

CANADA / JUDGMENT

Singh v. Surrey (City)

2024 BCSC 980

COURT

Supreme Court of British Columbia

DECIDED

14 May 2024

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2024 BCSC 980 Singh v. Surrey (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singh v. Surrey (City),

2024 BCSC 980

Date: 20240514

Docket: S252197

Registry: New Westminster

Between:

Amarpreet Singh

Petitioner

And

City of Surrey

Respondent

Before: The Honourable Justice J. Hughes

Oral Reasons for Judgment

(In Chambers)

Counsel for the Petitioner:

S. Singh

Counsel for the Respondent:

A. Wu

W. Aujla

Place and Date of Hearing:

New Westminster, B.C.

May 8, 2024

Place and Date of Judgment:

New Westminster, B.C.

May 14, 2024

- [1] This is an application by the respondent, City of Surrey (the "City"), seeking to have the underlying petition struck out in its entirety without leave to amend pursuant to Rule 9-5 (1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules].

Background

- [2] In June 2020, the City commenced a bylaw prosecution pursuant to section 18.1 of the Offence Act, R.S.B.C. 1996, c. 338, against the petitioner, Amarpreet Singh, in the Provincial Court of British Columbia. Mr. Singh was charged with violating Surrey bylaws, including the Zoning By-law, the Surrey Sign By-law, and the Surrey Property Maintenance and Unsightly Premises By-law, arising out of activities related to automobile businesses at two properties owned by him and located at 11129 128th Street and 11137 128th Street in Surrey, BC.
- [3] The matter proceeded to trial on March 9 and 16, 2022, and on June 21, 2022, Judicial Justice Blackstone convicted the petitioner on five counts under the Zoning By-law and the Surrey Property Maintenance and Unsightly Premises By-law. The petitioner was sentenced to a fine of \$4,000 and ordered to remediate and cease the bylaw contraventions for which he was convicted (the "BCPC Conviction").
- [4] On June 30, 2022, the petitioner filed a notice of appeal in this Court appealing the BCPC Conviction (the "BCSC Appeal").
- [5] On July 13, 2022, the petitioner also reappeared before Judicial Justice Blackstone to seek a reconsideration of the BCPC Conviction. That application was dismissed.
- [6] The BCSC Appeal was heard by Justice Verhoeven on February 27, 2023 and dismissed on March 28, 2023, with reasons indexed at 2023 BCSC 495.
- [7] On April 26, 2023, the petitioner filed a notice of appeal or application for leave to appeal in the Court of Appeal, seeking leave to appeal the BCPC Conviction and the dismissal of the BCSC Appeal.

- [8] Contemporaneously, the petitioner also sought a reconsideration of the BCSC Appeal dismissal before Justice Verhoeven. The petitioner's reconsideration application was heard on May 11, 2023, and dismissed on May 24, 2023, with reasons indexed at 2023 BCSC 865.
- [9] On June 7, 2023, the petitioner filed a further notice of appeal or application for leave to appeal in the Court of Appeal, seeking leave to appeal the BCPC Conviction and the BCSC Appeal dismissal.
- [10] The hearing date for the two appeals was initially set for November 29, 2023. On November 21, 2023, the petitioner filed a requisition in the Court of Appeal adjourning the hearing dates for both appeals to February 28, 2024. Counsel for the City advised on this application that the appeal did not proceed as scheduled. The proceedings remain extant before the Court of Appeal, though the appellant petitioner has not yet filed his factum.
- [11] This petition was filed January 4, 2024, seeking:
- (a) an order that the decision of the Provincial Court Judge Bowry (presumably this should be a reference to Judicial Justice Blackstone) dated March 9 and 16, 2022 be set aside or varied; and
 - (b) alternatively, an order that the trial conducted on those same dates is a mistrial and the matter is reopened for a fresh trial.
- [12] The factual basis for the petition repeats many of the same themes that form the basis of the BCSC Appeal, namely that:
- (a) there was prosecutorial misconduct and a miscarriage of justice on account of the prosecutor failing to bring evidence and make arguments before the BC Provincial Court in support of the petitioner's position that his use of property was a legal, non-confirming use; and
 - (b) that the prosecution failed to disclose information pertaining to alleged past business licences issued to the petitioner authorizing the alleged non-confirming use of properties.
- [13] The petitioner's prior non-confirming use arguments have been recast in the petition as the City having hidden the core issue that it had issued the petitioner licences to operate his business at the properties at some point in the past and had been doing so since 2003. In this respect, the petitioner asserts that the City accepted payment for renewal of business licences at the properties in November 2023. The petitioner concedes that this is the same assertion that formed the basis for his November 2023 Provincial Court reconsideration application: see petition at Part 2, paras. 9-11.

[14] Nonetheless, the petitioner makes the same overarching assertion on the petition as he did before the Provincial Court, on the BCSC Appeal, and on the reconsideration applications, namely that the BC Provincial Court Conviction was a mistrial as the City misled the Provincial Court and intentionally hid the relevant facts that would have been available to the City had it done its due diligence: see Part 2, para. 12 of the petition, and the BCSC Appeal reasons at paras. 29-37.

Issue

[15] The issue before me on this application is whether the petition should be struck pursuant to any or all of Rules 9-5(1)(a), (b), or (d) of the Rules.

Analysis

[16] Rule 9-5(1) provides as follows:

Scandalous, frivolous or vexatious matters

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
 - (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[17] The various subsections of Rule 9-5(1) may be applied together in the case of pleadings "so overwhelmed with difficulty that it's simply not possible to fully identify all of the specific inadequacies that exist or to categorize those difficulties into the specific subparagraphs of Rule 9-5(1)": *Simon v. Canada (Attorney General)*, 2017 BCSC 1438 at para. 53, citing *Sahyoun (Committee of) v. Ho*, 2015 BCSC 392 at para. 64, *aff'd* 2017 BCCA 96.

[18] The City says the petition should be struck under each of Rule 9-5(1)(a), (b), and (d). In the alternative, if the Court finds it is not possible to categorize the difficulties with the petition into the specific subparagraphs of Rule 9-5(1), the City says that the various provisions ought to be applied together to strike the petition for the reasons set out above.

9-5(1)(a) - Does the petition disclose the type of claim that may be brought by petition?

[19] Rule 9-5(1)(a) provides that a pleading, petition or other document may be struck on the ground that it discloses no reasonable claim or defence, as the case may be.

- [20] In the context of proceedings initiated by petition, the relevant enquiry when considering an application to strike under Rule 9-5(1)(a) is whether the petition discloses the type of claim that may be brought by petition: *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66 at para. 42.
- [21] I agree with the City that the petition in substance seeks relief in the nature of certiorari in the context of quasi criminal proceedings that are governed by the Criminal Rules of the Supreme Court of British Columbia, SI/97-140. Rule 4(1) of those rules provides that such applications must be brought by way of a notice of application in the criminal proceeding: see, e.g., *R. v. Alexander*, 2016 BCSC 873, at para. 16. The claims advanced in the petition--namely orders setting aside or varying the BCPC Conviction or declaring a mistrial and ordering a new trial--are not matters properly advanced by way of petition.
- [22] Nor is the claim advanced in the petition one that can be brought either pursuant to Rule 2-1(2) of the Rules.
- [23] The petitioner points to no enactment or other authority permitting this proceeding to be brought by way of petition.
- [24] Accordingly, I am satisfied that the petition does not disclose the type of claim that may be brought by petition and ought to be struck on that basis.

Rule 9-5(1)(b) - Is the petition unnecessary, scandalous, frivolous or vexatious?

- [25] Rule 9-5(1)(b) provides that a pleading, petition or other document may be struck on the ground that it is unnecessary, scandalous, frivolous or vexatious.
- [26] A pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, at paras. 65 to 66.
- [27] The petitioner sought reconsideration of the BCPC Conviction in Provincial Court, which was refused. The petitioner also pursued an appeal of the BCPC Conviction in this Court, which was dismissed, and then sought reconsideration of the dismissal of his appeal, which was also dismissed. He has also filed two notices of appeal in the Court of Appeal seeking in essence to appeal the dismissal of his appeal of the BCPC Conviction and the lower court's refusals to reopen the proceedings.
- [28] Section 125 of the Offence Act provides that a conviction or order must not be removed by certiorari if an appeal was taken, whether or not the appeal has been carried to a conclusion: see *R. v. Mearns*, [1970] B.C.J. No. 610 (C.A.), 1970 CanLII 1160, at paras. 5-6, 10, and 31-35, where the substantively similar provisions of the Criminal Code (then section 682) was interpreted to preclude relief in the nature of certiorari where appeal proceedings are taken.

- [29] The bringing of one or more proceedings to determine an issue which has already been determined by a court of competent jurisdiction also constitutes a vexatious proceeding: Simon at para. 49, citing Skender v. Farley, 2007 BCCA 629 at para. 64.
- [30] The petitioner has pursued a myriad of proceedings by way of reconsideration and appeal, all unsuccessfully to date, attempting to have the BCPC Conviction set aside, varied, or a new trial ordered. There are also active proceedings extant before the Court of Appeal in which the petitioner is attempting to obtain the same relief as is sought in the petition.
- [31] Considering the history of these proceedings as a whole, I find that this petition is unnecessary and vexatious. Accordingly, I am satisfied the petition ought to be struck pursuant to Rule 9-5(1)(b).

Rule 9-5(1)(d) - Abuse of process

- [32] Turning now to Rule 9-5(1)(d) which provides that a pleading, petition or other document may be struck if it is an abuse of process of this Court. The categories of abuse are open. Discretion is afforded to courts to dismiss actions for an abuse of process that may extend to circumstances in which the court process is used for an improper purpose. An abuse of process may also be found where proceedings are without foundation or serve no useful purpose or in which multiple or successive proceedings are commenced which cause or are likely to cause vexation or oppression: Chernen v. Robertson, 2014 BCSC 1358, at para. 29, citing Babavic v. Babowech, [1993] B.C.J. No. 1802, 1993 Carswell BC 2950.
- [33] Commencing more than one proceeding in the same jurisdiction against the same defendant in relation to the same matter also constitutes an abuse of process and is prima facie vexatious: Woodward & Company Lawyers LLP v. The Tsilhqot'in National Government, 2021 BCSC 16 at para. 70.
- [34] The petitioner submits that the difference between this proceeding and the previous appeals and reconsideration applications in respect of the BCPC Conviction is that he could not prove his assertion that he had applied for business licences in the context of the earlier proceedings. Presumably, the inference to be drawn from this submission is that he can now prove that to have been the case.
- [35] I disagree. The trouble with the petitioner's submission is that it is not substantiated in the evidence. The only evidence adduced is a receipt dated September 12, 2023, purporting to be for business licence renewals paid by cheque by a third party (Rajwinder Singh), not the petitioner, and for only one of the two properties in issue. The actual business licences themselves are not before the Court, nor has the petitioner identified when he applied for them so as to substantiate his petition or position that his application was extant back in June 2020, when the prosecution that resulted in the BCPC Conviction was commenced.

- [36] In my view, the petition is clearly duplicative of the positions advanced by the petitioner and rejected on the BCSC Appeal and BCPC and BCSC reconsideration applications, and which are the subject of the petitioner's extant proceedings in the Court of Appeal. In the result, I am satisfied that the petition constitutes an abuse of process and ought to be struck pursuant Rule 9-5(1)(d).
- [37] Moreover, applying sub rules (a), (b), and (d) together, I find the petition is so overwhelmed with difficulty that it may also be struck on the basis contemplated in Sahyoun.

Conclusion

- [38] Having considered the petition and the materials filed on this application, and for the reasons set out in the City's notice of application, I conclude that the petition fails to disclose the type of claim that may be brought by petition, is unnecessary and vexatious, and otherwise constitutes an abuse of the process of the court.
- [39] Counsel for the petitioner submitted that if the petition is struck, leave to amend to file a notice of civil claim ought to be granted, particularly because the petitioner filed the petition as a self-represented litigant.
- [40] I do not find the submission persuasive in the circumstances before me. The petitioner has now retained counsel--Sumandeep Singh--who responded to this application and appeared on behalf of the petitioner, but does not appear to have taken any steps to amend or bring an application to convert this petition to an action. Rather, counsel responded to this application on the basis of the petition as pleaded.
- [41] Also, counsel for the petitioner provided no statutory or case authority in response to the City's comprehensive notice of application. The authorities referred to by counsel in the petitioner's application response do not engage with the issues before the court on this application and, rather, appear aimed at, once again, rearguing the submissions made and rejected on the BCSC Appeal and the reconsideration applications.
- [42] More importantly, counsel for the petitioner did not identify any potential amendments capable of curing the multitude of deficiencies in these proceedings as outlined above. At its core, the petition seeks judicial review of the BCPC Conviction, an appeal of which has already been dismissed by this Court and is now currently under appeal before the Court of Appeal. In my view, no amendments are capable of addressing this fundamental defect in the manner in which this petition is conceived.
- [43] In the result, the respondent's application is granted, and the petition is struck pursuant to Rule 9-5(1) without leave to amend.

[DISCUSSION RE COSTS Submissions]

[44] Leave is granted for the parties to provide written submissions as to costs. Those submissions are not to exceed 5 pages in 12 point font, one and a half spaced. The City's submissions are due within 7 days. The petitioner's submissions in response are due within a further 7 days.

[FURTHER DISCUSSION RE COSTS SUBMISSIONS]

"Hughes J."

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