

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150514

Docket: A-409-14

Citation: 2015 FCA 128

**CORAM : PELLETIER J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

SUNSHINE VILLAGE CORPORATION

Appellant

and

**PARKS CANADA AGENCY, and
HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

Respondents

Heard at Calgary, Alberta, on May 14, 2015.
Judgment delivered from the Bench at Calgary, Alberta, on May 14, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150514

Docket: A-409-14

Citation: 2015 FCA 128

**CORAM : PELLETIER J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

SUNSHINE VILLAGE CORPORATION

Appellant

and

**PARKS CANADA AGENCY, and
HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

Respondents

**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on May 14, 2015).**

PELLETIER J.A.

[1] Despite Mr. Anderson's able submissions, we are of the view that this appeal should be dismissed.

[2] Sunshine Village does not dispute that Parks Canada continues to meet its avalanche control obligations under article 4 of its lease. It also agrees that Parks Canada is justified, for

reasons of safety, in prohibiting parking in the 30 year avalanche run out zone in the pull out area located within the boundaries of the appellant's lease. The only remaining issue is whether Parks Canada acted reasonably, or within its jurisdiction, in prohibiting parking in the balance of the pull out area.

[3] The record of decision shows that Parks Canada believed that existing measures did not provide an adequate margin of safety, given the catastrophic consequences of an avalanche. This is a judgement about the degree of risk to users of the resort and the Park which is acceptable to Parks Canada. While the unexpected severity of the 2012 controlled avalanche on Bourgeau 4 precipitated Parks Canada's review of existing procedures, its concerns dated back to 2006 when an interim strategy for managing overflow parking was adopted. Parks Canada's decision is supported by its expert report which noted that the option selected would solve both avalanche risk management and road safety issues. Given that there is no issue that Parks Canada is meeting its obligations under the lease, its decision to prohibit parking in the pull out area is reasonable and within the powers conferred on it by the *National Parks Highway Traffic Regulations*, C.R.C.,c.1126. As such, any interference with the appellant's rights under its lease is justified.

[4] As a result, the appeal will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-409-14
STYLE OF CAUSE: SUNSHINE VILLAGE CORPORATION v. PARKS CANADA AGENCY, AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING: Calgary, Alberta
DATE OF HEARING: MAY 14, 2015
REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
DAWSON J.A.
TRUDEL J.A.
DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

Kent Anderson
Sarah Hansen
Sara Bagg

FOR THE APPELLANT
SUNSHINE VILLAGE
CORPORATION

Christine Ashcroft

FOR THE RESPONDENTS
PARKS CANADA AGENCY,
AND HER MAJESTY THE
QUEEN IN RIGHT OF CANADA

SOLICITORS OF RECORD:

Miller Thomson LLP
Calgary, Alberta

FOR THE APPELLANT
SUNSHINE VILLAGE
CORPORATION

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENTS
PARKS CANADA AGENCY,
AND HER MAJESTY THE
QUEEN IN RIGHT OF CANADA