

CANADA / JUDGMENT

Kamloops v. Northland et al

2000 BCSC 566

COURT

Supreme Court of British Columbia

DECIDED

5 April 2000

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2000 BCSC 566

Citation: Kamloops v. Northland et al Date: 20000405

2000 BCSC 566 Docket No.:

25011

Registry: Kamloops

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF KAMLOOPS

PLAINTIFF

AND:

NORTHLAND PROPERTIES LIMITED, NORTHLAND PROPERTIES LIMITED DOING
BUSINESS AS SANDMAN INN (KAMLOOPS), AND NORTHLAND PROPERTIES
LIMITED DOING BUSINESS AS SANDMAN SUITES
DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE HUNTER

(IN CHAMBERS)

Counsel for the Plaintiff J.W. Locke

Counsel for Defendants J.B. Carter

Date and Place of Hearing: March 29, 2000

Kamloops, BC

- [1] In my Reasons for Judgment of January 26, 2000, I found the defendant Northland Properties Ltd. ("Northland") in contempt of my order of April 9, 1999, which enjoined Northland from using the Sandman Suites for overnight motel or short-term lodging, that activity being contrary to the uses permitted by City of Kamloops Zoning Bylaw 5-1-200. The activity which I found to be in contempt took place on September 30 and October 1, 1999.
- [2] In Reasons for Judgment issued on September 17, 1999, I found Northland guilty of civil contempt for similar conduct between April 9, 1999, and May 26, 1999, and imposed a fine in the amount of \$25,000 against Northland. Northland concedes that the events of September 30, and October 1, 1999, constitute civil contempt.
- [3] It was argued on behalf of Northland that if the fine for this second contempt relates in any way to the net income generated by this wrongful use of the Sandman Suites on September 30th and October 1st, that the fines should be less because the income generated was significantly less. I assessed the \$25,000 fine after concluding that Northland's net income generated by that wrongful conduct between April 9 and May 26, 1999, approximated \$10,000.
- [4] I rejected the evidence of Ms. Grayson, the Regional Director of Northland, who said that this offending overnight rental of the Suites on September 30th and October 1st was most unusual and had occurred only because Northland had earlier committed to providing accommodation for two tours on those two days and that there was no other hotel or motel space available in the city. The evidence of Mr. Stolz supports the conclusion, which I reached, that Northland acted deliberately and with full knowledge that it was breaching my order of January 26, 2000, by continuing to rent the suites on an overnight or short-term basis.
- [5] In fact, while the City of Kamloops complains only of breaches on September 30 and October 1, 1999, Mr. Stolz's evidence was that on several occasions between September 8 and October 15, 1999 (that was the time-frame of Stolz's employment by Northland as a manager of the motel and the Suites), Northland used the Suites for overnight accommodation. That was not denied by Northland. As well, Ms. Grayson instructed staff to have overnight patrons of the Suites sign a form of "Application to Lease" which I have concluded was done to disguise the true nature of this unlawful activity.
- [6] I cannot overlook the deliberate nature of this contempt which is confirmed by steps taken by management to disguise the overnight and/or short-term stays in the Suites. As I said in my Reasons for Judgment of January 26, 2000, "This conduct constitutes a deliberate plan of deception to hide the fact that Northland was renting the Sandman Suites as overnight accommodation contrary to the terms of the injunction of April 9, 1999."

- [7] This is not simply a matter of Northland deliberately breaching a zoning bylaw, but rather one of disobeying a court order. It goes beyond disobedience to orders of the court resulting in private injury (that is, to the City of Kamloops) and constitutes indifference to, or a contemptuous disregard for, the judicial process. It tends to bring the administration of justice into disrepute but, as I have found, it lacks a public quality. In other words, I am not satisfied that Northland was seeking to defy the order of the court openly. Accordingly I concluded that this conduct fell short of criminal contempt. However, it must be clearly understood that disobedience of a court order will result in serious consequences to the offender.
- [8] There was no evidence before me that the directors of Northland were involved in the conduct which constitutes this contempt, and of course there is no finding of contempt made against any of the directors or officers of that corporation. If there had been, I would not have hesitated to levy a fine against them. Rule 56(2) of the Rules of Court permits the court to fine directors and officers for the contempt of the corporation, but in the circumstances I decline to do so.
- [9] Given the serious nature of the contempt and the fact of similar conduct by Northland at an earlier date for which I found Northland to have acted in contempt, I levy a fine against Northland in the amount of \$60,000, payable on or before 4:00 p.m. on Friday, April 7, 2000, to the Ministry of Finance at the Registry of this Court in Kamloops.
- [10] There will as well be an order that Northland pay the costs of the City of Kamloops, assessed as special costs.

"R.B. Hunter, J."

The Honourable Mr. Justice R.B. Hunter

April 5, 2000 -- Corrigendum issued by Justice Hunter advising that on Page 5, Paragraph [9] that,

"I directed that the fine be payable on or before 4:00 p.m. on Friday, April 6, 2000. The day of the month is in error. It should read: Friday, April 7, 2000."

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Prepared on 29 October 2026 · Esheria