

CANADA / JUDGMENT

## Langley (Township) v. Dhillon

2020 BCSC 152

COURT

Supreme Court of British Columbia

DECIDED

7 February 2020

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2020 BCSC 152 Langley (Township) v. Dhillon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Langley (Township) v. Dhillon,

2020 BCSC 152

Date: 20200207

Docket: S174986

Registry: Vancouver

Between:

The Corporation of the Township of Langley

Petitioner

And

Mandeep Dhillon

Respondent

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Counsel for the Petitioner:

N. Lapper

Appearing on his own behalf:

M. Dhillon

Place and Date of Hearing:

Vancouver, B.C.

October 29 and November 6, 2019

Additional written submissions filed by the Petitioner:

January 20, 2020

Place and Date of Judgment:

Vancouver, B.C.

February 7, 2020

## Introduction

- [1] In or about June 2016, Mandeep Dhillon purchased a parcel of property at 5737 264th Street (the "property") within the Township of Langley (the "Township") in a competitive court-approved process. The property is also within the Agricultural Land Reserve.
- [2] Prior to the court-approved sale, the previous owners had deposited fill on the property without a valid permit or approval from the Township, in contravention of the Township's former Soil Deposit and Removal Bylaw 2013 No. 4975 (the "2013 Soil Bylaw"). Since then, the Township has endeavoured to have Mr. Dhillon bring the property into compliance with the Township's bylaws.
- [3] In its current application, the Township seeks a declaration that Mr. Dhillon is in contempt of a consent order entered on September 19, 2017 (the "2017 consent order") that required him to remediate the property. If successful, the Township seeks to have Mr. Dhillon pay a fine and special costs. The Township also seeks entry of a prior consent contempt order (the "2019 consent order") that was rejected for entry as a desk order.
- [4] Mr. Dhillon did not file a response to the application but attended court to speak in his own defence. Without providing any evidence, Mr. Dhillon submitted that he got in over his head when he purchased the property not knowing that he would have to complete such extensive remediation work. He further submitted that he has been trying to comply with the Township's requirements but has not had the money to do so.
- [5] Following the hearing, on November 8, 2019, I delivered a memorandum to the parties inviting Mr. Dhillon to provide evidence in support of his submission that he did not have the financial capacity to comply with the 2017 consent order. Mr. Dhillon failed to do so.
- [6] On January 3, 2020, I delivered a second memorandum to the parties inviting written submissions on whether there was sufficient circumstantial evidence to infer that Mr. Dhillon had the necessary intent to be found in contempt of court. Only the Township made further written submissions.

## Background

- [7] In February 2014, the Township discovered that the previous owners had deposited unauthorized fill on the property. On February 19, 2014, the Township placed a Stop Work Order on the property confirming that unauthorized fill had been deposited on the property and requiring the previous owners to contact the Township.
- [8] On June 19, 2014, the Township re-inspected the property and discovered that the previous owners had not removed the unauthorized fill. That same day, the Township placed a second Stop Work Order on the property that required the previous owners to remediate the property to a permitted condition by July 19, 2014.
- [9] On July 10, 2014, the Agricultural Land Commission ("ALC") also placed a Stop Work Order on the property. The ALC's Stop Work Order required the previous owners to rehabilitate the property back to its original agricultural capability under the supervision of a professional agrologist by July 30, 2014.
- [10] On or about June 30, 2016, Mr. Dhillon purchased the property pursuant to a court-approved sale. Despite the various Stop Work Orders, the previous owners had not remediated the property by the time of the sale.
- [11] The Township corresponded extensively with Mr. Dhillon throughout the balance of 2016 and into 2017. The Township informed Mr. Dhillon of the ongoing bylaw compliance issues on the property and of his obligation to remediate the property. The Township asked Mr. Dhillon to obtain a remediation report from a qualified professional and to remove the unauthorized fill in accordance with that report. When Mr. Dhillon failed to do so, the Township commenced these proceedings against Mr. Dhillon to obtain his compliance with the 2013 Soil Bylaw.
- [12] Eventually, on September 19, 2017, the Township and Mr. Dhillon entered the 2017 consent order, which included terms that:
1. Declared Mr. Dhillon to be in breach of the 2013 Soil Bylaw for failing to remove the unauthorized fill;
  2. Enjoined Mr. Dhillon and others with notice of the 2017 consent order from using or occupying the property, except in accordance with the 2013 Soil Bylaw;
  3. Required Mr. Dhillon to submit a report prepared by a qualified environmental professional to the Township by October 20, 2017 specifying the nature and volume of the unauthorized fill, a plan for the removal of the unauthorized fill and a plan to remediate the property;
  4. Required Mr. Dhillon to complete the work identified in the report within 90 days of the Township's approval of the report;

5. If Mr. Dhillon failed to comply with any term of the 2017 consent order, empowered the Township, at Mr. Dhillon's expense, to take all reasonable steps necessary to obtain compliance with the terms of the consent order; and
  6. Required that Mr. Dhillon pay the Township \$2,500 as the costs of the 2017 consent order.
- [13] On November 2, 2017, Mr. Dhillon submitted a report prepared by Gordon Butt, an agrologist with Madrone Environmental Services Ltd. ("Madrone"), to the Township. Mr. Butt's report included two recommendations for remediation of the property. After consulting with the ALC, the Township agreed with one of the options proposed by Mr. Butt, which required among other things, the removal of the unauthorized fill. The Township held off on formally approving the remediation plan until March 20, 2018 to ensure that Mr. Dhillon would have drier weather for the 90-day period for remediation.
- [14] By the end of the 90-day remediation period, Mr. Dhillon had not commenced the remediation of the property. To obtain compliance with the Township's bylaws, the Township began issuing bylaw offence notices to Mr. Dhillon. I was informed during the hearing that these accumulated at \$1,000 per day for 90 days, totalling \$90,000.
- [15] Beginning in July 2018, the Township spoke to Mr. Dhillon on one occasion, and wrote to him numerous times. Besides one early assurance that Mr. Butt would provide the Township with a progress report, Mr. Dhillon did not respond to the Township's communications and did not remediate the property.
- [16] Eventually, the Township brought an application to find Mr. Dhillon in contempt of the 2017 consent order. In April 2019, the Township and Mr. Dhillon agreed to enter the 2019 consent order. The 2019 consent order included terms that:
1. Declared Mr. Dhillon to be in contempt of the 2017 consent order;
  2. Enjoined Mr. Dhillon and others with notice of the 2019 consent order from using or occupying the property, except in accordance with the Township's Soil Deposit and Removal Bylaw 2013 No. 4975 Amendment Bylaw 2015 No. 5120;
  3. Required Mr. Dhillon to complete the remediation work that the Township had approved by June 30, 2019 and obtain an accepted final inspection report from the Township for the work;
  4. If Mr. Dhillon failed to comply with any term of the 2017 consent order, empowered the Township, at Mr. Dhillon's expense, to take all reasonable steps necessary to obtain compliance with the terms of the consent order; and
  5. Required Mr. Dhillon to pay the Township a fine of \$1,000 for his contempt of the 2017 consent order and \$2,000 as the Township's costs of obtaining the 2019 consent order.

- [17] On May 27, 2019, Mr. Dhillon provided the Township with the 2019 consent order bearing his original signature as well as a cheque for the amounts owed under the 2019 consent order. On May 28, 2019, the Township submitted the 2019 consent order for entry as a desk order. On August 1, 2019, the Court Registry advised the Township that the 2019 consent order had not been accepted for entry and that the contempt order and injunctive relief would have to be spoken to in chambers.
- [18] During the hearing, Mr. Dhillon did not dispute that, contrary to the 2017 consent order, he has not completed the remediation of the property. Mr. Dhillon did, however, provide documentation to show that some of the unauthorized fill has been removed from the property and that Madrone has completed a further assessment of the property.

### Legal Principles Regarding Contempt

- [19] The leading case on civil contempt is *Carey v. Laiken*, 2015 SCC 17. At paras. 30-36, Cromwell J., for the Court, summarized the principles, in part, as follows:
- [30] Contempt of court "rest[s] on the power of the court to uphold its dignity and process. . . . The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect". It is well established that the purpose of a contempt order is "first and foremost a declaration that a party has acted in defiance of a court order".
- [31] With civil contempt, where there is no element of public defiance, the matter is generally seen "primarily as coercive rather than punitive". However, one purpose of sentencing for civil contempt is punishment for breaching a court order. Courts sometimes impose substantial fines to match the gravity of the contempt, to deter the contemnor's continuing conduct and to deter others from comparable conduct.
- [32] Civil contempt has three elements which must be established beyond a reasonable doubt. These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of a contempt finding ensue only in appropriate cases.
- [33] The first element is that the order alleged to have been breached "must state clearly and unequivocally what should and should not be done". This requirement of clarity ensures that a party will not be found in contempt where an order is unclear
- [34] The second element is that the party alleged to have breached the order must have had actual knowledge of it...
- [35] Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels
- [36] The contempt power is discretionary and courts have consistently discouraged its routine use to obtain compliance with court order. If contempt is found too easily, "a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect". As this Court has affirmed,

"contempt of court cannot be reduced to a mere means of enforcing judgments. Rather, it should be used "cautiously and with great restraint". It is an enforcement power of last rather than first resort.

[Cites omitted.]

[20] On the issue of intent, an applicant does not need to establish beyond a reasonable doubt that an alleged contemnor intended to disobey the court order at issue. Rather, "all that is required is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice": Carey at para. 38; see also Langford (City) v. dos Reis, 2016 BCCA 201 at para. 24.

## Analysis

[21] I have no hesitation in finding Mr. Dhillon in contempt of the 2017 consent order and ordering that the 2019 consent order be pronounced by the court.

[22] The Township has satisfied me beyond a reasonable doubt that the three requirements for a finding of contempt have been established.

[23] The terms of the 2017 consent order could not have been clearer.

[24] Mr. Dhillon was aware of the terms. In fact, he signed the 2017 consent order prior to its entry. He was subsequently provided with an entered copy of the order.

[25] Mr. Dhillon's communications and actions demonstrate that he understood what the 2017 contempt order required him to do and the evidence adduced by the Township demonstrates that he failed to comply with those requirements. Despite many reminders from the Township, Mr. Dhillon largely ignored the Township and his obligations under the 2017 consent order. Specifically, he repeatedly failed to remediate the property in accordance with the 2017 consent order.

[26] In the absence of any evidence from Mr. Dhillon, I am compelled to conclude that his inaction was deliberate. In particular, insofar as the Township must prove that Mr. Dhillon was financially able to comply with the 2017 consent order (a point which I decline to decide in the absence of submissions on the point from Mr. Dhillon), there is nothing in the evidentiary record to support Mr. Dhillon's suggestion that he was not. In fact, the evidence points in the opposite direction. In this regard, I note as follows:

1. Mr. Dhillon had the financial resources to purchase the property in 2016;
2. Mr. Dhillon had the financial resources to retain counsel to assist him in entering the 2017 consent order;
3. If there was an issue with Mr. Dhillon's financial ability to comply with the 2017 consent order, he presumably would have discussed that issue with counsel and raised the issue with the Township;

4. In entering the 2017 consent order, Mr. Dhillon agreed to pay and in fact paid the Township's costs of \$2,500;
  5. In the fall of 2017, Mr. Dhillon retained Madrone;
  6. In May 2019, Mr. Dhillon entered into the 2019 consent order, admitting that he was in contempt of court and agreeing to pay the Township a fine of \$1,000 and \$2,000 in costs. Mr. Dhillon paid those amounts on May 27, 2019;
  7. In the summer of 2019, Mr. Dhillon arranged the removal of some truckloads of fill; and
  8. In October 2019, Mr. Dhillon retained Madrone to conduct preliminary testing and field work with a view to remediating the property.
- [27] Further, the circumstances make clear that the Township has resorted to contempt proceedings as a last resort not a first resort. For whatever reason, Mr. Dhillon has, to his detriment and to the detriment of the citizens of the Township, largely been unresponsive to the Township's reasonable efforts to obtain compliance with its bylaws short of contempt proceedings.
- [28] Given that most of what I have said was true prior to the Township's submission of the 2019 consent order for entry on May 28, 2019, I can now pronounce that order.

## Remedy

- [29] In *Langford (City) v. dos Reis*, 2016 BCCA 460 at para. 16, our Court of Appeal adopted a list of ten factors relevant to sentencing for civil contempt from *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees*, [2001] N.J. No. 17 (Nfld. T.D.). The following are the factors of relevance to the circumstances before me:
1. The inherent jurisdiction of the court, as a superior court, allows for the imposition of a wide range of penalties for civil and criminal contempt;
  2. Deterrence, both general and specific, but especially general deterrence, as well as denunciation, are the most important factors to be considered in the imposition of penalties for civil, as well as criminal, contempt;
  3. The impact that the contemptuous act has had on the general public, particularly in relation to health and safety matters, is a relevant consideration in determining the level of penalty;
  4. It is the defiance of the court order, and not the illegality of any actions which led to the granting of the court order in the first place, which must be the focus of the contempt penalty;
  6. Where a fine is to be imposed, the level of the fine may appropriately be graduated to reflect the degree of seriousness of the failure to comply with the court order;

9. In setting the overall level of penalty, the court may take account of the level of penalty imposed in similar cases in the past and may adjust the penalty upwards or downwards, depending on the court's assessment as to whether previous levels of penalty have had an effective general deterrent effect;
- [30] In all of the circumstances of this case, the Township submits that a fine of \$5,000 is adequate to achieve the primary goals of denunciation and deterrence. I agree.
- [31] A fine of \$5,000 is in line with fines imposed in somewhat similar circumstances in *North Cowichan (District) v. Jopp Ventures Corp.*, 2000 BCCA 327 and *District of Lantzville v. Pottie*, 2019 BCSC 1637. It is also a step up from the fine Mr. Dhillon consented to in the 2019 consent order, and recognizes that Mr. Dhillon has recently made some progress towards compliance.

### Special Costs

- [32] Under Rule 14-1 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, the court generally awards costs to the successful party. The court has discretion to award party and party costs or special costs. Party and party costs are intended to be a partial indemnity for the successful party's legal fees plus a reasonable reimbursement of that party's necessary and proper out-of-pocket expenses. Special costs are usually intended to fully or substantially indemnify the successful party in relation to their proper or reasonably necessary legal fees and out-of-pocket expenses.
- [33] Special costs are generally only awarded against a party that has engaged in some form of reprehensible conduct but there are exceptions: *Gichuru v. Smith*, 2014 BCCA 414 at para. 90. One of the exceptions is the "long-standing practice" to award special costs to the successful party in a civil contempt proceeding. The reasoning is that a party that obtains a court order is entitled to have it obeyed without having to incur any further expense. This is particularly so where a defendant has been prosecuted for civil contempt at public expense in relation to the breach of a local government bylaw: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 20.
- [34] In this case, Mr. Dhillon has not engaged in reprehensible conduct but he has repeatedly ignored the Township's efforts to communicate with him as well as his obligations under the Township's bylaws and the 2017 consent order. Mr. Dhillon did not file a response to the Township's application nor any affidavit evidence to explain his inaction. He has put the taxpayers of the Township to unnecessary expense. The circumstances justify an award of special costs against him.

### Order

- [35] For all of these reasons, I make the following order:
1. Mr. Dhillon is in contempt of the 2017 consent order.

2. Mr. Dhillon shall pay a fine of \$5,000 to the Township.
3. The declarations and orders sought in the 2019 consent order are pronounced by the court and the Township has leave to enter the 2019 consent order.
4. The Township is awarded special costs in relation to its application filed on August 20, 2019.

"L.S. Marchand J."

MARCHAND J.

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