

CANADA / JUDGMENT

North Vancouver (District) v. Guest,

2012 BCSC 744

COURT

Supreme Court of British Columbia

DECIDED

2 May 2012

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2012 BCSC 744 North Vancouver (District) v. Guest

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

North Vancouver (District) v. Guest,

2012 BCSC 744

Date: 20120502

Docket: S111682

Registry: Vancouver

Between:

Corporation of the District of North Vancouver

Petitioner

And

James William Charles Guest

Respondent

Before: The Honourable Mr. Justice Fitch

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner

F.V. Marzari

The Respondent, J.W.C. Guest

In Person

Place and Date of Hearing:

Vancouver, B.C.

April 30, 2012

Place and Date of Judgment:

Vancouver, B.C.

May 2, 2012

- [1] THE COURT: This is an application by William Guest to extend time for compliance with an order of this Court requiring removal of a shed he constructed from a lot he owns in the District of North Vancouver.
- [2] The background to this application is as follows.
- [3] In January and February of 2008, the applicant, Mr. Guest, constructed a 100 square foot shed on a steeply-sloped and heavily-forested lot that lies just outside the boundary of Mount Seymour Provincial Park. He did so without a building permit. The lot on which the shed was constructed forms part of an undeveloped historical subdivision. Although located within the District, the property is not connected to any of the District's services, including water. It has no well. There is no road access to the property for emergency services including fire trucks, equipment, or personnel. The property lies within the District's Fire Limits Area.
- [4] Mr. Guest proceeded to construct this shed following discussions with the District. His decision to do so may have been as a result of a miscommunication between him and the District as to what was permitted on the lot. He may have understood that a small accessory building could be erected on a lot without a building permit. Unfortunately, from Mr. Guest's perspective, the exemption for accessory buildings is engaged only when a principal dwelling for which a building permit has been issued is already on site.
- [5] I wish to make clear that I am making no specific factual findings on the issue of what Mr. Guest understood or who was responsible for the miscommunication that apparently occurred between him and the District before the shed was erected. It is not directly relevant to the issues before me.
- [6] The District applied before me in November 2011 for a declaration that the shed constructed by Mr. Guest on his lot is contrary to its Zoning and Building By-laws and to the British Columbia Building Code. The District sought a mandatory injunction requiring removal of the structure.

- [7] In reasons for judgment delivered December 15, 2011, reported at North Vancouver (District) v. Guest, 2011 BCSC 1790, I ruled that the District was entitled to a declaration that the shed erected by Mr. Guest was contrary to its By-laws as well as the Building Code.
- [8] In subsequent reasons for judgment delivered January 11, 2012, reported at North Vancouver (District) v. Guest, 2012 BCSC 174, I granted the mandatory injunction sought by the District requiring removal of the shed from the lot.
- [9] At the time of the issuance of the mandatory injunction in January of 2012, Mr. Guest presented a brief advising of his intention to engage the District in further discussions about how the lot might be serviced in a manner that would lead to the granting of a building permit for a primary dwelling on the site. The issuance of a building permit for a private dwelling would appear to make the shed erected on the property a permissible accessory structure.
- [10] Mr. Guest requested that the mandatory injunction not take effect for 18 months to permit him to engage the District in his efforts to seek a building permit for a primary dwelling on the lot.
- [11] For the District, Ms. Marzari took the position on the January appearance that the time for Mr. Guest to comply with the mandatory injunction should be no longer than six months.
- [12] In my ruling on January 11, 2012, I gave Mr. Guest until May 31, 2012, to comply with the order for injunctive relief. I gave leave to Mr. Guest to make application to extend that deadline by April 30, 2012. I was clear that any application to extend time for compliance with the mandatory injunction, (specifically, the removal of the shed from the lot) must be supported by evidence suggesting a reasonable prospect that the District might be inclined to issue to Mr. Guest the building permit he seeks for a primary dwelling on the site. Absent that sort of evidence, I indicated to Mr. Guest that the removal order effective May 31, 2012, would remain in effect.
- [13] In support of this application to extend time to comply with the declaration and related mandatory injunction, Mr. Guest has filed before me material which demonstrates that he has made a considerable investment of time, money, and creative energy in preparing a building permit application for a principal dwelling on the Mount Seymour lot. Those efforts include submission of a building design that contemplates the use of steel framing and non-combustible materials for the exterior walls. He has also engaged the services of a professional engineer to design a National Fire Prevention Association or NFPA-compliant sprinkler system for the principal dwelling, which includes a rainwater collection system.
- [14] In February of 2012, Mr. Guest requested a meeting with District officials to advise of the progress he had been making and to discuss their expectations and requirements in advance of submission by him of a formal building permit application.

- [15] Counsel on behalf of the District responded that Mr. Guest already had a strong indication of the District's concerns regarding the absence of fire service access to the property or fire suppression capability through a reliable water supply and that Mr. Guest was already in possession of the District's unenthusiastic response to his previous proposals for an on-site fire suppression system for the proposed primary dwelling. She suggested that rather than engaging in abstract discussions, Mr. Guest submit the building permit application if that is how he was inclined to proceed.
- [16] Mr. Guest did so on April 4, 2012. The District received his application on payment of the applicable Building Permit Application fee. Mr. Guest's application for a building permit was rejected by the District's Chief Building Official by letter dated April 13, 2012. That rejection letter, in its entirety, reads as follows:

Pursuant to s.4.2 of the District's Building Regulation By-law 7353, 2003, the Chief Building Official may refuse to issue a permit if, in his opinion, a proposed work will contravene the requirements of the British Columbia Building Code. The new "recreational" single family residential dwelling project proposed in your above-noted building permit application would contravene s.9.10.20.3 of the Building Code in that there is no access for fire department equipment to the proposed building. Primarily due to the forest fire risks associated with the proposed development, I am not prepared to exercise my discretion to grant a special variation as contemplated by s.A-9.10.20.3(1) of the Building Code.

I recognize that your application includes provisions for a wet sprinkler system incorporating rainwater collection and an electric pump presumably charged by an on-site generator and backup battery or batteries. However, this property is isolated, unserved by water or power utilities, and located in a hillside forest area.

In these circumstances, the proposed development would create unacceptable wild fire interface risks. I have therefore concluded that the objectives of the Building Code and the District's Building By-law to minimize fire risk of a building are not adequately met by an on-site fire suppression system. Accordingly, I must regretfully advise that building permit application number BLD 2012-00176 is hereby refused.

- [17] Mr. Guest responded to the rejection letter in writing on April 15, 2012. He asked the District to propose fire safety engineering solutions that would be acceptable to it for the construction of the proposed building on the lot. He also asked to be informed of steps he could take to appeal the refusal of his building permit application. He advises me that he has not received a response to this letter.
- [18] For the District, Ms. Marzari submits that the condition precedent to the extension Mr. Guest now seeks, specifically, that there be evidence before me demonstrating a reasonable prospect that the District may be inclined to issue the building permit Mr. Guest requires, has not been met. She submits that the application should be dismissed.

- [19] On the state of the record before me in support of this application, I cannot conclude that there is a reasonable prospect that the District will issue to Mr. Guest a building permit for the primary dwelling he seeks to erect on his lot.
- [20] It is apparent, as I noted earlier, that Mr. Guest has, since January, devoted much time and energy to the submission of his renewed application for a building permit for a primary dwelling on the lot.
- [21] While he has not indicated that compliance with my order by May 31, 2012 is problematic, I am prepared, in all the circumstances, to extend to June 30, 2012 the deadline for compliance with my order of January 30, 2012. I do so to give Mr. Guest and his family what I now consider to be a reasonable period of time to comply with this order.
- [22] I would also note that this extension of one month is still within the period of time initially said to be acceptable to the District for the removal of the shed from the lot.
- [23] In the event that a building permit is (or will be) granted for a primary dwelling on the site, through whatever appellate process Mr. Guest determines to engage with the District between now and June 30, 2012, I would grant leave to Mr. Guest to return to this Court to seek a stay of my order.
- [24] I remain seized of this matter but only in that limited way. To be clear, I am not seized of any application for judicial review Mr. Guest subsequently determines to initiate. Absent evidence that the District has or is prepared to issue the building permit Mr. Guest seeks, I will not entertain a further extension of time application in this matter.
- [25] I should be clear, however, that nothing said in these reasons is intended to fetter the discretion of a judge subsequently hearing a judicial review application to consider the granting of ancillary relief, if the presiding judge considers to be appropriate and just in the circumstances.
- [26] I would ask counsel for the District to prepare a further order reflecting that the time for compliance with the order of this Court requiring removal of the structure from the property has been extended to June 30, 2012. This order need not be approved by Mr. Guest.
- [27] I make no order as to costs in this matter.

"G. Fitch, J."

G. Fitch, J.

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