

# 2013 Canadian Apartment Investment Conference



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**CITATION:** First Ontario Realty Corporation v. Appelrouth, 2012 ONSC 2545  
**DIVISIONAL COURT FILE NO.:** 54/11 and 59/11  
**DATE:** 20120706

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**THEN R.S.J., SWINTON AND BRYANT JJ.**

**B E T W E E N :**

FIRST ONTARIO REALTY CORPORATION

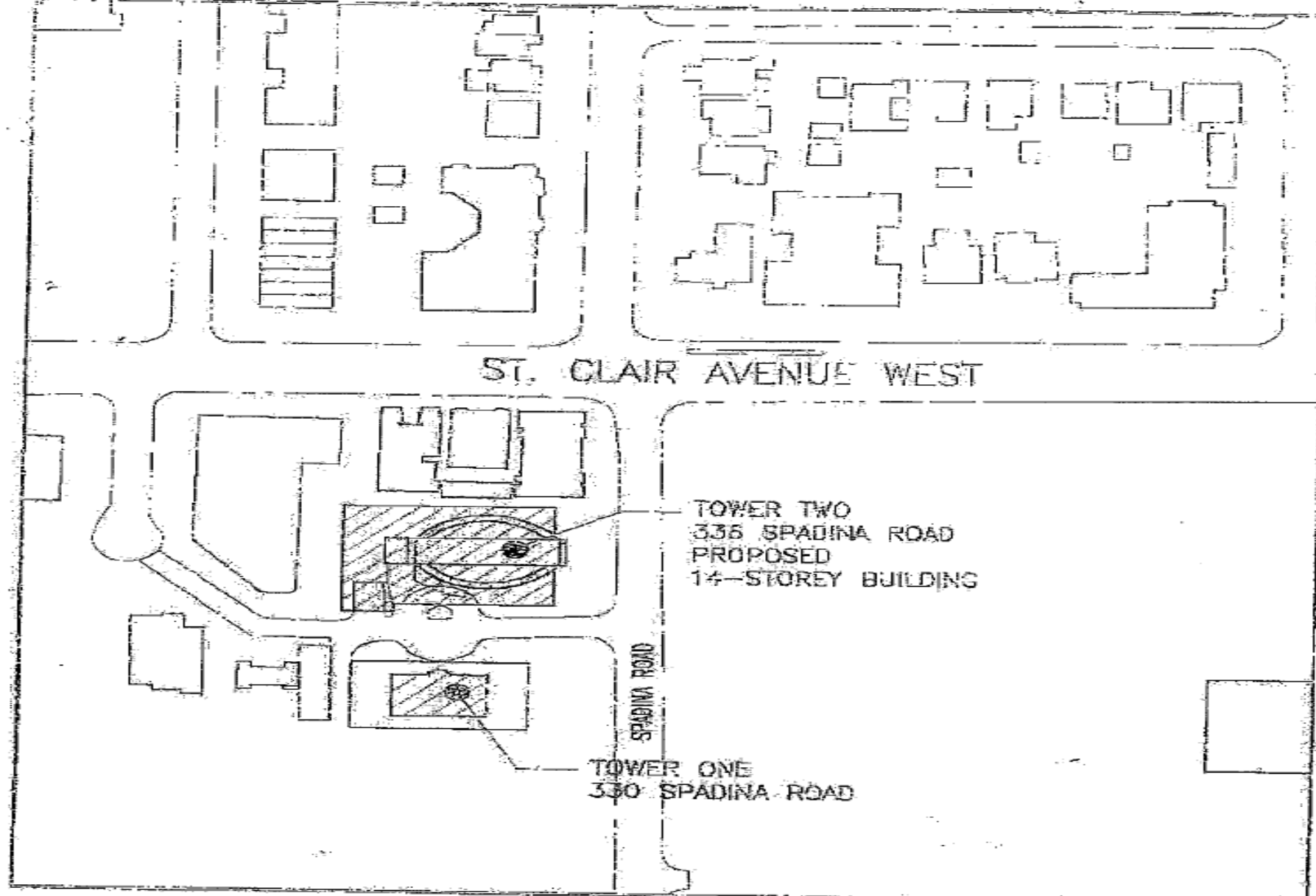
Appellant

**- and -**

DAVID APPELROUTH, CAROLYN ACRES,  
CATALINE BACAL, WILL BERROUARD,  
FRANCINE BLAIS, SUSAN BORINSKY,  
CHARLES BOUFFARD, CHRISTINE  
BROOK, NAN BROWN, BUTCH CAPLAN,

)  
)  
) *Joseph Hoffer and Kristin Ley, for the*  
) *Appellant*  
)  
)

) *Richard Fink, for the Respondents*  
)  
)  
)  
)



ST. CLAIR AVENUE WEST

TOWER TWO  
335 SPADINA ROAD  
PROPOSED  
14-STOREY BUILDING

SPADINA ROAD

TOWER ONE  
330 SPADINA ROAD

5 KEY PLAN  
A101 SCALE: NTS



# First Ontario Realty Corporation v. Appelrouth, 2012 ONSC 2545

## **The Issues on Appeal**

[10] The Landlord appealed on the grounds that the Board erred in law in finding that it could be held responsible for the construction disruption and the loss of view caused by a separate entity building on a separate parcel of land. In the alternative, the Landlord argued that it should not be liable for any changes to a tenant's view resulting from authorized development on land outside the residential complex, and that the Board has no authority to order a rent reduction under the guise of a rent abatement into the future.

# First Ontario Realty Corporation v. Appelrouth, 2012 ONSC 2545

[26] In the present case, the Board never examined the extent to which the Landlord could and should have acted to control the construction activity carried on by Tower Hill. It is significant that the construction activity of which the tenants complained occurred on a separate property, owned by another corporation, and that other corporation was properly held not to be the landlord for purposes of the tenants' application to the Board. That owner had obtained necessary planning and building permission to proceed with its development, including development approvals obtained from the OMB.

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[33] The Board's decision with respect to the Landlord's liability under s. 22 for the actions of Tower Hill is unreasonable. The Board failed to make the necessary findings about the scope of the Landlord's obligation to act with respect to the construction activity by another corporation on an adjoining property. Therefore, it failed to justify its conclusion that the Landlord had substantially interfered with the tenants' reasonable enjoyment of the rental unit or the residential complex. As well, the Board inappropriately relied on s. 202 to extend the Landlord's liability for actions done by a separate corporate entity.

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[42] The Board member was correct in stating that she was not applying the law of nuisance, but rather s. 22 of the Act. Nevertheless, in considering whether there was substantial interference with reasonable enjoyment of the rental premises, it was unreasonable for the Board to ignore the context within which the development occurred and the location of the rental building, as well as the lack of a right to a view at common law.

[43] In particular, in applying s. 22, the Board should have considered the planning permission obtained for the condominium. Objections about the loss of view because of the proposed development had been raised by some of the tenants in 2003 before the OMB. The OMB expressly found that the design of the condominium building was consistent with the light, view and privacy vision of the Official Plan. It stated,

There will be, with the proposed built form, some overlook of people's residences, but this is a situation which already exists, and is common throughout the City; particularly in this area; and even in low density residential areas.

*(1160963 Ontario Inc. v. Toronto (City) (2001), 43 O.M.B.R. 25 at para. 71)*