

CANADA / JUDGMENT

Surrey (City) v. Randhawa

2026 BCSC 16

COURT

Supreme Court of British Columbia

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2026 BCSC 16 Surrey (City) v. Randhawa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Surrey (City) v. Randhawa,

2026 BCSC 16

Date: 20260107

Docket: S251358

Registry: Vancouver

Between:

City of Surrey

Petitioner

And

Manjit Kaur Randhawa and Davinder Singh Randhawa

Respondents

Before: The Honourable Justice Ahmad

Reasons for Judgment

Counsel for the Petitioner:

G. Flores

Counsel for the Respondents:

G. Sandhu

Place and Date of Hearing:

Vancouver, B.C.

May 27 and July 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 7, 2026

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I. Introduction

- [1] The respondents are the owners of property located at 13515-79 Avenue, Surrey, British Columbia ("Property"). In this petition proceeding, the City of Surrey seeks various declarations and injunctive relief to restrain the respondents from conducting further construction and to require the demolition of what it says is the unauthorized construction on the Property.

II. Background Facts and Evidence

Building permit process

- [2] Lee McLeod, a Building Official with the City's Building Division described the process for obtaining a building permit from the City. He deposes that when applying for a building permit, it is mandatory to submit floor plans to the City outlining the proposed scope of work. Once reviewed and approved by a Plan Checker, the approved plans are marked with the City of Surrey stamp and initialed by a plan checker. The approved plans define the authorized scope of work under an issued building permit.

The building permit and plans for the Property

- [3] The most recent building permit issued for the Property is dated April 19, 2002 ("Issued Permit"). The corresponding plans on which the Issued Permit was based were reviewed and approved by the City on June 2, 2002 ("Approved Plans"). The Approved Plans depict the scope of work that was authorized for the Property.

Attendances at the Property

- [4] Several City employees attended at the Property on various dates from December 2021 to August 2024. Collectively, they depose as follows:
- [5] Having received a complaint about an alleged unpermitted construction, on December 17, 2021, Andrew Nolan, a Bylaw Enforcement Officer, attended at the Property where he observed five men installing roof beams on what he describes as an "accessory building" at the rear of the Property.
- [6] Three days later, on December 20, 2021, Mr. McLeod attended at the Property. He observed:
- a) a rear deck in the northeast corner of the home had been extended ("Extended Deck");
 - b) stairs had been added to the Extended Deck ("Stairs");
 - c) an aluminum canopy had been added to the Deck ("Canopy"); and
 - d) an accessory building ("Accessory Building"), which was then in the framing stages of construction, in the rear yard.

- [7] The Approved Plans do not depict the Extended Deck, the Stairs, the Canopy, or the Accessory Building (collectively, "New Construction") as part of the authorized works allowed by the Issued Permit. Nor did Mr. McLeod see anything in his review of the City records to indicate that any of the New Construction was permitted. Accordingly, on December 20, 2021, he issued and posted a red stop work order on the garage at the front of the house. However, from the photograph taken by Mr. McLeod, other than the words "STOP WORK ORDER", the content of the stop work order is impossible to read.
- [8] On February 22, 2022, Mr. McLeod delivered a compliance order to the respondents. The compliance order states in part:

A site review conducted by the City of Surrey's Building Division on 20 December 2021 indicated that an accessory building in the rear yard, an aluminum canopy, and a rear deck has been constructed on the Property (the "Works") without valid building permits and are being occupied without valid occupancy permits in contravention of Surrey Building Bylaw, 2012, No. 17850 (the "Bylaw").

- [9] The compliance order required the respondents to submit to the City either: (a) a building permit application for the New Construction; or (b) a permit application for the demolition of the New Construction on or before March 31, 2022. It also provided that: "Failure to comply with this order is a breach of Section 96 of the Bylaw and will result in further action, including legal proceedings, being taken by the City to enforce compliance with the Bylaw." [Emphasis in original.]
- [10] Mr. McLeod did not receive a response to the compliance order, nor did the Building Division receive a building permit application.
- [11] Mr. Nolan returned to the Property on May 3, 2022, with Douglas Gardiner and Tricia Coleman, both City employees. On that date, the Accessory Building had a roof, siding, and a door which were not present when Mr. Nolan was at the Property on December 17, 2021.
- [12] Seeing no stop work order on the Property, Mr. Gardiner posted another stop work order which includes the following wording:

STOP WORK ORDER

all construction activities shall cease immediately

work w/o permit

- [13] It is unclear from the photographs taken by Mr. Gardiner on May 3, 2022, whether the construction of the Accessory Building was completed nor do the photographs depict the interior of the Accessory Building.
- [14] Mr. Nolan returned to the Property on May 8 and May 23, 2022. He did not observe any changes to the Accessory Building from his May 3, 2022, visit.

- [15] Mr. Nolan deposes that on his May 8, 2022, visit, he spoke with an unidentified male who asked about the notice and advised Mr. Nolan that he had recently applied for a building permit. Mr. Nolan told him to contact the City's Building Division and that the City's records did not contain a permit application for the Accessory Building. Mr. Nolan did not observe any obvious changes to the Accessory Building on his subsequent visits on June 2 or July 3, 2022.
- [16] Erica Bates, a Bylaw Enforcement Officer, observed a stop work order on the Property on May 28 and June 19, 2022. On the latter visit, Ms. Randhawa told Officer Bates that her son had submitted an application for a building permit to the City. However, she was unable to provide any proof that that was the case.
- [17] On August 24, 2022, Devon Bolton, a Building Official with the City, and Officer Coleman attended at the Property where Mr. Bolton observed:
- a) that the interior of the Accessory Building included a large furnished living room area, a furnished bedroom, and a full bathroom which had a towel, soap, and garbage bin; and
 - b) two entry doors at the rear of the main house leading to two suites ("Dwelling Units"). One of the Dwelling Units contained two bedrooms, a living room, a kitchen area, and a bathroom which contained personal belongings. The door leading to the second Dwelling Unit was locked. The respondents' son advised Mr. Bolton that his brother lived in that suite.
- [18] On February 21, 2024, Suneil Khakh, a Bylaw Enforcement Officer for the City, delivered a letter from the City's Legal Services Division to the respondents' son, Karn. The letter was addressed to the respondents. In the letter, counsel takes the position that none of the New Construction is permitted. He advised that the stage of the construction meant that many of the elements that the City would need to inspect were covered. Accordingly, it could not then issue a permit for the New Construction. Counsel confirmed that the respondents were required to submit a permit for the demolition of the New Construction.
- [19] On June 20, 2024, Mr. McLeod returned to the Property with Officer Khakh, where they were met by Ms. Randhawa and her son. On that date, the Accessory Building had a living area, a bedroom, and a bathroom with cabinets, sinks, and a refrigerator. The Extended Deck, the Canopy, and the Stairs were substantially in the same condition as they were on December 20, 2021.
- [20] Mr. McLeod and Officer Khakh also observed the entry doors to the Dwelling Units at the rear of the main house. Ms. Randhawa confirmed that three tenants resided in one of the Dwelling Units and that her younger son lived in the other unit. The second unit, which was accessible only through the main door, contained two bedrooms, a kitchen area with cabinets, sink, and refrigerator (but no stove), a full bathroom, and a living room area.
- [21] The Approved Plans did not depict the Dwelling Units as part of the authorized works allowed by the Issued Permit.

- [22] On July 11, 2024, Jonathan Milloy, a Buildings Inspection Manager for the City, issued a compliance order which required the respondents to submit a building permit application for the demolition of the Accessory Building, the Extended Deck, the Stairs, and the Dwelling Units and to carry out the demolition once the permit was issued. The compliance order required the respondents to comply by August 8, 2024.
- [23] Officer Bates went to the Property on July 12, 2024 to deliver the compliance order. As no one was home, she left a voicemail message for Ms. Randhawa to call her back. Officer Bates spoke with Ms. Randhawa the next day and told her she had documents to deliver to her.
- [24] On July 19, 2024, Officer Bates affixed the compliance order to the front door of the house on the Property.
- [25] When Officer Bates returned on August 13, 2024, the Property was in substantially the same condition as it was on July 19, 2024. She encountered Ms. Randhawa and asked her about the progress of her permit application. Having been advised by Ms. Randhawa that she did not now how to use a computer. Officer Bates suggested Ms. Randhawa's children could assist or that Ms. Randhawa could call her. Ms. Randhawa left Officer Bates a voicemail message on August 18, 2024, in which she advised Officer Bates not to worry and that she would be applying for a building permit.
- [26] Trevor Welsh is the City's Chief Building Official and Director of the Building Division. He explains that the New Construction on the Property has progressed to a point where many essential elements are obscured, preventing inspections the City would consider necessary to confirm safety and compliance with the City's building bylaws and the British Columbia Building Code. Accordingly, he deposes that the City will not issue a building permit for the New Construction.

III. Preliminary Evidentiary Issue

- [27] The respondents object to the admissibility of much, if not all, of the affidavit evidence on which the City relies, arguing that it is comprised, to varying degrees, of inadmissible hearsay, argument, and opinion, or is otherwise inadmissible or deficient.
- [28] Prior to turning to the substantive relief sought, I will address those issues, starting with hearsay.

A. Hearsay

- [29] Regarding hearsay, the respondents rely on the decision of the chambers judge in *Surrey (City) v. Kallu*, 2024 BCSC 333 [Khallu BCSC] and the appeal of that decision in *Surrey (City) v. Kallu*, 2025 BCCA 19 [Kallu BCCA].

[30] As it does in this case, in Kallu, the City sought declaratory and injunctive relief against a property owner in respect of what the City claimed was unpermitted construction on his home. As it also does in this case, in Kallu, the City relied on the affidavit evidence of various employees regarding, among other things, the extent of the construction that had been authorized or not authorized. However, in Kallu, the City did not produce the records that set out what construction was authorized.

[31] The Court of Appeal summarized the issue with the City's affidavit evidence as follows:

[2] 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

[Emphasis added.]

[32] And further:

[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.

[Emphasis added.]

[33] The Court of Appeal upheld the decision of the chambers judge. It concluded:

[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. 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.

[Emphasis added.]

[34] Perhaps having learned from the evidentiary deficiencies in Khallu, in this case, the City does not rely solely on the "impressions and interpretations" of its affiants or "unidentified records" as proof of the construction that had been authorized on the Property. In this case:

- a) Mr. McLeod attaches to his affidavit both the Issued Permit and the Approved Plans, the latter of which depicts the scope of the work authorized for the Property; and
- b) Salinder Dosanjh, a Clerk with the Building Division of the City's Planning and Development Department, attaches to her affidavit what she refers to as the City's "entire Building File Contents related to the Property excluding internal correspondence between staff". Those contents include the Issued Permit and the Approved Plans.

[35] Ms. Dosanjh explains:

- a) When a building file is opened, it is initially kept in a physical file and that documents are also stored in AMANDA, a computer program used by the City to manage land development applications and permits.
- b) Once a building file is closed, it is scanned and digitally stored in the Land Development Records system, an online repository which "captures the land development activities from paper records produced from various sources at the City". All closed files from 1955 to date are stored in the Land Development Records.
- c) If the City receives a permit application or complaint after a building file has been closed, the new documents are stored in AMANDA and a physical file is also sometimes opened and stored in the Building Division's file registry.

[36] Ms. Dosanjh deposes that all the records kept in those three sources--AMANDA, Land Development Records, and the physical files--comprise what she defines as the City Records and are made and kept in the ordinary course of the City's operations. She also deposes that it is in the usual and ordinary course of the City's operations to record in its files a statement of facts at the time they occur or a reasonable time after that.

[37] Notwithstanding the production of the City Records for the Property, including the Issued Permit and the Approved Plans, the respondents maintain that the City has nonetheless failed to overcome the hearsay issue that existed in Kallu. Specifically, they argue that in Kallu, the fact that the City's key witnesses reviewed and attached the building permit and one drawing which contained a "hand-written indication of the [part of the impugned construction] and a City of Surrey stamp whose author and origins are unknown" did not preclude the Court's finding that the evidence was inadmissible hearsay: Kallu BCSC at para. 30. They argue that the same circumstances exist in this case where Mr. McLeod also relies on the Issued Permit and Approved Plans that he did not author.

[38] That argument misconstrues the evidence and the issue raised in Kallu and the relevance and the significance of Ms. Dosanjh's evidence.

- [39] In Kallu, there was no direct evidence of what construction was authorized--that information was not set out in the building permit nor was the provenance of the drawing that appeared to contain that information known. As both Courts in Kallu note, that evidentiary deficiency could have been remedied by the direct testimony from the officials who authorized the construction or admissible business records documenting the authorization.
- [40] I accept, as the respondents argue, the circumstances of this case mirror the circumstances in Kallu in that there is no direct testimony of the official or officials who authorized the construction on the Property, by the issuance of the Issued Permit or the approval of the Approved Plans. However, unlike the circumstances in Kallu, in this case, the City has sought to introduce the documents authorizing the construction--that is, the Issued Permit and the Approved Plans--as business records.
- [41] Section 42 of the Evidence Act, R.S.B.C. 1996, c. 124 [Evidence Act] governs the admissibility of business records. It provides, in part:

Admissibility of business records

- (2) In proceedings in which direct oral evidence of a fact would be admissible, a statement of a fact in a document is admissible as evidence of the fact if
- (a) the document was made or kept in the usual and ordinary course of business, and
 - (b) it was in the usual and ordinary course of the business to record in that document a statement of the fact at the time it occurred or within a reasonable time after that.
- [42] On its face, Ms. Dosanjh's evidence that the City Records are kept and contemporaneously, or nearly contemporaneously, recorded in the City's operations brings the City Records, including the Issued Permit and the Approved Plans, within those statutory requirements. They are admissible as business records. Accordingly, the facts contained in those documents regarding the construction that is authorized for the Property is admissible: Evidence Act, ss. 42(2)-(3).
- [43] Given the introduction of the Issued Permit and the Approved Plans as business records (i.e., an exception to the hearsay rule), there is no need to rely on the "impressions and interpretations" of the affiants about the scope of the authorized construction. Resort can be made to the Issued Permit and in particular, the Approved Plans themselves: Kallu BCCA at para. 46. I am satisfied that the City has properly introduced the Issued Permit and the Approved Plans for that purpose.
- [44] Finally, before turning from hearsay, I note that Mr. McLeod and Mr. Bolton provide evidence that, other than the Issued Permit and Approved Plans, there are no other permits in the City records that would authorize construction on the Property. While both reviewed the City Records to come to that conclusion, they do not rely on the content of any records. Their evidence is based on the lack of records and, accordingly, does not engage any issue

with respect to hearsay: *The Corporation of the District of Saanich v. Kinney*, 2025 BCSC 1132 at paras. 68-71.

B. Content of the City Records for the Property

- [45] As a second evidentiary issue, the respondents question the content of the City Records for the Property. In particular, they say that: (a) it is not clear that the City Records for the Property contain the materials such as drawings, permits, and plans referred to by Ms. Dosanjh as the "Building File Contents" typically found in a building file; (b) the City Records for the Property appear to be incomplete in that they do not include a "physical file"; and (c) the City Records for the Property do not include internal correspondence.
- [46] Given those alleged deficiencies, the respondents argue that any conclusions based on the affiants' review of the City Records for the Property cannot stand.
- [47] I do not accept any of the issues raised regarding the content of the City Records. I will address each in turn.
- [48] First, having reviewed the City Records for the Property, Ms. Dosanjh attaches what she expressly describes as the "entire Building File Contents related to the Property". The connection is clear: the City Records for the Property are comprised of the Building File Contents. There is no basis to conclude that the City Records do not include any of the Building File Contents that exist for the Property.
- [49] Second, as the respondent notes, generally, City Records are comprised of records contained in AMANDA, the Land Development Records, and physical files. However, Ms. Dosanjh deposes that a physical file is "sometimes" opened; there is nothing to suggest that is always the case. In this case, Ms. Dosanjh deposes that she has attached the "entire" Building File Contents comprising the City Records for the Property. As she does not append a physical file, I infer and accept that no physical file for the Property exists.
- [50] Finally, as Ms. Dosanjh deposes, the appended City Records do not include internal correspondence between staff. However, the admissibility of a document as a "business record" under s. 42 of the Evidence Act does not require that all documents kept in the ordinary course of business be produced; only the documents for which admissibility is sought need be produced. The City does not rely on the internal correspondence as evidence in support of their position. The admissibility of the Issued Permit and the Approved Plans is not contradicted because of the failure to append the City's internal correspondence to her affidavit.
- [51] There is nothing about the content of the City Records appended to Ms. Dosanjh's affidavit that detracts from the admissibility of the Issued Permit and the Approved Plans proffered by the City in support of its position on this petition.

C. Inadmissible argument and opinion evidence

[52] As the final evidentiary issue, the respondents say that some of the evidence proffered by the City's affiants is inadmissible argument or opinion.

[53] I agree. The determination of whether the New Construction or the Dwelling Units are authorized or that the respondents did not comply with stop work orders or compliance orders is for the Court to make. To the extent that any statement in the City's affidavits purport to determine or make any conclusions regarding those issues, it is inadmissible. I have disregarded all such evidence.

[54] I now turn to the substantive issues to be determined.

IV. Discussion and Analysis

A. Are the respondents in breach of the Building Bylaws?

[55] In considering whether to grant the relief sought on an application for a permanent statutory injunction, the court must determine whether the respondents have breached the statutes or the regulations or orders made under the statute: *Vancouver Island Health Authority v. Giannikos*, 2021 BCSC 957 paras. 54-57. I will start with that analysis.

[56] Pursuant to ss. 8(3)(1) and 53(2) of the Community Charter, S.B.C. 2003, c. 26, the City may, by bylaw, regulate, prohibit, and impose requirements in relation to buildings and structures for the health, safety and protection of persons and property. Pursuant to s. 298 (1) (a) of the Local Government Act, R.S.B.C. 2015, c. 1, the City is authorized to regulate the constructions, alteration, repair or demolition of buildings and other structures.

[57] The City has adopted the City of Surrey, Bylaw No. 17850, Surrey Building Bylaw, 2012 (14 January 2013) [Building Bylaws] for that purpose.

[58] The City's application for injunctive relief is based on what it says are the respondents' breaches of the Building Bylaws, as follows:

- a) the contravention of ss. 8 and 21(a) of the Building Bylaws by the construction of the New Construction and the Dwelling Units without a valid and enduring permit for that work;
- b) the contravention of ss. 96 and 98 of the Building Bylaws by their failure to comply with the compliance and stop work orders in respect of the construction; and
- c) the contravention of s. 9 of the Building Bylaws by permitting the use of the Accessory Building and the Dwelling Units for residential occupancy with no occupancy permit.

1. Are the respondents in breach of ss. 8 and 21(a) of the Building Bylaws?

[59] Sections 8 and 21(a) of the Building Bylaws require that every owner shall apply for, and no construction shall be commenced or continued, without a "valid and enduring permit" for the work.

[60] "Construction" is broadly defined in s. 2 of the Building Bylaws to mean:

the process or activity by which any building or structure is erected, repaired, altered, renovated, added to, installed, demolished, removed or moved, or for which preparation is made by way of shoring or excavation.

[61] The City argues that the respondents breached ss. 8 and 21(a) by their construction of the New Construction and the Dwelling Units. To succeed on this allegation, the City must prove what was constructed on the Property and that the construction did not come within the scope of the construction that was approved.

[62] Regarding the first element--that is, what was constructed on the Property--the City relies on the observations of its employees and the photographs that they took while at the Property. There is no basis to conclude, nor do I understand the respondents to argue, that evidence is hearsay or otherwise inadmissible. It is satisfactory evidence of the construction that did occur on the Property. Collectively, the City employees observed and photographed the New Construction comprised of the Extended Deck, the Stairs, the Canopy, and the Accessory Building, as well as the Dwelling Units. I am satisfied that construction occurred on the Property.

[63] Regarding the second element--that is, whether the New Construction or the Dwelling Units came within the scope of the construction that was authorized for the Property--the City relies on the Issued Permit and the Approved Plans. I have determined both are admissible for that purpose.

[64] Mr. Bolton has reviewed the entire building file to confirm what construction on the Property has been authorized by a building permit. Mr. McLeod reviewed the records attached to the affidavit of Ms. Dosanjh. Neither identified any relevant building permits or applications for building permits for the Property that would expand the scope of the construction authorized by the Issued Permit and the Approved Plans.

[65] I find that the Issued Permit and in particular, the Approved Plans, set out the construction that has been authorized for the Property. The Approved Plans do not include any of the New Construction or the Dwelling Units.

[66] The respondents do not admit that they have caused or allowed any unpermitted construction on the Property. However, they do not provide any evidence, nor did they make any submissions, to suggest that the New Construction or the Dwelling Units were authorized, under the Issued Permit and Approved Plans, or otherwise. Their opposition to this allegation of breach is based primarily on the admissibility of the City's evidence and the evidentiary issues that I have already disposed of.

[67] I find that by the New Construction and the construction of the Dwelling Units the respondents have commenced and continued construction without obtaining and holding a valid building permit as required by ss. 8 and 21(a) of the Building Bylaws. They are in breach of those sections.

2. Are the respondents in breach of ss. 96 and 98 of the Building Bylaws?

[68] The Building Bylaws also provide:

- a) pursuant to s. 19, that the Building Official may order the correction of any construction that is being or has been carried out in contravention of this or any other bylaw;
- b) pursuant to s. 96, that any person who fails to comply with an order or notice issued by a Building Official or who allows a violation of the Building Bylaws to continue, contravenes the Building Bylaws; and
- c) pursuant to s. 98, that the owner of a lot on which a stop work notice has been posted, and every other person, shall cease all construction activities on the lot immediately and resume work only once compliance has been achieved and the Building Official has rescinded the stop work notice in writing.

Did the respondents fail to comply with the stop work orders?

[69] The evidence of the City employees indicate that stop work notices were posted on the Property on at least two occasions: December 20, 2021, and May 3, 2022. I accept that they were. However, the content of the December 20, 2021, stop work order is not discernible nor did Mr. McLeod, who posted the order, describe its content. Without that information, I cannot conclude that the respondents breached its terms.

[70] The content of the May 3, 2022, stop work order is discernible. It clearly provided that "[a]ll construction activities shall cease immediately." It is less clear, however, what construction took place after that date.

[71] None of the City's affiants depose that there were any changes to the Extended Deck, the Stairs, or the Canopy after May 3, 2022, nor is there any evidence of any construction to the exterior of the Accessory Building after that date. The only reference to possible construction after May 3, 2022, is to the interior of the Accessory Building and the construction of the Dwelling Units located within the main house.

[72] While Mr. Bolton gained access to and described the interior of the Accessory Building in August 2022, there is no evidence of when that interior construction occurred. The fact that the roof, siding, and doors had been added to the Accessory Building by May 3, 2022, lends plausibility to the possibility that the interior was completed by that date as well.

[73] The evidence with respect to the Dwelling Units is also uncertain. The first reference to those units is also contained in Mr. Bolton's affidavit. He deposes that on August 24, 2022, he and Officer Coleman "went to the rear of the main dwelling where there were two entry

doors labelled "1" and "2"". Those doors led to the Dwelling Units. However, neither Mr. Bolton, nor any of the other City affiants, give evidence as to whether those doors existed prior to May 3, 2022, when the stop work order was posted. Nor do any of the affiants provide any information as to when the Dwelling Units were constructed.

[74] Without that information, I cannot conclude that the respondents breached the terms of the stop work order by the construction of the Dwelling Units.

Did the respondents fail to comply with the compliance orders?

[75] In addition to the stop work orders, the City delivered two compliance orders to the respondents. The first, issued and delivered in February 2022, required the respondents to submit a building permit application for the New Construction or for the demolition of that work. That work was to be completed by March 31, 2022.

[76] The second compliance order, issued and delivered in July 2024, did not include the option to apply for a permit for the New Construction or the Dwelling Units. Rather, it required only that the respondents obtain a permit to demolish the Accessory Building, the Rear Deck, and the Dwelling Units. They were to do so by August 8, 2024.

[77] As of the date of hearing this petition, the City has not received any application for a building permit for either purpose.

[78] The respondents do not deny receiving the compliance orders. Nor does Ms. Randhawa (the one of the respondents to file an affidavit in this proceeding) deny speaking with the City employees. However, she deposes that given her limited understanding of English, she did not fully understand what was being asked of her nor was she able to respond accurately as she intended.

[79] I do not accept Ms. Randhawa's evidence as a sufficient basis on which to excuse the respondents from their obligation to comply with the compliance orders.

[80] In June 2022, Ms. Randhawa told Officer Bates that her son had submitted an application for a building permit. In her voicemail message for Officer Bates in August 2024, Ms. Randhawa confirmed that she would be applying for a building permit. Her direct references to a building permit leave no doubt that she was aware of the obligation to apply for the permit.

[81] Moreover, the obligations set out in the written compliance orders are clear and unequivocal. To the extent that Ms. Randhawa did not understand the content of the orders, at least one of her sons was available to read it to her. Her evidence that her son had submitted a building permit application together with her son Karn's advice to Officer Khakh that "they had reached out to an architect for plans" is further indication that Ms. Randhawa did consult with her sons and that they discussed the obligations set out in the compliance orders.

[82] I find that the respondents have failed to submit to the City an application for a building permit, either to allow for the New Construction, as initially ordered, or for the demolition of the unauthorized construction, as subsequently required. Specifically, they have failed to comply with compliance orders to do so. By those failures, the respondents are in breach of s. 96 of the Building Bylaws.

3. Are the respondents in breach of s. 9 of the Building Bylaws?

[83] Section 9 of the Building Bylaws provides that:

No person shall occupy or use any building unless a valid and enduring occupancy permit has been issued by the Building Official for the building, nor shall any person occupy or use any building contrary to the terms of any occupancy permit issued or any notice given by the Building Official.

[84] With no evidence before me with respect to an occupancy permit that may or may not have been issued, I cannot conclude that the respondents are in breach of this provision.

B. Is injunctive relief available to the City?

[85] Section 274 of the Community Charter provides:

Actions by municipality

(1) A municipality may, by a proceeding brought in the Supreme Court, enforce, or prevent or restrain the contravention of,

(a) a bylaw or resolution of the council under this Act or any other Act

[86] As proceedings under s. 274(1) are statutory injunctions, the court should only refuse to enforce the legislative requirements in exceptional circumstances: *Surrey (City) v. Sidhu*, 2023 BCSC 1837 [Sidhu] at para. 29, citing *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 [North Pender Island] at para. 38.

[87] Unlike the test for the granting of a common law injunction, the test for granting statutory injunctions does not require that an applicant prove irreparable harm nor does the court have to assess the balance of convenience as between the parties. Rather, an application for a statutory injunction engages the public interest in seeing that a public statute is given effect: *Abbotsford (City) v. Weeds Glass & Gifts Ltd.*, 2016 BCSC 135 at paras. 20-22, citing *North Pender Island* at paras. 37-38.

[88] While the Court has discretion to refuse the injunction, the discretion is narrow and should only be granted in exceptional circumstances: *Sidhu* at para. 30, citing *Burnaby (City) v. Pocrnic*, 1999 BCCA 652 at para. 15.

- [89] The respondents suggest that discretion should be exercised in this case because: (a) there is a realistic prospect of obtaining retroactive approval for the New Construction and the Dwelling Units; (b) there may be a change in zoning that would permit the New Construction and the Dwelling Units; and (c) the respondents will incur hardship if the injunction is granted.
- [90] In my view, none constitute exceptional circumstances to depart from the strong presumption in favour of enforcing the Building Bylaws.
- [91] The possibility of retroactive approval was considered, and rejected, in *Surrey (City) v. Singh*, 2022 BCSC 1455:
- [45] Mr. Singh's belated application for a building permit is limited to interior renovations. It would not resolve the issues arising from the improper placement of fill. It would not address the City's concerns about the building foundations and structural integrity. Based on Mr. MacLeod's evidence, I do not think there is any realistic prospect that the City would retroactively approve a building permit that addressed all the building issues, even if Mr. Singh applied for one.
- [92] Similar evidence is present in this case. Mr. Welsh notes that, given the stage of construction, many elements of the New Construction are obscured, preventing inspections that are required to confirm safety and compliance with the Building Bylaws and the British Columbia Building Code. Based on his evidence, I am satisfied there is no reasonable prospect of retroactive approval for the New Construction.
- [93] Second, with nothing more than the respondents' bald assertion that there is a possibility that the Property's zoning may be changed to permit the unauthorized construction, their claim is nothing more than speculation. It is a wholly insufficient basis on which to exercise the Court's discretion to refuse the injunction.
- [94] Finally, Ms. Randhawa alleges hardship in that the requirement to demolish the New Construction and the Dwelling Units may render the Property unoccupiable, leaving her without a place to reside. However, she provides no evidence of what work will be required or why she will be unable to stay in the main home on the Property during the demolition. Without any such evidence, the fact that the New Construction is located outside of the main home makes it difficult to accept that its demolition will have any effect on her ability to live there. The fact that she appears to have lived in the home while the Dwelling Units were built detracts from the possibility that she will have to relocate to allow for their demolition.
- [95] In any event, to the extent that the demolition may cause hardship or inconvenience, that will not outweigh that public interest in having the law obeyed: *Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 54 B.C.L.R. (3d) 155 at para. 9, 1998 CanLII 6446 (B.C.C.A.).

[96] No exceptional circumstances exist to justify the exercise of the Court's discretion to refuse the injunction sought. Having found that the respondents have breached the Building Bylaws in the manner set out above, the injunction sought by the City is granted.

V. Disposition

[97] To summarize, I grant the following relief:

- a) a declaration that the respondents have contravened the Building Bylaws by failing to comply with an order by the City Building Official to remove the Accessory Building, the Extended Deck, the Stairs, the Canopy, and the Dwelling Units that have been constructed without permits on the Property;
- b) an injunction restraining the respondents or their agents, servants and employees, or any other person having notice of this order, from doing any of the following on or at the Property:
 - i. erecting, repairing, altering, renovating, adding to, installing, demolishing, removing or moving any building or structure, or preparing by way of shoring or excavation; and
 - ii. violating the compliance orders issued by the City

except as may specifically be permitted by valid and subsisting permits issued by the City pursuant to its bylaws;

- c) an injunction requiring the respondents to do all things reasonably necessary to apply for a permit under the Building Bylaws, including submitting all required documents, information, and fees to the City within 15 days of the date of this order, for the demolition and removal of the Accessory Building, the Extended Deck, the Stairs, the Canopy, and the Dwelling Units and to restore the Property to a condition that complies with the Building Bylaws, the British Columbia Building Code, and any other applicable codes and enactments;
- d) an injunction requiring the respondents to carry out the demolition and removal of the Accessory Building, the Extended Deck, the Stairs, the Canopy, and the Dwelling Units within 60 days of receiving a permit for such work; and
- e) an injunction requiring the respondents to carry out the restoration of the Property within 60 days of receiving a permit for such work.

VI. Costs

[98] The City has been substantially successful in this proceeding. It is entitled to its costs from the respondents at Scale B.

"Ahmad J."

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