

CANADA / JUDGMENT

Surrey (City) v. Kallu

2025 BCCA 19

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 19 Surrey (City) v. Kallu

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Surrey (City) v. Kallu,

2025 BCCA 19

Date: 20250128

Docket: CA49720

Between:

City of Surrey

Appellant

(Petitioner)

And

Amandeep Singh Kallu

Respondent

(Respondent)

Before:

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Justice Winteringham

The Honourable Justice Donegan

On appeal from: An order of the Supreme Court of British Columbia, dated

February 9, 2024 (Surrey (City) v. Kallu, 2024 BCSC 333,
New Westminster Docket S250971).

Counsel for the Appellant:

P.A. Hildebrand

Counsel for the Respondent:

R.A. Doran

Place and Date of Hearing:

Vancouver, British Columbia

October 17, 2024

Place and Date of Judgment:

Vancouver, British Columbia

January 28, 2025

Written Reasons by:

The Honourable Justice Donegan

Concurred in by:

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Justice Winteringham

Summary:

The City of Surrey appeals the dismissal of its petition proceeding, brought against the respondent homeowner to enforce an alleged violation of the City's bylaws resulting from the construction of what it claimed were unauthorized additions to the respondent's house. In order to establish the impugned construction deviated from what it had authorized, the City tendered evidence from officials who reviewed certain records in the City's possession, rather than tendering direct evidence or the records themselves. The chambers judge rejected this evidence as hearsay, finding that the officials' knowledge of the alleged deviations from the authorized construction derived from records by someone else. He also rejected the City's request for an adjournment to tender further evidence and relevant authorities. He found that the remaining, non-hearsay evidence was insufficient to prove the alleged violations.

Held: Appeal dismissed. The officials' reliance on unidentified City records to prove the bylaw violation was correctly identified by the chambers judge as hearsay, and thus inadmissible. Further, the chambers judge did not err in refusing to grant an adjournment to the City. He exercised his discretion judicially and according to proper principles.

Reasons for Judgment of the Honourable Justice Donegan:

Introduction

- [1] This is an appeal from the order of a chambers judge made February 9, 2024 dismissing the appellant's petition proceeding, with costs to the respondent.
- [2] At the hearing below, the appellant, City of Surrey (the "City"), sought declaratory and injunctive relief against the respondent, Amandeep Singh Kallu, related to what it claimed was unpermitted construction on his home. In order to establish the impugned construction deviated from what it had authorized, the appellant tendered evidence from officials who reviewed certain records in the City's possession, rather than tendering direct evidence or the records themselves. The chambers judge found aspects of this evidence constituted hearsay, and thus were inadmissible. He then refused the appellant's adjournment application, considered the remaining admissible evidence, determined the appellant had failed to meet its burden of proof, and dismissed the petition.
- [3] On appeal, the appellant contends the chambers judge erred in law by concluding the evidence was hearsay. It also argues that the decision refusing an adjournment was so clearly wrong that it amounts to an injustice.
- [4] For the reasons that follow, I would dismiss the appeal.

Background

General Context

- [5] Mr. Kallu owns property located on 130 Street in Surrey, British Columbia (the "Property"). On January 27, 2020, Mr. Kallu obtained a permit from the City to construct a detached single-family dwelling on the Property (the "Permit"). The house was built, with all construction completed, in 2021 (the "House").
- [6] In April, May and October of 2022, City officials viewed the exterior of the House and identified what they believed to be unauthorized construction, namely: a structure connected to the first storey of the rear of the House (the "Addition"), and an enclosed deck on the second floor of the House (the "Enclosed Deck").
- [7] On May 22, 2023, the City served Mr. Kallu with a letter demanding that he demolish the Addition and the Enclosed Deck. When he declined to do so, the City commenced the underlying proceeding in September 2023, seeking a declaration that Mr. Kallu had contravened Surrey Building Bylaw, 2012, No. 17850 (the "Building Bylaw") by constructing the Addition and Enclosed Deck. It also sought injunctive relief to address the contraventions.
- [8] Mr. Kallu filed his petition response on November 10, 2023.

The Hearing

- [9] The petition came on for hearing before the chambers judge on December 1, 2023. The City relied on seven affidavits from various City officials. Mr. Kallu tendered one affidavit, his own. In his response materials, Mr. Kallu did not confirm or deny the existence of any unauthorized construction.
- [10] In order to obtain the declaratory relief it sought, the City was required to establish the Addition and the Enclosed Deck deviated from the construction its official(s) had authorized under the Permit. Rather than tender any direct evidence about the extent of the construction its officials had authorized, the City chose to rely primarily on the opinions, derived from a review of City records, of two of its enforcement officials -- Harprit Grewal and Devon Bolton. These officials each deposed that they had reviewed records in the City's possession in order to "confirm what construction had been authorized". Using their interpretations of the content of these unidentified records as a basis for their knowledge of what had been authorized, they went on to offer their opinions about whether the Addition and Enclosed Deck deviated from that which had been authorized.
- [11] At the hearing, Mr. Kallu took the position that this evidence -- assertions by these officials about the extent of the construction another official had authorized under the Permit, as recorded in certain documents -- was hearsay and thus inadmissible. Emphasizing the absence of any direct evidence about what construction had been authorized, he argued that the remaining admissible evidence was insufficient to establish a violation of the Building Bylaw and the petition should be dismissed.
- [12] The City argued that its officials should be able to give evidence of what construction it had, or had not, authorized based upon their review of the City's records, and that such evidence was not hearsay. In the event of a contrary ruling, it took the position that the balance of the evidence it had tendered, including the partial drawings and photographs of the House appended to the affidavits, along with Mr. Kallu's evidence, formed a sufficient basis for the court to infer that the impugned construction was unauthorized under the Permit. Alternatively, the City submitted that the appropriate remedy was an adjournment of the hearing, to provide it with an opportunity to correct the evidentiary deficiency in its case with admissible evidence.

The Judgment: 2024 BCSC 333

- [13] After outlining the evidence that had been tendered, the applicable legal framework, and the positions of the parties, the chambers judge turned to the evidentiary issue that had been raised. Relying on first principles, he concluded that the evidence offered by City officials which derived from their review of City documents was hearsay, and thus inadmissible. He then considered the remaining evidence and concluded it was incapable of establishing a violation of the Building Bylaw.

- [14] The chambers judge declined to adjourn the hearing. Noting the absence of a compelling reason for the deficiency in the City's evidence, and highlighting the expectation that parties are to put "their best foot forward in presenting the evidence on which they seek to rely", he determined the City should "not be given an opportunity to resubmit the evidence in admissible form": at para. 42.
- [15] In light of the lack of admissible evidence -- specifically, direct testimony from the officials who authorized the construction or admissible business records documenting the authorization -- proving the difference between what construction was authorized and what was built, the judge found the City had failed to meet its burden and dismissed the petition.

Issues on Appeal

- [16] The City contends the chambers judge erred in two ways:
- (a) by identifying aspects of the City's evidence as hearsay; and
 - (b) by refusing the City's adjournment request.
- [17] The City argues that had these errors not been made, its evidence was (or would have been) clearly sufficient to prove a violation of the Building Bylaw and the consequent injunctive relief should have been ordered. It seeks to have the order dismissing the petition set aside, and asks this Court to grant the declaratory and related statutory injunctive relief sought. Alternatively, it seeks a new hearing, with liberty to file further affidavit evidence.

Did the chambers judge err by identifying the evidence at issue as hearsay?

Standard of Review

- [18] The parties agree this ground of appeal raises a question of law and engages the correctness standard of review: *R. v. Saddleback*, 2014 ABCA 166 at para. 8.
- [19] I will begin my analysis by detailing the evidence at issue.

The Evidence at Issue

- [20] Mr. Kallu objected to key aspects of the evidence of City Building Officials Mr. Grewal and Mr. Bolton. He also objected to aspects of the evidence of Bylaw Enforcement Officer Mr. Nolan, and that of the manager of the City's Building Division, Mr. Dube.

Mr. Grewal and Mr. Bolton

- [21] Mr. Grewal and Mr. Bolton are both Building Officials employed with the City's Building Division. Their responsibilities include inspecting properties for compliance with the British Columbia Building Code Regulation, BC Reg 264/2012, and the Building Bylaw. They both attended the Property, at different times, after the construction on the House was complete.

- [22] Mr. Grewal attended the Property on April 21, 2022. He deposed that prior to his attendance at the Property that day, he "reviewed the City's records to confirm what construction had been authorized by a building permit". He did not identify the records he reviewed, nor did he identify any of the information they contained.
- [23] Mr. Grewal next deposed that while in attendance at the Property that day, he observed that "construction had been completed that had not been authorized by a building permit". He identified the Addition as the construction he believed was unauthorized, and attached a photograph of it.
- [24] Mr. Bolton attended the Property twice -- first on May 12, 2022 and then again on October 18, 2022. Like Mr. Grewal, he deposed that prior to his first attendance at the Property, he "reviewed the City's records to confirm what construction had been authorized by a building permit". Other than the Permit (a copy of which he attached to his affidavit), Mr. Bolton did not identify the records he reviewed, nor did he identify any of the information they contained. Notably, the Permit does not set out the limitations on what construction was authorized at the Property.
- [25] Mr. Bolton further deposed that while he was at the Property on May 12, 2022, he observed "a one-storey addition to the dwelling had been constructed without authorization under the Issued Permit" and "a second-storey covered deck had been fully enclosed without authorization under the Issued Permit".
- [26] Mr. Bolton attached to his affidavit a copy of a single-page document that he deposed was "a rear elevation depicting the approved works on the Property that shows that only a covered deck had been approved for where the Enclosure now exists". This document contains some hand-drawn markings and a City stamp. The origins and author of the document were not identified in the evidence, nor were the source of the markings identified or explained.
- [27] Although construction on the House was complete by the time of Mr. Bolton's first visit, he nevertheless posted a "stop work order" on the Property that day. He explained that he did so because he learned, through his review of "the City's records", that a "stop work order" had been previously posted to the Property. Not seeing such a document posted to the Property, he concluded that it "had been removed", prompting him to post another. The City adduced no direct testimonial or documentary evidence regarding the previous stop work order referred to by Mr. Bolton. It tendered no evidence about when it was posted, who posted it, what it was regarding, or whether Mr. Kallu had any knowledge of it.
- [28] Mr. Bolton returned to the Property on October 18, 2022, intending to inspect the interior of the House. Unable to do so, he took photographs of the Addition and Enclosed Deck, which remained present.
- [29] Mr. Bolton's evidence went beyond his opinion that the Addition and Enclosed Deck were unauthorized under the Permit. Although not raised in the petition, Mr. Bolton also offered an opinion that the "constructed works" on the Property also contravened Surrey Zoning

Bylaw, 1993, No. 12000 in that they exceeded the permitted "floor ratio area", exceeded "lot coverage", and "violated setbacks". Like his assertions that the Addition and the Enclosed Deck were unauthorized, Mr. Bolton based these assertions on his ability to "confirm" certain information from his review of the "City's records". Again, these records were not identified and the information they contained was not specified.

Mr. Nolan

- [30] Mr. Nolan is a Bylaw Enforcement Officer for the City. His responsibilities include investigating violations of City bylaws and taking steps to secure compliance. Like Mr. Grewal and Mr. Bolton, Mr. Nolan attended the Property after construction on the House was complete.
- [31] Mr. Nolan attended the Property on May 22, 2022. His evidence primarily addressed a "stop work order" of which he was aware through his review of unidentified City records. Again like Mr. Grewal and Mr. Bolton, Mr. Nolan deposed that before attending the Property, he "reviewed the City's records to confirm what permits had been sought for construction on the Property". He did not identify the records he reviewed, nor did he describe the information they contained.
- [32] Mr. Nolan further deposed that during his review of these records, he "confirmed that the City had not received any permit applications since the City first posted a stop work order on March 11, 2021". He deposed that he saw no "stop work order" posted to the Property on May 22, 2022. The City adduced no direct testimonial or documentary evidence regarding the "stop work order" Mr. Nolan "confirmed" seeing in the City's records. The City tendered no evidence about when it was posted, who posted it, what it was regarding, or whether Mr. Kallu had any knowledge of it.

Mr. Dube

- [33] Mr. Dube is the manager of the City's Building Division. He is responsible for overseeing and managing staff who process and review building permit applications and staff (like Mr. Grewal, Mr. Bolton and Mr. Nolan) who inspect properties for building code and bylaw compliance.
- [34] Mr. Dube did not attend the Property. He deposed that he is "familiar with the Building Bylaw violations" at the Property and is "aware that an unauthorized addition and deck enclosure has been constructed at the Property". He offered no explanation for these statements.

The Decision

- [35] To determine whether the evidence from these witnesses based upon their resort to City records was hearsay, the chambers judge began with first principles. He held:

- [28] A document that is relied on for the truth of its contents is potential hearsay, just as much as testimony about a statement by an out-of-court witness. Unless it is being relied on to prove some other issue other than its truth, which is known as original evidence or non-hearsay, or it falls within an exception, including the principled exception based on necessity and reliability, a document that is to be relied on in this manner must be proven to be one that is kept in the usual and ordinary course of business, pursuant to s. 42 of the British Columbia Evidence Act, or the common law business records exception, if its author is someone other than the witness through whom it is sought to be introduced.
- [29] There is no exception for employees of the same department all resorting to a common body of records, of which any one of them may not be the author (although one of those employees certainly could, either pursuant to the Evidence Act or the common law business records exception, provide the necessary evidence for the document to be received as a business record).
- [36] Applying these principles, the judge held that evidence at issue was inadmissible as hearsay. He reasoned:
- [30] The difficulty in this case is that the key witnesses on behalf of the City all derive their knowledge of the extent to which the building on the respondent's property deviates from what has been authorized from reviewing records by someone else, including the building permit itself (which in any event, does not set out the limitations on what has been authorized) and the one drawing of the rear of the property, which contains a hand-drawn indication of the enclosure and a City of Surrey stamp whose author and origins are unknown. (The officer who appended the drawing to his exhibit also did not authenticate it as something that was submitted by or on the respondent's behalf, which might have made it admissible as a form of admission against interest by him.)
- [31] What this means is that the resourceful efforts of the City's counsel to contrast the drawing to the offending construction fall short of providing the required proof, because the provenance of the drawing is unknown and has not been properly proven.
- [32] Even the fact of the stop-work order, which might provide some evidence supporting an inference of the respondent having proceeded in an unauthorized manner at the initial construction stage, was based on a review of records that have not been substantively proven.
- [33] Indeed, quite apart from these hearsay concerns, exactly what conduct the stop-work order applied to is left completely unexplained in the material.
- [34] Further, as the respondent's counsel has pointed out, the allegations of unauthorized construction in the City's letter to the respondent are not substantive proof of those facts in this proceeding.

- [35] As a result, to the extent that the evidence of the City's witnesses is based on their resort to its records, it is inadmissible in this proceeding as hearsay.

Discussion

- [37] The chambers judge correctly described the governing legal principles -- the City does not argue otherwise. Rather, the City takes the position that the chambers judge erred in his application of these principles because he misconstrued the nature of the evidence at issue, and the purpose for which it was tendered.
- [38] The City submits that it did not seek to tender evidence from its officials based on their review of its records for the proof of truth of the contents of the records (a hearsay purpose), but rather as a "statement of fact" of the content of the records (a non-hearsay purpose). The City further submits that the evidence at issue does not give rise to the typical concerns underlying the hearsay rule: primarily, that the affiants' evidence was sworn and Mr. Kallu could have sought to have them cross examined, as opposed to more typical examples of hearsay that feature unsworn evidence that is not subject to cross examination.
- [39] As I understand the submission, the City contends that because the documents associated with the Permit were approved and filed with the City, their legal effect does not arise from the "truth of their contents". The City argues that the records themselves are neither true nor false -- whatever construction was approved and on file was what could be built. In this way, it contends that because the contents of the records do not assert facts to be established, but rather are themselves material facts, it is not hearsay for witnesses who observed those "facts" to describe them (and then compare them to their observations of what was built). As such, the City submits that the assessment of the evidence at issue ought to have focussed on weight, not admissibility.
- [40] Respectfully, I cannot agree with this submission. For reasons I will now develop, I conclude the judge correctly identified the evidence about the extent of the construction that had been authorized as hearsay.
- [41] Hearsay is an exception to the general evidentiary principle that all relevant evidence is admissible: *R. v. Starr*, 2000 SCC 40 at para. 157. Defined generally as "an out-of-court statement tendered for the truth of its contents" (*R. v. Bradshaw*, 2017 SCC 35 at para. 1), hearsay evidence is presumptively inadmissible because its truthfulness and accuracy cannot be tested, thus compromising trial fairness and the truth-seeking process of our adversarial system: *R. v. Charles*, 2024 SCC 29 at paras. 43-44. While hearsay issues most typically arise in situations in which a witness testifies about an earlier, verbal statement made by someone else, it is important to remember that hearsay is not confined to this scenario, nor is it defined by the nature of the evidence per se. Hearsay is defined by the purpose for which the evidence is adduced (to prove the truth of its contents) and the absence of a meaningful opportunity to test the source of the evidence as to its truth. In this way, and as the judge observed, information contained within a document that is relied on

for the truth of its contents can be hearsay, just as much as testimony about a statement by an out-of-court witness.

- [42] The City's position is grounded in its view that the evidence at issue does not involve an attempt by the affiants to tender an "out-of-court statement" for its truth, but is rather a permissible description of an observable material fact. Respectfully, this position misconstrues the nature of the evidence at issue, and the clear purpose for which it was tendered.
- [43] The evidence at issue involves deposition by the affiants about the extent of the construction approved or authorized under the Permit. As they were not the officials who had personally approved the extent of the construction and issued the Permit, these witnesses were not offering any direct evidence about what had been approved. Rather, they were offering evidence about what had been approved by someone else, derived from their observations and impressions of the content of certain out-of-court documents from someone else. The evidence is silent about the form of these documents, but whether they consisted of plans, drawings, sketches, letters, notes or some other form of writing bearing the approval markings of a City official, their nature, purpose, and general content is clear from the evidence as a whole. These records, whatever they might be, did not simply exist as an observable "statement of fact" as the City contends. These records documented the content of an earlier out-of-court decision, a statement, made by another City official -- the decision about the extent of construction that would be allowed under the Permit.
- [44] Despite the position taken on appeal, it is also clear that the City relied on the evidence at issue for a hearsay purpose. In order to obtain the declaratory relief it sought, the City was required to establish the Addition and the Enclosed Deck deviated from the construction its official(s) had authorized under the Permit. In an effort to prove the scope of what it had authorized, the City did not tender direct evidence from any original source, such as from any issuing or approving official, nor did it seek to tender, through a business records exception to the hearsay rule, the records that documented the content or details of the decision made by that approving official. Instead, the City made a tactical decision, one its counsel concedes was a "shortcut" meant to avoid adducing potentially large and cumbersome documents. It chose to have its enforcement officials review records documenting details of a decision made by another official about the extent of the construction that other official approved under the Permit. It then sought to tender their observations and interpretations of the information contained within those records as factual proof of the authorized scope of construction.
- [45] The central evidentiary concern underlying the hearsay exclusionary rule -- the inability to test the truthfulness and accuracy of the evidence -- is apparent here.
- [46] The City was offering the impressions and interpretations of its affiants about the extent of the construction someone else had authorized, derived from their observations of unidentified records documenting that decision, as proof of the truth of the extent of the

construction that had been authorized. Mr. Kallu had no way to test (and the chambers judge had no way to assess) the accuracy of this evidence. It is no answer to suggest, as the City now does, that Mr. Kallu could have sought to cross-examine the affiants and then tested their observations and impressions of the documents by demanding the documents be tendered during cross-examination. It was not for Mr. Kallu to tender the records that could establish the extent of the construction authorized under the Permit. It was for the City to do so, with admissible evidence. Had the City successfully tendered the records through a business records exception to the hearsay rule, the affiants' observations and impressions of them, and their opinions about what those records authorized, would be entirely unnecessary. The records themselves would establish the scope of the authorization.

- [47] The objectionable evidence in this case is very unlike the evidence considered in *Ratten v. The Queen*, [1971] UKPC 23, [1971] 3 AER 801 and *In the Estate of C. R. Phibbs*, [1917] 15 P. D. 170, two authorities upon which the City relies.
- [48] *Ratten* was a murder case that involved testimony from a telephone operator about what the deceased said (and how she sounded when she spoke) shortly before she died. As the evidence of this out-of-court statement was not being offered for its truth of what the deceased said, the Privy Council had little difficulty concluding it was not hearsay.
- [49] In *Phibbs*, the deceased's will had been destroyed in a fire. Prior to its destruction, one of the beneficiaries had read the document and recorded her recollections of it. In the context of an application for a grant of administration with the "will" (the witness's written recording of her recollections of the will) annexed, the court relied on this evidence, found the will had been proven, and granted probate. The application was supported by all of the deceased's next of kin and no objection was taken to the admissibility of the document on the basis that it was hearsay. The court did not consider the issue.
- [50] No parallels can be drawn between these decisions and the case at bar. Unlike the evidence in *Phibbs*, there is no suggestion that the City official who approved what was authorized was unavailable, or that the documents recording what they authorized had been lost or destroyed. Nor is there any suggestion that the City was seeking to tender evidence from its affiants about the content of its records under the principled exception based on necessity and reliability. Unlike the purpose for which the evidence was tendered in *Ratten*, it is quite apparent that the City was seeking to tender the evidence at issue for a hearsay purpose, as I have explained.
- [51] The chambers judge correctly identified the evidence at issue as hearsay. As the City was seeking final orders, he also correctly determined that this hearsay evidence was inadmissible: Rule 22-2(13) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. I would not accede to this ground of appeal.

Did the chambers judge err in the exercise of his discretion refusing the City's adjournment request?

Standard of Review

- [52] When the chambers judge refused to adjourn the hearing, he was exercising his discretion. Such a decision attracts a highly deferential standard of review on appeal.
- [53] Recognizing the high standard it is required to meet, the City acknowledges that this Court will only intervene if the judge's discretion was not exercised judicially or according to proper principles: *Bodnar v. The Cash Store Inc.*, 2007 BCCA 366 at para. 15. It must establish the chambers judge: acted on a wrong principle by, for example, misdirecting himself; gave insufficient or no weight to relevant considerations; or made a decision that is so clearly wrong it results in an injustice: *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.

Discussion

- [54] The City takes the position that its adjournment request was not occasioned by any failure, or deficiency, on its part. Rather, it says that the request was prompted by deficiencies and/or a lack of clarity in Mr. Kallu's response materials. The City contends that Mr. Kallu ought to have provided notice, in his response, of the evidentiary arguments he intended to make at the hearing, and that he used language in his materials that "appeared to acknowledge the City's allegation of unpermitted work". By failing to provide proper notice and leading it to believe it would not be required to prove an essential feature of its case, the City says that it was caught off guard at the hearing and the chambers judge, in fairness, ought to have allowed it some time to: (a) gather authorities to meet the evidentiary objections raised; and (b) assemble additional, admissible evidence to overcome the deficiencies in its case arising from an adverse ruling.
- [55] The City also points to other factors arguably weighing in favour of an adjournment, including: the absence of any prejudice to Mr. Kallu (as an adjournment was consistent with the delay he sought); and the public interest in protecting the City's ability to enforce its bylaws -- not only to protect the City's interests, but to protect the interests of potential purchasers of the Property. In all of these circumstances, the City contends that the decision of the chambers judge declining its adjournment request was so clearly wrong that it amounts to an injustice.
- [56] I respectfully disagree.

- [57] To begin, I see no basis for the City's contention that its adjournment request was prompted by some deficiency in Mr. Kallu's response materials or conduct. The City cites no authority for the proposition that Mr. Kallu was obliged to provide notice in his petition response that he would be objecting to the admissibility of aspects of the City's evidence, or that he would argue that the City failed to meet its standard of proof on the evidence it was planning to adduce.
- [58] The petition response is compliant with Rule 16-1(5) of the Civil Rules. While its Legal Basis focussed on the injunctive relief sought by the City, the petition response clearly stated that Mr. Kallu opposed all of the relief sought, including the declaratory relief. It is true that Mr. Kallu referred to the construction the City claimed was unauthorized as the "renovations", but I see no basis upon which this word, or any other language used in his response or his evidence, could have reasonably misled the City into believing that Mr. Kallu was admitting a central aspect of the case to be made against him. In any event, the City's conduct in seeking to adduce evidence to prove the scope of what had been authorized is inconsistent with the notion that it was somehow misled into believing it did not have to do so.
- [59] As the orders sought by the City were final orders, it could not rely upon inadmissible hearsay evidence. By seeking to tender the evidence at issue, I agree with the chambers judge that the City was not meeting that which is required of every litigant in the adversarial process -- to put its "best foot forward in presenting the evidence on which they seek to rely": at para. 42. The City was aware that it was required to establish, with admissible evidence, that the Addition and Enclosed Deck were unauthorized construction under the Permit. As I have discussed, the City made a tactical decision in the presentation of its case. Rather than tendering direct evidence or seeking to tender relevant documentary evidence to establish a central feature of its case, it instead chose to tender evidence from officials who reviewed certain out-of-court evidence and had them offer their interpretations of the content of that evidence, for its truth.
- [60] I also see no basis for the City's contention that an adjournment was required to allow for the gathering of authorities to meet the evidentiary objections raised. The fact that the chambers judge recited the applicable legal principles regarding hearsay evidence without reference to specific authorities is not, as the City argues, an indication that an adjournment should have been granted for specific authorities to have been provided. The judge articulated basic legal principles that are well-established in the jurisprudence. As the City cannot point to any authorities that run contrary to these deep-rooted principles even on appeal, it cannot argue an adjournment was required for this purpose.
- [61] The City's primary purpose in seeking an adjournment was to allow it an opportunity to adduce further evidence. Whether to grant an adjournment in the circumstances of this case was something the chambers judge was best positioned to answer: *Andersson v. Andersson*, 1990 CanLII 2235, [1990] B.C.J. No. 1110 (B.C.C.A. Chambers). While the judge did not recite all of the factors the City now argues, it is apparent from a fair reading of the reasons in light of the record and live issues, that he was aware of the competing interests and considered

the relevant factors.

- [62] The chambers judge exercised his discretion judicially and according to proper principles. He was fully aware of the pleadings. He demonstrated a firm grasp of the entire evidentiary record and the submissions of counsel. He concluded, correctly in my view, that the City failed to provide admissible evidence to prove a central aspect of its case. As it had not put its "best foot forward in presenting its case" and provided no compelling reason for the deficiency, he refused the City's request to be given a second opportunity to prove its case -- this time with admissible evidence.
- [63] Although Mr. Kallu may not have suffered prejudice from an adjournment to the extent that it would align with the delay he sought, he most certainly would have been prejudiced by the City being allowed a second opportunity to argue its case, with new evidence or arguments, after the failure of its first attempt.
- [64] In all of these circumstances, it cannot be said the chambers judge acted on a wrong principle, gave insufficient or no weight to relevant considerations, or made a decision that is so clearly wrong it results in an injustice. I see no basis for interfering with the judge's exercise of discretion in declining to adjourn the hearing and would not accede to this ground of appeal.

Disposition

- [65] For all of these reasons, I would dismiss the appeal, with costs to the respondent.

"The Honourable Justice Donegan"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Winteringham"

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