

CANADA / JUDGMENT

City (Surrey) v. Singh

2023 BCSC 2161

COURT

Supreme Court of British Columbia

DECIDED

19 October 2023

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2023 BCSC 2161 City (Surrey) v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

City (Surrey) v. Singh,

2023 BCSC 2161

Date: 20231019

Docket: S243317

Registry: New Westminster

Between:

City of Surrey

Petitioner

And

Sukhdev Singh and Kashmir Singh Sahota

Respondents

Before: The Honourable Justice Chan

Oral Reasons for Judgment

Counsel for the Petitioner:

E. Anderson

The Respondent, Sukhdev Singh, appearing in person:

S. Singh

The Respondent, Kashmir Singh Sahota:

No appearance

Place and Date of Hearing:

New Westminster, B.C.

October 18, 2023

Place and Date of Judgment:

New Westminster, B.C.

October 19, 2023

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Introduction

[1] The City of Surrey (the "City") brings a petition seeking declaratory and injunctive relief to compel Sukhdev Singh and Kashmir Sahota to bring their property into compliance with the City's bylaws. Mr. Singh and Mr. Sahota are registered owners (the "Owners") of a house at 6072 133 A Street in Surrey, BC ("Residence"). The Owners built an addition to the back of the Residence as well as made alterations to the inside of the existing structure to turn this single-family house into four separate rental suites. The Owners carried on this work without permits, after having been issued multiple infraction tickets by city inspectors, and in defiance of an interlocutory injunction granted by this Court.

Factual Background

[2] The City's evidence is contained in affidavits filed by various building inspectors and bylaw enforcement officers.

- [3] The City attended at the Residence starting on December 23, 2021, in response to a complaint. The bylaw officer observed a large excavated area at the back of the Residence, where concrete was being poured into forms (the "Addition"). Mr. Singh was present and identified himself as the owner. The bylaw officer advised the workers to stop work as no permit was in place.
- [4] On December 31, 2021, a bylaw officer again attended at the Residence. The officer observed the Addition was now in the framing stage. The Owners arrived during the inspection and confirmed they had hired the workers. Tickets were issued to the workers for building without a permit.
- [5] On January 3, 2022, a bylaw officer attended and observed the Addition had been framed and plumbing was in place. On January 4, 2022, a city building inspector attended and confirmed there was no permit for the work. A Stop Work Order was posted on site.
- [6] On January 22, 2022, a bylaw officer attended, and spoke to the Owners through an open garage door. Sounds of hammering and power saws being used were heard from inside the Residence. Mr. Singh advised the officer that the workers were renovating inside the house, and that the Stop Work Order was only for the outside work. The Owners refused to grant access for an inspection. The bylaw officers issued tickets to both the Owners; Mr. Sahota ripped up the ticket for Mr. Singh, and kicked the ticket issued to him.
- [7] On January 31, 2022, a bylaw officer attended. More work had been done to the Addition. Exterior siding, glass windows, drywall, electrical, plumbing, and flooring had been installed. The Addition had been divided into two suites.
- [8] On February 4, 2022, a bylaw officer attended and observed workers and construction material on site and in the house. The officer observed painting, tiling, drywall and flooring materials. Tickets were issued to the workers. Mr. Sahota attended while the officer was present. Mr. Sahota blocked the officer from leaving, trying to close the construction fence so the officer could not leave. The officer called 911 and RCMP officers attended.
- [9] On May 27, 2022, a bylaw officer attended and observed on the ground floor of the house a fully furnished suite with a kitchen and living room. The officer noted this area of the house was inspected and approved by the City as an unfinished play area when the house was permitted and built. The building plans for the original Residence in 1987 show this area as "Unfinished Area", noted as "play area" with no appliances or sinks. The plan is stamped "Single Family Dwelling Unit". Mr. Singh met the officer at the Residence. A family was observed to be residing in this ground level suite. Tenants were observed to be residing inside two suites in the Addition. Mr. Singh advised he did not have a key to enter the main Residence and the officer did not inspect the Residence.
- [10] On July 23, 2022, a bylaw officer attended and observed tenants in both suites in the Addition. The officer spoke with a tenant of the main Residence who advised she had moved in about one month ago and that the three suites below were also rented.

- [11] On August 10, 2022, a bylaw officer attended and observed the Addition divided into two suites and a laundry room. Both suites were observed to be furnished. The officer spoke to a tenant in one of the suites, who advised she had been living there for about four to five months, paying \$1,000 a month. The officer spoke to the tenant in the second suite who advised she had lived there since May 2022 and was paying \$1,000 a month.
- [12] On August 11, 2022, the bylaw officer returned and met the Owners. The bylaw officer attended the main Residence, and observed a two-bedroom suite, with kitchen and bathroom. This suite had indicia of being lived in by a family. Upstairs in the main Residence was another self-contained living unit with three bedrooms. This unit also appeared to be lived in.
- [13] On October 29, 2022, a bylaw officer attended and spoke to a tenant in one of the suites in the Addition. The tenant advised he had lived there for two months. The officer observed the other suite in the Addition also appeared to have a tenant.
- [14] On January 13, 2023, a bylaw officer attended the Residence in response to a complaint about roofing work. The officer observed materials for vents on the top of the Addition. On January 15, 2023, the bylaw officer re-attended and observed five additional vents had been installed.
- [15] On January 22, 2023, a bylaw officer attended and observed the Stop Work Order had been removed. Officers met Mr. Singh at the Residence and went inside. The officer confirmed the three suites on the ground level had not been decommissioned or removed.
- [16] On September 10, 2023, bylaw officers attended and observed the suites had been rented out again. On September 19, 2023, bylaw officers attended and found tenants in both suites in the Addition.
- [17] No permits have ever been obtained by the Owners for any construction work. No permit or approval was obtained for the construction of the Addition, the secondary suite inside the Residence (the "Secondary Suite"), or the occupancy of these suites.
- [18] In July 2022, the Owners applied to the City to retroactively approve the work that has been carried out. That application was rejected, as the construction did not comply with the zoning bylaw. The construction exceeded the maximum floor area ratio and lot coverage limits for the single-family residential zone in which the Residence is located, and also encroaches into the side yard setback.

Procedural History

- [19] The City obtained an interlocutory injunction on April 14, 2022, restraining the Owners from carrying out further construction or from occupying or using the Addition or Secondary Suite.

- [20] When the Owners did not stop work, the City brought an application for contempt. On September 12, 2022, the Owners were found by Justice Gibb-Carsley to be in contempt of the interlocutory injunction. The Owners were sentenced with a fine of \$6,000, plus special costs. Justice Gibb-Carsley ordered the fine to increase to \$13,000 if the suites were not vacated by January 1, 2023.

Law

- [21] Section 274 of the Community Charter, S.B.C. 2003, c. 26, provides that a municipality may bring a proceeding in Supreme Court to "enforce, or prevent or restrain" the contravention of a bylaw.
- [22] The City has enacted the City of Surrey, Bylaw No. 17850, Surrey Building Bylaw, (2012). [Building Bylaw]
- [23] Section 8 of the Building Bylaw provides that "no person shall commence or continue any construction unless the Building Official has issued a valid and enduring permit for the work".
- [24] Section 21(a) provides that "Every owner shall apply for and obtain a permit before carrying out any construction".
- [25] Construction is defined in s. 2 as "the process or activity by which any building or structure is erected, repaired, altered, renovated, added to, installed, demolished, removed or moved, or for which preparation is made by way of shoring or excavation".
- [26] Section 9 provides "no person shall occupy or use any building unless a valid and enduring occupancy permit has been issued nor shall any person occupy or use any building contrary to the terms of any occupancy permit ".
- [27] Section 13 provides "no person shall obstruct the entry of the building official or other person authorized by the City to any building in relation to the admin of this bylaw".
- [28] Section 65 requires the building official's acceptance of certain stages of construction before commencement of the next stage.
- [29] City of Surrey, By-law No. 12000, Zoning Bylaw (13 September 1993), Part 2, para. A provides that "no person shall use any buildings for any use, except for those specifically permitted in the Zone in which the building is located Any use not specifically permitted in a zone is an unlawful use".

Injunctive Relief

- [30] The City seeks injunctive relief pursuant to s. 274 of the Community Charter. The requested injunction is a statutory remedy that engages the public interest. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances: *North Pender Island Trust Committee v. Conconi*, 2010 BCCA 494 at paras. 37-38.
- [31] The requested injunction is a statutory remedy which requires the Court to determine whether the Owners have breached the bylaws. As this is a statutory injunction, factors that a court may consider in an application for an equitable injunction will be of limited application. Courts have recognized once a breach of a statute has been established, it is in the public interest to have the law enforced. Where a breach has been established, an injunction ought to follow: *Vancouver Island Health Authority v. Giannikos*, 2021 BCSC 957 at para. 56 and the cases cited therein.
- [32] Effective enforcement of the City's bylaws and public interest requires unpermitted additions be demolished and removed: *Surrey (City) v. Singh*, 2022 BCSC 1455 at para. 46.

Position of the Parties

- [33] The City argues the evidence is clear that the Owners breached the Building Bylaw and the Zoning Bylaw. The Owners carried out extensive construction to build the Addition and the Secondary Suite inside the main Residence. The Owners excavated an area in the back, poured concrete foundations, framed and built the Addition and carried out renovations to the inside of the main Residence to create a Secondary Suite. No permits have been issued by the City for any construction. The Residence is zoned for a single-family dwelling, which may contain one secondary suite that is restricted in size. The Owners have converted this residence into a fourplex, which is in violation of the Zoning Bylaw.
- [34] Mr. Singh did not tender any evidence at this hearing. He made submissions that he does not understand why his Residence is being targeted. He claims he knows many homeowners in Surrey who are building suites without permits. He argues he did not build the bathroom in the Secondary Suite, as that was existing when he bought the Residence. He made submissions that the kitchen was also existing. He argues there may be changes in the future in the City's bylaws and zoning which would allow suites of this type. He advised the Court he is willing to do what is needed to have this matter concluded.

Analysis

- [35] In my view, the evidence is overwhelming that the Owners built the Addition and created a secondary suite inside the main Residence, without obtaining any permits and allowing for proper inspection at each phase of construction. The photos and video show the construction and the tenants occupying the units. The Owners ignored the tickets issued to them and their workers, and ignored the Stop Work Orders. The Owners ignored the

interlocutory injunction, and even after they were found in contempt and fined, they still continued in their quest to rent out the illegal suites. The evidence is that while the contempt finding deterred the Owners from renting out the units in January 2023, the units were rented out again by September 2023. The Owners have continued to occupy and use the Addition and the Secondary Suite, contrary to the interlocutory injunction and contrary to the Zoning Bylaw, which prohibits a fourplex at the Residence.

[36] The Owners argue others are also building illegal suites in Surrey. However, that does not excuse the Owners' conduct. They deliberately continued with construction even after being told multiple times to stop all work. The public interest favours the enforcement of municipal laws. The Owners have breached the City's bylaws since December 2021 and continue to do so. To enforce the City's bylaws, the unpermitted Addition and Secondary Suite should be demolished, removed and decommissioned so the Residence is a single-family dwelling.

[37] I agree the Owners should apply for a demolition permit to demolish and remove the Addition and to decommission the Secondary Suite, returning the Residence to a single-family dwelling use. I find it prudent to have the Owners apply for a demolition permit, to allow the City oversight into how the Owners plan to demolish and remove the illegal construction. I make the following orders:

- a) There will be an order in the terms containing paras. 1-7 of the order submitted by counsel for the City.
- b) Within 15 days of this order, the Owners will apply for a demolition permit.
- c) Within 60 days of receiving the permit, the Owners will demolish and remove the Addition and decommission the Secondary Suite, returning the Residence into a single-family dwelling.

[38] The City will have its costs at the ordinary scale.

"Chan J."

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