

CANADA / JUDGMENT

Surrey (City) v. Koonar

2024 BCSC 627

COURT

Supreme Court of British Columbia

DECIDED

21 February 2024

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2024 BCSC 627 Surrey (City) v. Koonar IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Surrey (City) v. Koonar , 2024 BCSC 627 Date: 20240221 Docket: S251454 Registry: New Westminster Between: City of Surrey Petitioner And Praveen Kaur Koonar and Jaswinder Singh Koonar Respondents Before: The Honourable Justice Gomery Oral Reasons for Judgment In Chambers Counsel for the Petitioner: A. Wu The Respondents, appearing in person: J. Koonar P. Koonar Place and Date of Trial/Hearing: New Westminster, B.C. February 21, 2024 Place and Date of Judgment: New Westminster, B.C. February 21, 2024

- [1] THE COURT: The respondents, Mr. Koonar and Ms. Koonar, live in a residential property on 116 Street in Surrey. Ms. Koonar owns the property. Mr. Koonar lives there and operates a business there.
- [2] The area in which they live is zoned by the City for single family residential use. The zoning bylaw limits uses that can be made of properties within the zone by providing that only those uses that are specifically permitted are allowed. Other uses are unlawful. Part 4, Section B. 17. of the zoning bylaw provides: A shipping container shall only be used, placed, stored, repaired, cleaned, upgraded, or modified on a lot in an industrial zone and in such cases the shipping container must comply with the requirements of the zone as if it were a building or structure. Where a shipping container is necessary and accessory to construction in progress and such construction is the subject of a current and valid building permit, the shipping container will be permitted.
- [3] The bylaw defines a shipping container in these terms: Shipping Container means an enclosed unit used or intended to be used for storing and transporting goods via ship, rail or truck, whether or not it is actually being used for such a purpose.
- [4] The City maintains that the Koonars have placed a shipping container on their property contrary to the bylaw. It seeks an injunction to require the shipping container's removal and a further order that would prevent any other shipping container from being placed on the property in its place.
- [5] The Koonars object that the structure in question is not a shipping container. They say that it is a storage shed.

- [6] There are two issues: (1) is the structure, which is the subject of this application, a shipping container within the meaning of the bylaw; and (2) if it is a shipping container, should I grant the City an injunction to require that it be removed?

Analysis

The first Issue

- [7] The law requires me to interpret the zoning bylaw, having regard both to its text and its purpose. The purpose, as with zoning regulation generally, is to preserve property values by prohibiting uses that are believed to be deleterious to neighbourhoods mainly residential in character. *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494, at para. 14.
- [8] The language of the bylaw makes certain points clear. A shipping container is an enclosed unit. It is defined according to its use or intended use. Use or intended use involves the storage and transportation of goods. It doesn't matter whether the shipping container is actually being used for the purpose of storing or transporting goods via ship, rail or truck. Underlying the bylaw is the thought that shipping containers, by their appearance, not necessarily their use, are inconsistent with the residential character of homes in Surrey, other than homes that are currently under construction or undergoing construction. There is no question in this case that the container is necessary and an accessory to construction. There is no construction in place at the Koonars' house. The shipping container, the structure that we are concerned with, is either a shipping container or it is not.
- [9] There are photographs of the structure in evidence. It looks like a shipping container. It has, at least in July of last year, it had, language on the side including the statement of caution "nine foot six-inch-high container". It has serial numbers, an indication of its cubic capacity, the weight of goods that it can hold, and so on. These are all consistent with the appearance of the thing as a shipping container. It is made of metal, rectangular, and has two doors that open at one end exposing the entire end and permitting entrance and access through the entire back end as it were.
- [10] What differentiates the structure from most if not all shipping containers is the presence of a door and three windows cut into the long side. Mr. Koonar says that he has never seen a shipping container in use as a shipping container that had a door and windows installed in this way. Mr. Koonar says that he has been using the shipping container as a storage shed, that he bought it for use as a storage shed, and he has never used it for any other purpose.

- [11] I think it clear that the structure was originally manufactured as a shipping container because it contains printing on the end which is only consistent with its use as a shipping container. I think it has almost certainly undergone modifications since it was originally manufactured and it may well be that it could no longer be used in the shipment of goods and in a port or on a truck because of the door and windows that have been cut in the side. I don't have any evidence to that affect. It is a speculation.
- [12] In my view, the structure is a shipping container within the meaning of the bylaw. It has the appearance of a shipping container, which is what the bylaw is really concerned with. It was manufactured as a shipping container. It is serving one of the purposes of a shipping container, that is, as a storage unit by the Koonars for their children's stuff.
- [13] Mr. Koonar submits that what constitutes a structure as opposed to a shipping container is defined by its intended use, not the materials it's made of or its appearance. I disagree. I think the submission is untenable. It would permit any shipping container to be placed on property and cease to become a shipping container as soon as it was used for some purposes other than the immediate shipment of goods and I cannot imagine that is what the bylaw intends. I don't think it makes a difference that Mr. Koonar has been using the shipping container as a storage shed or that he bought it for use as a storage shed. The substance of the matter is that it satisfies the definition in the bylaw. The second issue - ought I to grant an injunction
- [14] The City is authorized to apply to court to enforce its bylaws, and to restrain the contravention of its bylaws. In *Surrey (City) v. Singh*, 2022 BCSC 1455, at para. 38, I noted: The public interest favours the enforcement of municipal laws. While the court has a discretion to refuse to enforce legislative requirements, it will only be exercised in exceptional circumstances; *Maple Ridge (District of) v. Thornhill Aggregates Ltd.* (1998), 162 D.L.R. (4th) 203 (BCCA), at paragraph 9; *Fraser Health Authority v. Jongerden*, 2010 BCSC 355, at paragraphs 30 to 32.
- [15] I am not satisfied that there are, in this case, exceptional circumstances which would warrant me refusing the City the injunction that it seeks.
- [16] I am influenced in this in part by the history of this matter. The City has been seeking the removal of the shipping container from the Koonars' property since the spring of 2022. It initially advised Mr. Koonar by letter dated April 11, 2022, that the shipping container must be removed no later than May 9, 2022. Mr. Koonar spoke with the City official and obtained an extension of that deadline to June 14, 2022.
- [17] In July 2022, the City official observed that the shipping container was still there. The City official, Officer Schmelter, spoke with the Koonars about what he viewed as the importance of the removal of the shipping container.

- [18] In November 2022, the City served Mr. Koonar with a letter from the City's council advising the Koonars that the City intended to commence litigation to require a removal of the container if it was not removed from the property by March 15, 2023.
- [19] Mr. Koonar requested an extension of the deadline to September 15, 2023. He advised that the container was being used to store items belonging to his children who were living on campus at local universities and indicated the extension would allow him to empty the storage unit and have it removed without disrupting the children's studies. The City granted that extension.
- [20] On September 7, 2023, Mr. Koonar requested a further extension of the deadline for compliance to January 31, 2024. He explained there had been a delay in the graduation of his children and they would be able to attend to the removal of their belongings at the end of the current semester. The City requested some documentation confirming the children's enrolment. It emerged the children were not expected to finish their programs until April 2024. Mr. Koonar then requested an extension to the end of April. The City responded that it would grant a final extension to October 15, 2023.
- [21] This petition was filed on November 8, 2023. After that, the City proposed to grant an extension on the basis the City would waive costs if the Koonars would consent to an order requiring the removal of the shipping container by May 1, 2024. The Koonars did not accept that proposal. Mr. Koonar explains that his children's graduation has been postponed and he now expects them to graduate in mid-2025.
- [22] This matter has been pending for a long time. It needs to be resolved. I think that, in the circumstances, the City is justified in requesting an order and there are no exceptional circumstances warranting refusal of an order. Accordingly I grant the City the order it seeks. The MR. KOONAR: Your Honour, can it be a longer period of one, um, more than one week, I THE COURT: How long do you need, Mr. Koonar? MR. KOONAR: They were actually agreeing to make it until May or June or something of like this. THE COURT: May MR. KOONAR: Yeah. THE COURT: Mr. Wu? MR. KOONAR: I There's no way I can throw out my kids' THE COURT: No, I appreciate, I don't want you to get into trouble with your kids, but this matter does have to conclude now. MR. KOONAR: Yeah. THE COURT: Mr. Wu, how long can you give? MR. WOO: In my submission, one month is more than reasonable. The extension to May was premised on a resolution that would avoid the need for us to be here today and take up a lot of the court's time. I don't think that it's for Mr. Koonar to have his cake and eat it too. THE COURT: Mr. Koonar, I'll give you 30 days. MR. KOONAR: Yes, Your Honour.
- [23] THE COURT: There is a declaration that the Koonars have contravened the zoning bylaws by storing a shipping container on the property. They will be required to remove the shipping container from the property within 30 days of this order and they will be enjoined not to have any shipping containers on the property after the 30 days is concluded. MR. KOONAR: That is unlawful totally to the use of my property, Your Honour. THE COURT: I am simply

ordering you to comply with the bylaw. The bylaw says you may not have a shipping container. The order will provide that you may not have a shipping container. The order does not prevent you from having a storage shed, but you cannot have a storage shed that is a shipping container. It will have to be some other kind of storage shed. MR. KOONAR: Yes, Your Honour. THE COURT: And you'll have to sort that out and you have 30 days - MR. KOONAR: Yes, Your Honour. THE COURT: -- to make those arrangements.

[24] THE COURT: The City requests an order for costs. I think the City has been successful in this proceeding and is entitled to costs. The City asks me to assess costs summarily at \$1,000 as a lump sum. I am entirely satisfied that \$1,000 is considerably less than the amount of costs that would be assessed if they were assessed before the registrar in the usual way. It's very likely that the costs that would be payable if they were assessed in another way would be two to three times the \$1,000 the City seeks. In the circumstances, I award the City lump sum costs of \$1,000. (Discussion re costs) (Discussion re vetted order) THE COURT: I have signed the order. Thank you. "Gomery J."

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