th day of August, 2021
(2021 ABQB 666, Docket: 1101-05026; 1101-09439)

Memorandum of Judgment

The Court:

[1] The case management judge dismissed the appellants' actions for delay, pursuant to rule 4.31 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] Both actions arise out of the failures of gabion style retaining walls in a residential property development in Cochrane, Alberta (the Development). In April 2011, the Town of Cochrane filed a statement of claim against 58 defendants (the Town Action). In July 2011, 69 individual homeowners filed a statement of claim against 89 defendants (including the Town of Cochrane as a named defendant) (the Homeowners' Action). The Actions allege, *inter alia*, negligence and breach of contract. The Town seeks $6 million in damages, the homeowners seek no less than $20 million in damages.

[3] In May and June 2019, five groups of defendants applied to have the Actions dismissed for delay pursuant to rule 4.31. Those applications were heard together over four days in November 2020 and April 2021. The case management judge dismissed the Actions pursuant to rule 4.31: 2021 ABQB 666 (the Decision). The Town and the homeowner plaintiffs appeal that decision.

[4] For the reasons that follow, the appeal is dismissed.

Background

[5] A detailed summary of the facts and chronology is included in the lower court decision.

[6] Briefly, construction of the gabion walls commenced in 1999 and completed in 2000. It seems the Town first learned of the wall failures in 2003, attempted remediation in 2004, and then learned of further failures between 2007 and 2009. The Town then retained a consulting firm to prepare a report (the Stantec Report). The Stantec Report, dated April 2010, opined that eventually the entire wall would need to be repaired at a cost of between $5.8 and $8.5 million. One year after receiving the Stantec Report, the Town filed its action and a few months later, the homeowners filed their action.

[7] The Actions proceeded together but could not be consolidated as the Town is a named defendant in the Homeowners' Action. The parties have agreed that the Actions will be heard concurrently with evidence in each action admissible in the other.

[8] From 2011 to 2014 there was a flurry of activity with defences filed, affidavit of records exchanged, third parties added, and applications to strike or summarily dismiss filed and heard. The Actions were placed into case management at the end of 2012 where the parties discussed

pursuing an alternative dispute resolution (ADR) process. The parties attempted mediation in 2014 but it became clear at a June 2014 case management meeting that the attempt to mediate failed at that point in time.

[9] From 2015 to 2019 there was more activity with further statements of defence filed, third parties added, discontinuances filed, and various summary dismissal applications, although no further mediation was scheduled. In 2015, the Town and the homeowner plaintiffs entered into a standstill agreement to facilitate settlement discussions and pursue a joint expert opinion. The defendants were not advised of this agreement.

[10] In 2016, the Town and the homeowner plaintiffs obtained court approval of a Pierringer settlement agreement with a group of defendants involved in both the design and construction of the gabion walls (the Almor Defendants). The settlement amount has not been disclosed, but it appears to be for a significant amount.

[11] The parties appear to have delayed questioning pending the attempted mediation in 2014, and since then, questioning has only been conducted of the Almor Defendants.

[12] There are differing accounts of the status of document production and whether it is in an incomplete state. The Town and homeowner plaintiffs say that document production is complete and there is a voluminous record available. However, several of the homeowner plaintiffs have yet to file and swear their affidavits of records, and some homeowner plaintiffs have deposed to having only two relevant and producible records.

[13] Expert reports are a critical aspect of the case given allegations of professional negligence. While five expert reports addressing damages have been prepared, none of the reports are usable at trial, and none of the reports address standards of care or causation. In 2013, the plaintiffs served three expert reports on all parties (Stantec, Coffey and Wade). The Stantec report recommended full remediation of the gabion walls at an estimated cost of $5.8 to $8.5 million, while the Coffey report recommended partial remediation solutions at a much lower cost in the $655,000 to $2.1 million range. It was later learned that Coffey had a conflict of interest, so the Wade Report was commissioned to review the adequacy of the Coffey report. In 2014, a fourth expert (Demitt) was retained by the homeowners, and in 2016, the plaintiffs together retained a fifth expert (Tetra Tech). In April 2019, the plaintiffs provided the Tetra Tech report to the defendants along with a litigation plan.

[14] About a month later, in May and June 2019, five groups of defendants applied to have the action dismissed for delay under rule 4.31 (Decision at para 4):

> (a) the developer of the Development, Austech Holdings Inc., Austech Consulting Limited, 641269 Alberta Ltd., 593267 Alberta Ltd., 593267 Alberta Ltd. carrying

on business as Bow Ridge Investments, the said Bow Ridge Investments, 641269 Alberta Ltd., carrying on business as Bow Ridge Developments, the said Bow Ridge Developments, Austech Holdings Inc., Austech Consulting Limited, 641269 Alberta Ltd. and 593267 Alberta Ltd. carrying on business as Austech Group and/or Bow Ridge Investments and/or Bow Ridge Developments, the said Austech Group (the Austech Defendants);

(b) the designer of the overland drainage including the swale on top of, or adjacent to, the gabion walls, retained in 1997, Reid Crowther & Partners Ltd., Earth Tech Inc., Jim Clark, D. Wayne Tomlinson, Rob Johnston, Robin J. Fitzgerald and G.A. Geoffrey;

(c) the contractor for construction of the gabion walls undertaken in 1999, Whissell Contracting Ltd., Whissell Contracting Calgary Ltd., Whissell Contracting Ltd. carrying on business as Whissell Contracting, the said Whissell Contracting (the Whissell Defendants);

(d) the preparers of a preliminary slope stability assessment issued in 1994, Robert Saunders and Milos Stepanek; and

(e) the provider of structural engineering advice to the Almor Defendants in 2003, KTA Structural Engineers Ltd.

[15] The delay applications were heard over two days in November 2020 and two days in April 2021.

[16] The Demitt report was provided to the parties in January 2020, the purpose of which was to identify the cause of the failures and provide engineering opinions related to the ongoing litigation.

[17] The gabion walls still exist and are available for inspection.

The case management decision

[18] The case management judge issued her reasons in August 2021. She acknowledged that this was not the type of case where the plaintiffs had not taken steps for several years or seem uninterested in prosecuting the claims: Decision at para 66. Nonetheless, she concluded that there was inexcusable and inordinate delay in the Actions, that there was presumed and actual prejudice, and the Actions should be dismissed.

[19] The case management judge found that: the plaintiffs had not advanced the Actions to the point on the litigation spectrum that a litigant acting reasonably would have attained within eight years (Decision at para 90); the Actions would require an additional two years to be ready for trial (Decision at para 89); the delay in completing questioning and obtaining expert reports was inordinate (Decision at para 103); this is not a documents case and witness memories will be relevant (Decision at para 104); the plaintiffs did not establish that the delay was excusable for reasons related to securing the Tetra Tech report or because the parties agreed to - or the defendants acquiesced to - the delay while the parties pursued ADR (Decision at paras 127, 149 and 152); the applicant defendants did not contribute to the overall delay (Decision at para 174); the plaintiffs failed to rebut the presumption of significant prejudice and there is actual prejudice to the applicant defendants (Decision at para 214); and there are no compelling reasons not to dismiss the Actions for delay (Decision at para 220).

Grounds of Appeal and Standard of Review

[20] On appeal, the Town submits that the case management judge erred in law and fact in assessing delay, applied the wrong legal test in assessing prejudice, and erred in her conclusion that failure to obtain a trial ready expert report prior to May 2019 resulted in actual or irrebuttable prejudice.

[21] The homeowner plaintiffs submit that the case management judge applied the wrong test in determining whether the delay was excusable and whether the defendants had acquiesced to the delay, failed to appreciate that a fair trial remains possible, and relied on evidence of prejudice that was speculative and unrelated to litigation delay.

[22] The standard of review applicable to a decision under rule 4.31 was set out in *Royal Bank of Canada v Levy*, 2020 ABCA 338 at paras 11-12:

> Whether an action should be dismissed for delay engages a certain element of discretion. Unless the exercise of that discretion is based on an error in principle, or is clearly unreasonable, deference is warranted on appeal: *Canada (Attorney General) v Fontaine*, 2017 SCC 47 at para. 36, [2017] 2 SCR 205. A case management judge, who would have a detailed knowledge of the progress of the action, is well positioned to measure the reasons for and effects of delay. There is no fixed methodology or line of analysis that must be followed in delay applications: *Transamerica Life Canada v Oakwood Associates Advisory Group Ltd*, 2019 ABCA 276 at paras. 15-16, 23, 92 Alta LR (6th) 41; *4075447 Canada Inc v WM Fares & Associates Inc*, 2020 ABCA 150 at paras. 13-14. The thoroughness of the analysis, and the level of detail in the reasons, seldom generate stand-alone reviewable errors.

> Whether there has been delay in the prosecution of an action, whether the delay is "inordinate and inexcusable", and whether there has been "significant prejudice" are largely questions of fact. The decision of a chambers judge on such factual issues, and the ultimate question of whether the action should be dismissed for delay, will not be disturbed on appeal unless it discloses palpable and overriding error: *Transamerica* at para. 41; *Humphreys v Trebilcock*, 2017 ABCA 116 at para. 157, 51 Alta LR (6th) 1.

Analysis

Did the case management judge err in her assessment of delay?

[23] As stated in *TransAmerica Life Canada v Oakwood Associates Advisory Group Ltd*, 2019 ABCA 276, the core source of legal principles applicable to delay applications is the *Alberta Rules of Court*. "The application of the rules to the particular facts will always engage an element of judicial discretion, reflected in the word 'may' found in R. 4.31(1). There are many different ways that a Master or chambers judge can analyze a delay application; there is no universal mandatory formula": *TransAmerica* at para 15.

[24] At the time of the applications, rule 4.31 provided:[1]

> 4.31(1) If delay occurs in an action, on application the Court may
>
> (a) dismiss all or any part of a claim if the Court determines that the delay has resulted in significant prejudice to a party, or
>
> (b) make a procedural order or any other order provided for by these rules.
>
> (2) Where, in determining an application under this rule, the Court finds that the delay in an action is inordinate and inexcusable, that delay is presumed to have resulted in significant prejudice to the party that brought the application.

[25] Notably, the wording of rule 4.31 refers to delay "in an action" which "requires a review of the entire action, and not segments": *Arbeau v Schulz*, 2019 ABCA 204 at para 27. Delay is always a matter of degree; the differential between the theoretical standard of what "point on the litigation spectrum" a reasonable litigant would have reached and any particular case is incapable of precise definition: *TransAmerica* at para 20. Ultimately, determining whether there has been

[1] In 2022, rule 4.31 was amended with the addition of subsection (3): "In determining whether to dismiss all or any part of a claim under this rule, or whether the delay is inordinate or inexcusable, the Court must consider whether the party that brought the application participated in or contributed to the delay."

delay in a case must be based on an "examination of the record, the submissions of counsel, and the experience of the judiciary": *TransAmerica* at para 22.

[26] The appellants submit that the case management judge erred because she failed to properly assess and identify distinct periods of delay having regard to their circumstances and potential contributory factors as to delay in each instance. In particular, the appellants argue the delay prior to November 2017 should not be given any weight and that delay after November 2017 was immunized by a "pause" allegedly conceded by one or more of the defendants. Alternatively, the appellants argue that if the clock started running prior to 2017, it did so, at the earliest, after the June 2014 case management meeting. The appellants further submit the case management judge failed to consider the complexity of the litigation, including the number of parties, and essentially concluded that any step taken after 2014 towards alternative dispute resolution or simplifying the litigation was pointless.

[27] We disagree that the case management judge committed any such error. The case management judge followed the framework outlined in *Humphreys v Trebilcock*, 2017 ABCA 116, leave to appeal to SCC refused, 37626 (14 December 2017) as she was permitted to do, to conclude there was delay. In particular, she found that a reasonable litigant, after eight years, would have at least conducted some, if not all, questioning. In addition, after eight years, the appellants had not obtained a single expert report that could be used at trial. Specifically, she noted at para 74 that:

> …no expert opinion has been obtained as to the specific proximal cause(s) of the Gabion Wall Failures, the applicable standards of care, whether there was a breach of the requisite standards of care by any of the Defendants, nor about who bears ultimate responsibility for the failures.

[28] We agree with the case management judge's conclusion that there has been delay in prosecuting the Actions. At the time the dismissal applications were filed by the respondents, the Actions were far from being ready for trial. As the defendants contended at the hearing, there was virtually no activity on most of the essential steps necessary to move the litigation forward. Further, the case management judge specifically acknowledged the complexity of the Actions when arriving at this conclusion, at para 90:

> On the facts of the case before me, despite the number of parties and the alleged complexity, I conclude that the Plaintiffs have not advanced the Actions to the point on the litigation spectrum that a litigant acting reasonably would have attained within an eight-year period.

[29] It is true that the appellants were actively engaged in steps to progress the litigation in the sense that the number of defendants was reduced substantially from the time the Actions were filed to the time the rule 4.31 applications were filed. In addition, the settlement with the Almor

Defendants did get rid of third party claims. However, those steps did not reduce the number of issues to be considered at trial, nor did they assist in the development of the necessary evidential framework for those issues to be addressed at trial in a manner which was fair to every party. A trial judge would still have to consider whatever evidence is available to determine the degree of Almor's responsibility in relation to liability, causation, and damages, among other issues. Thus, while this court noted in *Amoco Canada Petroleum Co Ltd v Propak Systems Ltd*, 2001 ABCA 110 that Pierringer agreements may be beneficial because they result in shorter trials and narrow the issues to be determined, the Pierringer agreement entered with the Almor Defendants in this case resulted in fewer similar benefits.

[30] There is no basis to interfere with the case management judge's conclusion that there was delay in the litigation.

Did the case management judge apply the wrong test in determining whether the delay was excusable or if there was acquiescence to the delay?

[31] The appellants submit the case management judge erred in failing to find that any delay was excusable or that the respondents acquiesced to any such delay given the parties' alleged commitment to some form of alternate dispute resolution including mediation and settlement. The case management judge should have considered the parties' joint commitment towards alternative dispute resolution, and pausing the litigation, to be an excuse for any delay. The appellants point to the comments made by counsel to the Austech and Whissell Defendants as evidence of the commitment to avoid costly and lengthy litigation. The appellants further submit that the case management judge gave them no credit for steps taken after June 2014 towards alternative dispute resolution.

[32] Notably, when asked to identify what steps were taken after the 2014 case management meeting towards ADR, the appellants acknowledged that the only concrete step taken was securing the report from Tetra Tech. However, the appellants say the case management judge failed to understand how difficult it was to obtain the Tetra Tech report, as conflicts, insurance requirements and other issues had to be managed.

[33] In our view, the appellants' suggestion is without merit. It is evident from the decision that the case management judge was well-aware of the issues the appellants outlined regarding the retainer of Tetra Tech and their ability to undertake their work. After discussing the Tetra Tech retainer and work in detail, the case management judge found that the appellants bore sole responsibility for the conduct of Tetra Tech and the time taken to complete its work. The case management judge's finding is supported by the record and the appellants' suggestion that obtaining the Tetra Tech report constituted meaningful progress towards ADR is not sustainable. That conclusion is reinforced by the fact that the Tetra Tech report, by its own terms, was not a

definitive opinion ready for presentation as evidence in court, let alone as evidence on the nature and breach of any standard of care by the various professional defendants or on causation.

[34] With respect to any agreement to pause the litigation as between the appellants and the respondents, the appellants rely on the same communications from counsel to the Austech and Whissell Defendants that were before the case management judge. In her reasons, the case management judge explained why she did not agree with the appellants' characterization of the communications. With respect to comments in a brief filed by the Austech Defendants, the case management judge observed that they spoke to "the history of the Actions and not necessarily to the plan going forward": Decision at para 136. The case management judge further noted that communications made at the November 2017 case management meeting over which she presided were made to preserve questioning rights against third party defendants who were being released from the Actions: Decision at para 141. The case management judge committed no error when she ultimately concluded that there was no evidence of an agreement of all parties to avoid litigation steps entirely: Decision at para 145.

[35] Similarly, the case management judge committed no error in rejecting the argument that the respondents acquiesced to delay through their conduct or silence. Silence does not amount to acquiescence: *Flock v Flock Estate,* 2017 ABCA 67 at para 22, leave to appeal to SCC refused, 37552 (19 October 2017). While *Flock* was decided under rule 4.33, we see no reason why this principle ought not similarly apply under rule 4.31.

[36] The case management judge committed no error in her assessment of whether the delay was excused or if the respondents acquiesced to the delay. Ultimately, we agree with the case management judge's observation at para 162 of her reasons:

> While ADR may be desirable, there is always the real possibility that it will fail and litigation will be necessary. Thus, both avenues should have been pursued in tandem. As Master Schulz said in *McKay v Prowse*, 2017 ABQB 694 at para 20, affirmed 2018 ABQB 975, further affirmed 2020 ABCA 131, "[c]ounsel must practice with one eye on settlement and another on the requirements of the *Rules of Court*."

Did the case management judge apply the wrong test to assess prejudice?

[37] The appellants submit that the case management judge relied on speculative evidence, and she failed to tie any prejudice to the period of delay. They point to *Levy* as standing for the proposition that only incremental, significant prejudice should be considered. In this respect, documents that were lost before the Actions were filed should not have been considered and the case management judge erred by referencing lapsed memories, without proof that memories became worse after the Actions were commenced, after the June 2014 case management meeting,

or after the 2017 comments made by counsel to the Austech and Whissell Defendants. The appellants invite us to review the cross-examination transcripts and evidence that was before the case management judge to conclude that any evidence of prejudice was rebutted. In any event, they submit the prejudice alleged is not the type of prejudice which justified dismissal of the action for delay. The appellants also complain that the case management judge failed to recognize that it is still possible to have a fair trial in part because the gabion walls and drainage swale are still available for inspection.

[38] In reviewing the case management judge's reasons, it is apparent she was aware of the meaning of "prejudice" and "significant prejudice". She was also aware that any such prejudice must arise from delay. The case management judge reviewed several factors in her assessment, including the following:

> (i) Whatever memories the respondents may have had when the Actions were filed would have faded further during the ensuing eight years of delay, and prejudice is exacerbated by each of the respondent's small role in the Development.
>
> (ii) While documents may have been lost before the Actions were filed, those documents and records are not available to refresh the respondents' witnesses' memories.
>
> (iii) This is not primarily a documents case.
>
> (iv) *Viva voce* testimony will be required to establish what actually happened during design, construction and the 2003 repair of the gabion walls. There will have to be an assessment of whether professionals met the requisite standard of care and skill, and this holds true in relation to the contributory negligence claims.
>
> (v) The bankruptcy of one of the named defendants (Geo-Engineering (MST) Ltd.) in 2016, over which there remains uncertainty, may adversely impact the respondents in regards to the apportionment of liability and damages.

[39] The case management judge concluded that the appellants had not rebutted the presumption of significant litigation prejudice and found that the respondents had established actual litigation prejudice. This could only be remedied through the dismissal of the Actions.

[40] As was noted in *TransAmerica*, a conclusion that there has been significant prejudice is a mixed question of fact and law and the case management judge's assessment is entitled to deference. The findings of the case management judge were available on the record before her

and the appellants have not established that the case management judge committed palpable and overriding errors.

Conclusion

[41] It is clear from the record and comprehensive reasons that the case management judge conducted a thorough and detailed analysis of the matter before her. We see no basis for this court to intervene. The appeal is dismissed.

Appeal heard on November 3, 2022

Memorandum filed at Calgary, Alberta
this 21st day of November, 2022

Authorized to sign for: Watson J.A.

Strekaf J.A.

Ho J.A.

Appearances:

S.J. Weatherill
L.K. Feehan
for the Appellant, The Town of Cochrane

L.J. Warner
for the Appellants, Laura Akitt and others

B.E.K. Wallace
for the Respondents, Austech Holdings Inc. and others

D.J. Corrigan, KC
for the Respondents, Whissell Contracting Ltd. and others

B.G. Kapusianyk, KC
for the Respondents, Reid Crowther & Partners Ltd. and others

C.C. Kachur
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T.C. Hagg, KC
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