

**Transcript**

**Small Claims Court Newmarket**

**Tina Duncan ats Marnee Buckles**

**October 2018**

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## Page 117 – Adrian Admits Having A Survey

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**Adrian plays dumb “How is a survey relevant???”**

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built the fence according to - and in fact the Aurora by-law it can be built on the property line.

5 Q. Where's the survey?  
A. Where is the survey?  
Q. Yes. Your survey.  
MS. ADRIAN: Objection. How is that relevant?  
MS. PRIESTLY: How is it relevant? You've asked for our survey, my client had to go out and spend thousands of dollars to get proof...  
10 A. I have the survey right there.  
MS. PRIESTLY: ...that the fence was built on her property.  
MS. ADRIAN: Your client is the plaintiff. The onus is on her to established that there's an encroachment.  
15 MS. PRIESTLY: That's correct, and if I remember correctly during settlement conference you were asked to provide a survey and we've never seen one.  
20 A. Well, I have the original survey right in my file.  
MS. PRIESTLY: I'm sure you do.  
A. But you have the survey already to prove that the fence itself is on the property - is on the inside of the property line and you're saying that the fence is encroaching underneath the ground, so...  
25 Q. I'm not saying that, the survey is saying...  
A. Well, the surveyor then, right.  
Q. That's right.  
30 A. So the original survey is there...

**The fence is encroaching under the ground->**

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Q. A credible....

A. ...the Town of Aurora - nobody questioned anything - became a big song and dance from - I went to the Town, "What do you need?" "I need the survey." So I gave them all the information, came out and measured, which was actually done on September the 25<sup>th</sup> was when the fence was declared legal by the Town of Aurora.

Q. Was it not two inches or you still had two inch shape - something out?

A. No, no, no, the - my - my fence is in compliance.

Q. Why did you have to remove some of the fence then if it was in compliance?

A. I didn't have to move the fence. It was the fence posts.

Q. Not the - no, I'm talking about the height. Was it not....

A. No, the height was - the height is underneath - is underneath - it's not even - I think it's 75 inches you can have and it's 73.

Q. Okay.

A. My fence is - otherwise...

Q. Okay.

A. ...the Town would've asked me to cut the fence down, right?

Q. I just wanted to clarify that ma'am, that's all. In your pleadings, you clearly write and I'm sure that you remember them - that you knew that the fence was going to be over on the property of the plaintiff.

A. No.

**"AURORA QUESTIONED NOTHING"**

**"My fence is in compliance."**

**LIES – TOO HIGH, in Trespass**

**Buckles challenges admissions of guilt in pleadings**

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Q. May I read from the construction of the fence of the pleadings?

“Pleadings are not testimony.”

MS. ADRIAN: Your Honour, pleadings are not testimony. This is a cross-examination of testimony, not allegations in pleadings. I’m not sure it’s helpful to be cross-examining on pleadings. We are of course in your hands, but...

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THE COURT: Well, I think it’s legitimate. She’s asking the defendant if her evidence corresponds with what she has in her defence. Yes I’m going to allow it.

10

MS. PRIESTLY: Thank you, Your Honour.

Justice: “It’s legitimate.”

Q. It’s number three of the pleadings. It says in part, “In mid 2017 the defendant approached the plaintiff to enquire whether they would object to the defendant placing a gate across her driveway to form an enclosed yard. Because the plaintiff’s dwelling sits extremely close to the shared property line, the gate to be effective would need to almost touch the defendant’s dwelling and likely would reach slightly over the property line. At that time the plaintiff objected to this proposal and was unwilling to discuss the issue further with the defendant.” Is that correct?

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A. I have no idea. I don’t know what you’re suggesting there. I....

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Q. I’m not suggesting anything...

A. ...I already said in the beginning that....

Q. ...I’m suggesting that this is your testimony when you filed the pleadings. You spoke to your lawyer and your lawyer wrote this and from what you told her.

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Duncan proposed Buckles should give up access to her land for a Duncan gate post

Page 120 – Duncan confesses to gate post trespass

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“I knew the gate post was on Marnee’s property.” =>

“So, I’ve never said my fence is not on Marnee’s property”

“... (the fence) is on my side by one inch.” =>

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5 A. Is this Brad Cran?  
Q. No, these are your filings - look.  
A. I’m just confused. I don’t - what - I already said that I knew originally that the fence was - the gate post was on Marnee’s property. I admitted to that and said yes it was, and then it got surveyed and the fence and then removed that problem. So I’ve never said - my fence is not on Marnee’s property. It’s underneath - you’re suggesting underneath that it’s encroaching underneath, but the fence is on my side of the property line by one inch all the way, and that was confirmed - I assume that was confirmed by Mr. Geyer’s survey.

10 Q. Just a couple of weeks or days ago - let me - like that - why do you have flashing strobe lights facing the rear of your property facing into....  
A. They’re Halloween decorations.  
Q. But nobody can see them from where they are. That’s not a decoration.  
A. Well, I had - I had people in the house. I’m celebrating Halloween. My house is done up for Halloween.

15 Q. I’m sorry, I’m hearing impaired. I didn’t hear that last word.  
A. Halloween.  
Q. No prior to that - it- your house is something.  
A. I’m - I’m decorated for Halloween.  
Q. Okay.  
A. And what has this got to do with the case? I don’t understand?

20 Q. The animosity between the two - between the two of you. In fact, my client was advised by another neighbour

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that you had put a Frankenstein like object and faced it towards....

MS. ADRIAN: I'm going to object to this, Your Honour. It has nothing to do with the allegations. I'm not sure how it relates to while we're in court today.

THE COURT: Yes, I don't want to hear what a neighbour says. You can ask the witness about certain things.

MS. PREISTLY: Q. Did you place a Frankenstein like figure that has been sitting in your porch the other night - did you put it in your driveway with a dagger in its hand facing the plaintiff's property?

A. It's not a dagger. It's actually a butler and it's got a candelabra. He's holding a candelabra, and the reason that I moved him, because three days ago somebody was on my porch at four a.m. in a hoodie and I didn't know who it was, so I moved him away from the porch. There was somebody ran off my porch across the street yelling right, so I moved him and then I have to be careful now. The dog doesn't like him, so on the porch he's fine, but I put him there for the children down the road to enjoy and then if I put him in the garage, it's tied in the garage, so he's back up on the porch at this point, but I'm scared to leave him there at night because I don't know who this person was on my driveway - on my porch the other morning. Anyway, this is Halloween and it's for enjoyment and pleasure. It's a butler who says some hilarious things carrying - holding a candelabra, so....

THE COURT: Okay, let's move on. Next question?

MS. PRIESTLY: That is all, Your Honour.

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THE COURT: Okay. Any re-direct?

MS. ADRIAN: No, Your Honour, there's not.

THE COURT: You said that this is the type of fence that the fence company recommended. Have you ever enquired as to what it would cost to lower this fence - lower the height of the fence?

A. No, I haven't enquired on doing that, no.

THE COURT: And is there some reason that you wanted the fence two metres high?

A. There was absolutely no ill intentions. It was I have the gate and I needed a fence. Never really gave it a thought.

THE COURT: And would there be any problem or any objection from you to lower the fence?

A. Yes, there would.

THE COURT: Okay, and why is that?

A. Because it compliments my house and it matches the gates and it gives me - it protects me from the gas line, from my snowplough. I had trouble getting a snowplough guy in to plough the driveway because the plough without the fence would be detrimental because the gas line is right there, and secondly, the driveway is my backyard. I don't really have a back yard as such. So when I play out there with the dog, throw the ball, if I didn't have that fence there, I would be hitting Ms. Buckles' house and her one piece of eaves trough that is on the house - the only piece, the pipe - not the eaves trough, the drain pipe is hanging on by a thread. So the fence at least protects me from damaging her house.

Could you lower it? NO!

Protects gas line from snowplough.

I would be hitting her house.



**Page 122 – “Had we left the gate where it was, none of this would’ve happened.”**

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THE COURT: I take it you never asked the plaintiff what would remedy this situation with regards to the fence?

5 A. No, I didn't because when - when we - she yelled at me about the gate and she was pretty scary so, telling me about easements and pathway of hundreds of years ago when people could come and do whatever they wanted on the driveway - on my driveway - so she was certainly not in any -  
10 after speaking to me like that - embarrassing me in front of my fence guy, no, certainly not. Had we left that gate where it was, there would never have been a fence. We would just be living harmoniously, but that didn't happen. So my other neighbour we have no problems between us. We have no fence, no  
15 nothing. Everything's fine. So had that gate been left for that short amount of time, Ruby is now 70 pounds. This time last year she was pretty little, so just the gate alone would've - none of this would've happened.

**“..embarrassing me...”**

THE COURT: Okay. Any questions arising out of my questions. Plaintiff?

20 MS. PRIESTLY: Yes, Your Honour.

Q. Just previously you had said that one of the reasons why you put the gate on there was so you didn't back up into the - or the fence so you wouldn't back up into the gas  
25 line, correct?

A. Mm-hmm.

Q. But now you're saying that if the plaintiff would've allowed you to put the gate on there, there never  
30 would've been a fence?

A. No, I know, and that would've been an issue.

Q. So what is your issue there then?

**SPITE! Non of this would've happened**

**Duncan:  
Snowplow  
driver would  
NOT plow  
without the  
fence there...**

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A. Well, it wasn't - it isn't an issue now, because I didn't realize that there would be a problem. I've only lived in this house a year. I always have a snowplough company come and before - when I talked to the snowplough guy, he said he would not plough my driveway, had there not been a fence there to protect himself from damaging Ms. Buckles' house.

10  
Q. Had you ever heard from the plaintiff if anybody has ever damaged the house - of all the years - it's a heritage house - it's been there - hasn't moved, nobody - did you ever speak to her about that and ask if that was ever a problem?

15  
A. She doesn't want to talk to me. She made it quite clear that day when she didn't want the gate there, so why would we talk?

Q. You know exactly what kind of education that Ms. Buckles has, and then how she - her business, her occupation. You know exactly what it is.

20  
MS. ADRIAN: Again, Your Honour, objection. This is argument and it's not arising out of the points that you raised.

THE COURT: Agreed. Anything else?

MS. PRIESTLY: Thank you, Your Honour, nothing.

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THE COURT: Okay, defence?

MS. ADRIAN: I have nothing, Your Honour. Thank you.

30  
THE COURT: Okay, thank you. Okay, thank you. Any rebuttal evidence? Or would you like to proceed with your submissions?

MS. PRIESTLY: That would be all, Your Honour.

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