

Grenadier road, Toronto, contrary to the provisions of by-law No. 6061 of the plaintiff corporation.

Tried before the Honourable The Chancellor, at Toronto non-jury sittings, December 4th and 5th, 1912.

Irving S. Fairty, for the plaintiffs.

W. J. McWhinney, K.C., for the defendants.

HON. SIR JOHN BOYD, C.:—I have been considering this case, and I think that an injunction should be granted on the terms that the city undertakes to pay any actual outlay made by the defendants, and for any loss that they may be liable for, because of any breach of any contract entered into by them, with a view to the construction of the apartment house.

There will be no costs up to here. There will be a reference to the Master to ascertain the damages, and the costs of that reference are to be dealt with by him in case there are any extravagant claims.

My reasons in part are these; that the Legislature and the city prohibited the erection of apartment houses within this area, and that being the position the permit would be so much waste paper. I take it there is no power to override that by-law on the part of any city official; it would take some power as high as that which passed the by-law itself, and the tentative letter from the solicitor's office and the instructions from the architect did not carry the matter any further; they did not relieve the situation in point of law. They did operate on the defendant and induced him to make an outlay and do other things in preparation for the erection of this apartment house, and when he made the excavation there in September, I suppose that awakened the city to the gravity of the situation. That is the reason why I do not give costs up to here, and this being a Court of equity, as a matter of equity, I deal with it in that way.