

CANADA / JUDGMENT

Surrey (City) v. Sidhu

2023 BCSC 1837

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Supreme Court of British Columbia

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2023 BCSC 1837 Surrey (City) v. Sidhu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Surrey (City) v. Sidhu,

2023 BCSC 1837

Date: 20231024

Docket: S248460

Registry: New Westminster

Between:

City of Surrey

Petitioner

And

Jagmohan Singh Sidhu and Gagandeep Kaur Sidhu

Respondents

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Counsel for the Petitioner:

A. Wu

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M. Bajwa, Articled Student

Place and Date of Hearing:

New Westminster, B.C.

October 4, 2023

Place and Date of Judgment:

New Westminster, B.C.

October 24, 2023

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I. Overview

- [1] The City of Surrey (the "City") brings this petition seeking the demolition and removal of an extension to the main house and a laneway house (the "Structures") located at 8373 148th Street, Surrey, British Columbia (the "Property"), because the Structures were constructed in violation of the City's bylaws. Specifically, the City contends the Structures' square footage greatly exceeds that allowed by the bylaws, its location on the Property offends the setback requirements from neighbouring property lines and the Structures were constructed without any building permits or requisite inspections.
- [2] The respondents, Jagmohan Singh Sidhu and Gagandeep Kaur Sidhu, are a married couple and the owners of the Property. They admit that the Structures offend the City's bylaws both in the manner in which they were constructed and their size and location on the Property. However, the respondents argue that given the housing crisis in the Lower Mainland of British Columbia, ordering the demolition and removal of the Structures is wasteful and too drastic a remedy. They ask that they be given an opportunity to retroactively legalize the infractions so that the Structures can continue to be rented to tenants.
- [3] For the reasons that follow, I conclude that the Structures must be removed. The respondents built the Structures in flagrant violation of the City's bylaws in where the Structures are located; by grossly exceeding the square footage allowed on the Property; and by not obtaining any permits or inspections during construction.

- [4] In answer to the respondents' proposal that the court should allow them an opportunity to retroactively legalize the Structures, I accept the colloquial characterization provided by counsel for the City regarding the fundamental flaw in the respondents' argument: not only can the genie not be put back in the bottle because permits and inspections were not obtained at each step of the construction process, but in this case, the genie never fit in the bottle in the first place because both the size and the position of the Structures are unlawful.
- [5] In these reasons, I will first set out a brief review of the regulatory framework for construction projects in Surrey. I will then provide brief background facts relating to the construction of the Structures and the City's investigation. I will then turn to my analysis in support of my conclusion.

II. Regulatory Framework of Building in the City of Surrey

- [6] Pursuant to its authority under the Community Charter, S.B.C. 2003, c. 26 [Community Charter], the City adopted the City of Surrey, Bylaw No. 17850, Surrey Building Bylaw, 2012 [Building Bylaw] to regulate the construction, alteration, repair, or demolition of buildings and structures for the health, safety and protection of persons and property, and to provide for the administration of the British Columbia Building Code, B.C. Reg. 264/2012 [Building Code]. In addition, the applicable zoning bylaw, City of Surrey, By-law No. 12000, Zoning By-law (13 September 1993) [Zoning Bylaw] regulates the location, use and height of buildings, size of yards and other open spaces, and the use of land. In essence, the regulatory framework of building and zoning in the City, as with all municipalities in British Columbia, is to establish a set of standards for building design and construction for safety, health, accessibility, fire and structural protection.
- [7] Section 8 of the Building Bylaw prohibits construction that is not authorized by a building permit:

No person shall commence or continue any construction unless the Building Official has issued a valid and enduring permit for the work.

- [8] Section 21(a) of the Building Bylaw provides that, among other things:

Every owner shall apply for and obtain:

- (a) a permit before carrying out any construction

- [9] Construction is defined broadly in s. 2 of the Building Bylaw as:

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.

- [10] Section 65 of the Building Bylaw requires that, regardless of whether or not a registered professional has provided assurance for the development, the Building Official's acceptance of certain specified stages of construction is required before commencing a subsequent

stage of construction. Section 66 requires the Building Official's written acceptance of each aspect of the work listed in s. 65 before that aspect of construction is concealed. The purpose and importance of ss. 65 and 66 is that inspections are to occur at incremental stages of a construction project so that various elements of a project can be inspected for safety and compliance before they are, for example, covered in concrete or sealed in walls, floors or ceilings.

[11] Section 51 of the Building Bylaw sets out the conditions for issuance of a building permit:

The Building Official shall issue a permit when:

- (a) a completed permit application, including all required supporting documentation has been processed and accepted;
- (b) the information submitted as part of the permit application adequately demonstrates that the proposed work will substantially conform with the Building Code, this Bylaw and other applicable enactments;
- (c) all applicable fees have been paid; and
- (d) no other applicable bylaws or enactments require that the City withhold the permit.

[12] Section 9 of the Building Bylaw establishes the requirement that a building cannot be occupied until an occupancy permit is issued:

- 9. 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.

[13] It is with these various building requirements in mind that I now turn to the facts of this case and actions of the respondents in building the Structures on the Property.

III. Background Facts

[14] As set out above, the respondents own the Property. Mr. Sidhu's occupation on the title documents to the Property indicates he is a realtor. The respondents constructed a family dwelling on the Property sometime before November 2021 for which they obtained permits. I mention these two facts because, in my view, they support a conclusion that, given Mr. Sidhu is a realtor and had obtained permits for the construction of the main dwelling on the Property, he was aware or should have been aware that building permits and bylaws applied to the construction of the Structures.

[15] On November 15, 2021, the City first confirmed the presence of unpermitted construction at the Property when a City Building Official, Lee MacLeod, attended at the Property. Mr. MacLeod observed two works that were under construction:

- a) a two-story addition that created a second story deck extending from the main house on the Property (the "Extension"); and
- b) a two-story accessory building constructed in the rear side yard of the Property (the "Accessory Building").

(previously collectively defined as the "Structures")

- [16] Mr. MacLeod then reviewed the City's records and confirmed that neither the Extension nor the Accessory Building had been authorized by a building permit issued under the Building Bylaw. Accordingly, he posted a stop work notice at the front of the Property.
- [17] Mr. MacLeod returned to the Property on March 31, 2022. On that date, he observed that the Extension and Accessory Building remained on the Property and that construction of the Extension had advanced significantly since his previous inspection on November 15, 2021.
- [18] On May 4, 2022, Mr. MacLeod issued letters via both regular mail and registered mail to the respondents at the addresses noted for them on title to the Property. The letters advised the respondents that the Extension and Accessory Building had been constructed without permits in violation of the Building Bylaw and required the respondents to comply with the Building Bylaw by either obtaining a retroactive building permit or applying for a permit to demolish the unauthorized works. Both letters issued by Mr. MacLeod via registered mail were ultimately unclaimed and returned to the City.
- [19] On May 8, 2022, City Bylaw Enforcement Officer Andrew Nolan attended at the address listed on title to the Property for the respondent, Mr. Sidhu, and posted a copy of Mr. MacLeod's May 4, 2022 letter to the front door.
- [20] On May 8, 2022, Officer Nolan again attended at the Property. During his attendance, Officer Nolan observed that the stop work notice posted to the Property had been partially obscured and placed on the inside of the fence. Officer Nolan also observed that the workers at the Property appeared engaged in assembling and moving furniture.
- [21] On May 16, 2022, City Building Official Douglas Gardiner and Officer Nolan attended at the Property. During their attendance, they observed both the Accessory Building and the Extension. They also observed the stop work notice that had been obscured and placed on the inside of the fence. As the previously posted stop work notice had been obscured, Mr. Gardiner posted another stop work notice on the left side of the garage door where it would be clearly visible.
- [22] On October 7, 2022, Officer Nolan and City Building Official Devon Bolton attended at the Property to meet with the respondent, Mr. Sidhu. Mr. Sidhu provided access to the Property. During the inspection, Officer Nolan and Mr. Bolton entered the Accessory Building, which had been completed. Within the Accessory Building, they observed that the upper level contained a two-bedroom suite that was being occupied as a dwelling. The suite contained a kitchen, bathroom, and two bedrooms. Officer Nolan observed there were three individuals

in the suite and it was clear that the suite was occupied as the beds were made and the suite contained personal, kitchen, and bathroom items. Officer Nolan and Mr. Bolton also observed that the first level of the Accessory Building did not appear to be occupied. Mr. Sidhu advised Officer Nolan and Mr. Bolton that his intention was to use the lower level as a gym.

- [23] In support of the City's petition before me, Mr. Bolton provided an affidavit setting out the various bylaws the Structures offended:
- a) As of February 23, 2023, the City's Building Division had not received any permit applications in connection with the Structures;
 - b) The Structures exceed the Zoning Bylaw's permitted lot coverage of approximately 32% of the lot, which after the construction of the house on the Property allowed only an additional six square feet of lot coverage. The Structures exceed six square feet;
 - c) The Structures exceed the floor area ratio permitted by the Zoning Bylaw. Specifically, based on the family dwelling constructed on the Property there was an additional 24.5 square feet for additional construction for floor area. The Structures exceed 24.5 square feet;
 - d) The Extension violates the required setback of 7.5 metres imposed by the Zoning Bylaw, as the Extension is within approximately half a metre of the Property boundary on the west side; and
 - e) The Extension is constructed on top of the septic field. The septic field is not intended to support a structure like the Extension, which raises serious concerns regarding the stability of the Extension.
- [24] The respondents provided an affidavit of Mr. Sidhu in which he deposes that the Structures were built to City building code standards despite not having inspections. He also deposes that the Structures contain two rental units: a one-bedroom suite that is attached to the main unit of the Property and a suite on the second story of the Accessory Building.

IV. Analysis

- [25] The City argues that the Structures must be demolished and removed because they violate a number of bylaws and were constructed without any of the requisite permits or inspections. As referenced above, the City asserts that the bylaw violations cannot be remedied retroactively because inspections did not occur incrementally during the building process and so cannot be completed now. Further, the City says the Structures exceed the size allowed by the City and also contravene setback requirements from property boundaries. Thus, no remedy is available other than demolition.
- [26] The respondents raise two arguments in response to the City's application to demolish the Structures. First, they argue that given the housing shortage in the Lower Mainland, it is wasteful to destroy what they contend are perfectly good rental units. They cite the

government of British Columbia's Homes for People: An action plan to meet the challenges of today and deliver more homes for people, faster (3 April 2023) online: <news.gov.bc.ca/files/Homes_For_People.pdf> ("Homes for People Plan") as support of the government's appetite for building more houses and rental units. Second, they say they are willing to work with the City to retroactively bring the Structures into compliance with the City's bylaws.

[27] The respondents articulate their argument in the following passages of Mr. Sidhu's affidavit filed in this petition:

5. The lower mainland is already experiencing a housing crisis, with the provincial government releasing its plan called "Homes for People" focusing on four priorities - unlocking more homes faster; delivering better, more affordable homes; helping those with the greatest housing need; and creating a housing market for people.
9. I do not wish the total demolition of the work constructed and to changes made to the existing structures on the property. I wish to consult with architects, engineers, and tradespeople to obtain expert assessment and opinion on how to best approach the remedial work in a way that would not require undoing all the work and changes made to the property. At the same time satisfy [sic] the City's bylaws, rules, and regulations.

[28] The City's authority to seek an injunction to demolish and remove the Structures is found in s. 274(1) of the Community Charter. Section 274(1) allows the City to apply to court to enforce its bylaws and prevent or restrain the contravention of those bylaws:

274 (1) A municipality may, by a proceeding brought in 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, or
- (b) a provision of this Act or the Local Government Act or a regulation under those Acts.

[29] Proceedings under s. 274(1) of the Community Charter are statutory injunctions and the court should only refuse to enforce the legislative requirements in exceptional circumstances: *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 38. As described by Justice Rowles in *Vancouver (City) v. Maurice*, 2005 BCCA 37:

[34] where a public authority, such as the City, turns to the courts to enforce an enactment, it seeks a statutory rather than an equitable remedy, and once a clear breach of an enactment is shown, the courts will refuse an injunction to restrain the continued breach only in exceptional circumstances.

[30] In circumstances where a bylaw is breached and the court is to determine whether a statutory injunction should be ordered, the public interest is generally paramount: *Sooke (District) v. Driver*, 2023 BCSC 63 at para. 43. I acknowledge that the court has discretion to refuse the injunction. However, that discretion is narrow and should only be granted in exceptional circumstances because it involves weighing the public interest against the hardship the order will impose upon the respondents: *Burnaby (City) v. Pocrnic*, 1999 BCCA

652 at para. 15.

- [31] In *Surrey (City) v. Singh*, 2022 BCSC 1455, Justice Gomery granted the City's request for an order requiring demolition of construction on a residential property that violated the Building Bylaw. Justice Gomery addressed a similar argument raised by the respondents in the case at bar: that they should be granted an opportunity to retroactively legalize the infractions. Justice Gomery allowed the City's injunction, finding there was no realistic prospect of the City issuing a retroactive building permit:
- [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.
- [32] Justice Gomery also concluded that the public interest favored enforcement of the City's bylaws because the owner of the property's breaches occurred over several months and were deliberate: *Surrey (City)* at para. 39.
- [33] In the case at bar, the respondents accept that they are in breach of the Building Bylaw in constructing the Accessory Building and Extension without building permits and inspections. The evidence before me supports a conclusion that the respondents continued construction of the Structures in defiance of the stop work order that was placed in a prominent location at the Property on November 15, 2021. Further, Mr. Singh's affidavit provides no evidence of the hardship the respondents will face if required to remove the Structures other than it will require the tenants to move out. Although I accept that the demolition and removal of the Structures will be an expense for the respondents.
- [34] In respect of the tenants, the respondents acknowledge that they have rented out portions of the Structures and are collecting rent without first obtaining occupancy permits for those rental units. The respondents' actions are flagrant and deliberate. As articulated by counsel for the petitioners, the respondents gambled that they could expand the buildings on the Property and create rental units without obtaining permits and not be caught by the City. They lost that bet. In my view, this is similar to the circumstances in *Pocrnic* where Esson J.A. concluded: "Reduced to its essentials, it is a case of owners deliberately flouting the bylaw for their own benefit and in the hope of not being detected": at para. 19.
- [35] As referenced above, the Structures violate several bylaws. The respondents did not obtain permits or inspections before or during construction. The permitting and inspection process is designed to ensure that sufficient standards are satisfied both before a project is commenced and incrementally as a building is constructed. Other than the respondents' submission that they would be willing to retroactively seek compliance, I was presented with no evidence to show that retroactive compliance was possible. To the contrary, the City presented cogent evidence showing that permits to construct the Structures would not have

been granted in the first instance because, as set out above, the Structures: (a) exceed the square footage of the building area and footprint; (b) violate setback requirements from the Property line; and (c) are built on a septic field. As set out at the start of this decision, in the circumstances of this case, it is not only the manner in which the Structures were constructed, but the very nature of the Structures themselves that offends the bylaws. I find there is no realistic prospect the Structures could be retroactively brought into compliance with the bylaws.

- [36] Even if there were potential remedies to bring the Structures into compliance--which I conclude there are not--the court must not condone unlawful activity. This is especially so when, in the circumstances of this case, as of at least October 2022 (and on balance I accept by November 15, 2021 when the stop work notice was posted at the Property), the respondents were aware that the Structures were not in compliance with the City's bylaws. Instead of stopping work or seeking a proactive remedy for the situation, the respondents continued building in violation of the stop work notice and bylaws.
- [37] The respondents argue the court should give them an opportunity to retroactively remedy the Structures because an order to demolish the Structures will exacerbate British Columbia's housing crisis. I reject this argument. I will not accept that the Government of British Columbia, as part of its Homes for People Plan, wishes to encourage the unlawful construction of dwellings in the province as part of the solution. The respondents' argument is self serving and unsupported. Accepting the respondents' argument is not in the public interest. I conclude that the respondents flouted the City's bylaws in a deliberate attempt to increase the size--and likely value--of their Property by building the Structures that they then rented out to produce income.
- [38] Further, in addition to blatantly skirting the bylaws to increase their house's size and to collect rent, no occupancy permits were obtained for the rental units in the Structures. As set out in submissions of counsel for the City, Mr. Wu, one of the purposes of permits, inspections and occupancy permits is to ensure that construction projects are built to requisite safety standards. I accept that the public interest favours the demolition of the Structures as opposed to condoning unlawful and potentially unsafe building and rental practices.
- [39] Given the foregoing and weighing the public interest against the hardship that will be faced by the respondents in removing the Structures, I have no hesitation in granting the orders sought by the City. Accordingly, I order:
1. A declaration that the respondents have contravened the Building Bylaw by:
 - i. commencing and continuing construction of the unauthorized Accessory Building and Extension;
 - ii. continuing construction on the Property after a stop work notice had been posted; and

iii. occupying and using the Accessory Building and the Extension for residential purposes without a valid and enduring occupancy permit issued by the Building Official, and contrary to the terms of any occupancy permit issued or any notice given by the Building Official;

2. The respondents and their agents, servants, and employees, or any other person having notice of the order, are restrained 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;

ii. Violating or removing any stop work notice posted on the Property by the City; and

iii. Occupying or permitting any person to occupy the Accessory Building and Extension;

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

3. The respondents shall apply for a permit under the Building Bylaw to demolish and remove the Accessory Building and Extension from the Property, including submitting all required documents, information, and fees within 15 days of the date of the order; and

4. The respondents shall carry out the demolition and removal of the Accessory Building and Extension within 60 days of receiving a permit for such work.

V. Costs

[40] The petitioner has been entirely successful in this application. As such, it is entitled to its costs of this application assessed at Scale B.

VI. Conclusion

[41] I thank counsel for their well-prepared and argued submissions.

"Gibb-Carsley J."

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