

CANADA / JUDGMENT

Surrey (City) v. Singh

2022 BCSC 2059

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Supreme Court of British Columbia

DECIDED

29 November 2022

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2022 BCSC 2059 Surrey (City) v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Surrey (City) v. Singh,

2022 BCSC 2059

Date: 20221129

Docket: S243317

Registry: New Westminster

Between:

City of Surrey

Petitioner

And

Sukhdev Singh and Kashmir Singh Sahota

Respondents

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Counsel for the Petitioner:

E. Anderson

The Respondents, appearing in person:

S. Singh and K. Sahota

Place and Date of Hearing:

New Westminster, B.C.

November 17, 2022

Place and Date of Judgment:

New Westminster, B.C.

November 29, 2022

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I. INTRODUCTION

- [1] In 2021, the respondents purchased a residential property at 6072 133A Street, Surrey, British Columbia (the "Property"). In late December 2021, they performed extensive renovations to the Property, at least in part to create three separate rental units. Upon completing the renovations, the respondents rented out the rental units to third parties.
- [2] The City of Surrey brought a petition alleging that the respondents failed to obtain the requisite building and occupancy permits or related inspections from the City of Surrey to renovate and occupy the Property. The City of Surrey alleges that the respondents ignored the City of Surrey's repeated efforts to have the respondents comply with the municipal bylaws. The steps taken by the City of Surrey prior to filing the petition included posting "stop work" notices at the Property, warning the respondents several times to halt the renovations and to not occupy or use the Property, and issuing bylaw infraction tickets to the respondents.

- [3] While that petition has not yet been heard, on April 14, 2022, the City of Surrey obtained an interlocutory injunction from the Honourable Mr. Justice Ball of this Court that restrained the respondents from occupying or using the rental units in the Property (the "April Order").
- [4] On September 22, 2022, I found the respondents in contempt of the April Order and set a future date for the penalty phase of the contempt proceeding. These are my reasons in respect of the contempt penalty. I have concluded that, in the circumstances of this case, the appropriate penalty is a fine of \$6,000 for the breach of the April Order. Further, if the Property remains occupied on January 1, 2023, the respondents shall pay an additional fine of \$13,000, unless otherwise agreed to in writing by the City of Surrey or by further order of this Court. I also award the City of Surrey special costs for the contempt proceedings in respect of the April Order.

II. FACTS

A. Background Facts

- [5] The respondents are the registered owners in fee simple, each as to an undivided 2/4 interest, of the Property, legally described as PID 006-389-902, Lot 12, Section 8, Township 2, New Westminster District, Plan 73651, with a civic address of 6072 133A Street, Surrey, British Columbia. For the purposes of issuing building and occupancy permits, the Property is within the jurisdiction of the City of Surrey.
- [6] The City of Surrey first became aware of what they alleged was unlawful construction taking place on the Property in December 2021. At that time, the respondents had excavated an area of the Property to the rear of the existing single-family dwelling and were pouring concrete into foundation forms. Between December 2021 and March 2022, the respondents allegedly proceeded to fully construct and finish a two-suite addition to the previously existing residence on the Property (the "Addition") and an additional secondary suite within the residence (the "Secondary Suite"). The City of Surrey alleges the respondents did so without permits or required inspections and contrary to the "stop work" orders, tickets, warnings from the City of Surrey, and the applicable bylaws.

B. The Interlocutory Injunction and Contempt Proceedings

- [7] On April 14, 2022, the City of Surrey applied for an interlocutory injunction before Ball J. to restrain the respondents from carrying out further construction or from occupying or using the Addition or Secondary Suite. On the same day, Ball J. issued the interlocutory injunction. The respondents were represented by counsel at that application, but the counsel withdrew after the order was issued. As such, the respondents have been representing themselves during the contempt proceedings before me.
- [8] Despite the April Order, the respondents continued to use the Addition and the Secondary Suite as three separate rental units, which have been occupied by third parties in exchange for payment to the respondents. The respondents have also been using the upper floor of

the house as a fourth rental unit for tenants. In doing so, the respondents have, in effect, converted a single-family structure into an unauthorized and unpermitted 4-plex. This conduct is contrary to: the Surrey Zoning Bylaw, 1993, No. 12000; the Surrey Building Bylaw, 2012, No. 17850 [Building Bylaw]; and the British Columbia Building Code.

- [9] On August 2, 2022, the petitioner sought an order before me for contempt of the April Order. I heard the contempt application on August 2 with reasons initially to follow on August 8. However, on August 8, I adjourned the matter for two reasons.
- [10] First, upon reviewing the materials, I was concerned that one of the affidavits put before me by the City of Surrey, included inadmissible hearsay evidence. Specifically, I was concerned that an affidavit sworn by a Surrey Bylaw Officer based on another Bylaw Officer's notes constituted hearsay. I noted that contempt proceedings are quasi criminal matters, and thus the doctrine of strictissimi juris must be applied: *Friedlander v. Claman*, 2016 BCCA 434 at para. 26. The hearsay issue was not addressed during the August 2 hearing, so I adjourned the matter to allow the City of Surrey to make submissions as to why I should admit what I considered to be hearsay evidence or to provide additional evidence to support the contempt application.
- [11] Second, I adjourned the initial contempt proceeding to provide an opportunity to the respondents to provide the court with evidence or materials to respond to the City of Surrey's allegations. I also informed the respondents that, should I ultimately find them to be in contempt, one of my considerations when fixing a penalty would be the efforts that the respondents made to purge their contempt in the time between the April Order and the penalty phase of the contempt hearing.
- [12] On August 18, 2022, the City of Surrey provided additional written submissions and affidavit evidence to support its position that the respondents were in contempt of the April Order. The additional materials included first hand affidavit evidence of a Bylaw Officer who attended at the Property, inspected the Secondary Suite and the Addition, and met with the occupants residing in those units. I also note that the Bylaw Officer observed and photographed the April Order affixed to the residence at the Property.
- [13] The respondents did not provide any affidavit evidence to the Court. However, in submissions, the respondents indicated that they understood from their lawyer that they could remedy the failure to obtain building and occupancy permits before renovating and occupying the Property by applying to the City of Surrey after the fact. The respondents also indicated that they were making efforts to have the occupants of the Addition and Secondary Suites move out of the Property.
- [14] On September 12, 2022, in oral reasons for judgment, I found that the respondents were in contempt of the April Order. My reasons included the following:

- [40] I am satisfied beyond a reasonable doubt that the respondents intentionally violated Justice Ball's Order. The respondents own the Property as evidenced by the title documents. Further, the respondents demonstrate their control of the activities on the Property based on the evidence that they toured Officer Khakh through the Property during his August 11, 2022 visit. In my view, the link between the ownership of the Property by the respondents and it being used by individuals is sufficient for me to conclude that the respondents are in breach of the order by having the Secondary Suite and Addition used and occupied. In the circumstances of this case, it would be absurd to conclude that the individuals are using or occupying the Property without the knowledge and permission of the respondents.
- [15] I adjourned the penalty phase of the contempt proceedings and again informed the respondents that at the penalty phase of the proceeding I would consider what steps the respondents had taken to purge their contempt.
- [16] I will now address the law regarding courts' treatment of penalties for civil contempt, with a focus upon contempt of municipal bylaws.

III. LAW

A. Penalty Phase of Contempt Proceedings

- [17] Rule 22-8(1) of the Supreme Court Civil Rules sets out the sanctions available to a court to punish a contemnor:

The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

- [18] The purpose of a penalty for civil contempt is to enforce compliance with court orders and to ensure societal respect for the courts: *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065, 1992 CanLII 29. In *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 903, 1992 CanLII 99, McLachlin J. (as she then was) expressed this broader purpose of maintaining respect for the court process as follows:

The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

- [19] In *Langford (City) v. dos Reis*, 2016 BCCA 460 at para. 16 [Langford], Mr. Justice Donald (in Chambers) reiterated the ten factors relevant to sentencing for civil contempt set out by Chief Justice Green of the Newfoundland Trial Division in *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees*, [2001] N.J. No. 17, 2001 CarswellNfld 11 (T.D.). I find the following six factors relevant to the case at bar:

- a) The inherent jurisdiction of the court, as a superior court, allows for the imposition of a wide range of penalties for civil and criminal contempt;
 - b) Deterrence, both general and specific, but especially general deterrence, as well as denunciation, are the most important factors to be considered in the imposition of penalties for civil, as well as criminal, contempt;
 - c) The impact that the contemptuous act has had on the general public, particularly in relation to health and safety matters, is a relevant consideration in determining the level of penalty;
 - d) It is the defiance of the court order, and not the illegality of any actions which led to the granting of the court order in the first place, which must be the focus of the contempt penalty;
 - e) Where a fine is to be imposed, the level of the fine may appropriately be graduated to reflect the degree of seriousness of the failure to comply with the court order; and
 - f) In setting the overall level of penalty, the court may take account of the level of penalty imposed in similar cases in the past and may adjust the penalty upwards or downwards, depending on the court's assessment as to whether previous levels of penalty have had an effective general deterrent effect.
- [20] In *College of Physicians and Surgeons of British Columbia v. Ezzati*, 2021 BCCA 422, the Court observed that the focus in civil contempt proceedings is on the wilful disregard of the court's authority. Accordingly, the court is required to assess the seriousness of the contemnor's failure to respect the court's process, not the severity of the harm the contemnor's acts or omissions may have caused: at para. 61. However, where the conduct imperils the safety of the public, the sanction may well have to reflect the risk of harm that may be occasioned should the contemnor maintain a posture of defiance. In this respect, the protection of the public is a well-established goal in sentencing for civil contempt: at para. 62.

B. Jurisprudence Regarding Quantum of Penalty

- [21] As set out in *Langford*, in establishing the appropriate penalty, one of the factors the court is to consider is the level of penalty imposed in similar cases: at para. 16. To that end, the City of Surrey has provided me with a number of cases that it says set out an appropriate penalty for the respondents' contempt.
- [22] In *Langford*, the respondent was found in contempt for failing to remove an unlawful structure as directed by court order. Donald J.A. imposed a fine of \$5,000, with the amount increasing by \$2,500 for a total of \$7,500 if the respondent failed to clear the site or pay the fine by the following month: *Langford* at paras. 21-22.

- [23] In another case involving a failure to comply with an injunction prohibiting the use of land contrary to a zoning bylaw, the corporate and individual respondents were each fined \$5,000: *North Cowichan (District) v. Jopp Ventures Corp.*, 2000 BCCA 327 at para. 2.
- [24] In *Langley (Township) v. Dhillon*, 2020 BCSC 152 [Langley], Mr. Justice Marchand imposed a \$5,000 fine on a landowner who purchased a property with an existing land use violation and failed to remedy the breach: at para. 30. This amount took into account some progress by the contemnor towards compliance: *Langley* at para. 31.
- [25] Finally, in *District of Lantzville v. Pottie*, 2019 BCSC 1637, the respondent similarly failed to comply with an injunction to cease using land contrary to a zoning bylaw and to remove an unlawfully built structure. The court reiterated that the respondent must pay a \$5,000 fine previously imposed on him for the contempt, and imposed an additional \$10,000 if the contemnor did not purge the contempt within 15 days: at paras. 29-32.

IV. PARTIES' POSITION

- [26] The City of Surrey argues that the circumstances of this case call for a penalty of \$5,000 for each of the respondents for a total of \$10,000, as well as a contingent penalty of \$10,000 if the occupants of the Addition and Secondary Suite do not vacate the Property by December 1, 2022. The City of Surrey argues that the following circumstances in this case justify the penalty it seeks:
- a) There is a risk to public safety in having individuals occupying buildings for which no occupancy permits were obtained;
 - b) The respondents did not take any meaningful steps to purge their contempt from April 14, 2022. In fact, in the most recent affidavit provided by the City of Surrey on November 1, 2022, the Bylaw Enforcement Officer observed individuals living in the rental units. The only steps taken by the respondents appear to be the signing of three "Mutual Agreement to End a Tenancy" agreements between the occupants and the respondents that indicate that the occupants will leave the Property by December 31, 2022. These agreements were signed on November 16, 2022--i.e., the day before this application;
 - c) The respondents were driven by profit and were collecting rent from the three illegal suites for many months despite knowing that the Property must not be occupied or used; and
 - d) The penalty sought is in line with cases involving similar violations of municipal bylaws.
- [27] The respondents have not filed an affidavit in any of the applications before me. As just referenced, at the hearing on November 17, 2022, the respondents provided me with three "Mutual Agreement to End a Tenancy" agreements purportedly signed by the tenants of the Addition and the Secondary Suite.

- [28] The respondents were also frank in their submissions to the court; they acknowledged they were in breach of the bylaws and the Court order. The respondents stated that they "never thought it would get this far". They said that so many other people in Surrey are doing the same thing--that is, building and renting suites without permission--that they did not think this would happen. They advised that they have spent thousands of dollars on fees for lawyers and engineers and have made sincere efforts to obtain the required building permits from the City of Surrey, albeit after they had already renovated the Property and rented it to the occupants of the Addition and the Secondary Suite.
- [29] The respondents point to the fact that they have been trying for months to get the occupants to leave the Property, but were only recently able to have the occupants enter into the agreements to move out by December 31, 2022. They say the occupants are resistant to moving because the respondents charge a low rent and that it is very difficult to find similar rental accommodations in the Lower Mainland.
- [30] The respondents further informed the court that they are suffering financial hardship in their other businesses and asked the court to have leniency in the penalty imposed.

V. DETERMINATION

- [31] In the circumstances of this case, where there has been a finding of contempt and no significant effort to purge that contempt, it is appropriate to impose a penalty. Indeed, contempt proceedings are required to maintain confidence in the administration of justice and the rule of law. To not impose penalties when there is a blatant disregard for court orders could be viewed as acquiescence to non-compliance and would undermine the administration of justice.
- [32] It is useful to reiterate the purpose of the court's contempt powers. This purpose was summarized by Cromwell J. in *Carey v. Laiken*, 2015 SCC 17:
- [30] Contempt of court "rest[s] on the power of the court to uphold its dignity and process. . . . The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect": *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 S.C.R. 901, at p. 931. It is well established that the purpose of a contempt order is "first and foremost a declaration that a party has acted in defiance of a court order": *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612, at para. 35, cited in *Bell ExpressVu Limited Partnership v. Torroni*, 2009 ONCA 85, 94 O.R. (3d) 614, at para. 20.
- [33] In the circumstances of this case, where it appears the respondents have blatantly disregarded municipal permitting requirements that are intended to promote and protect the public by establishing minimum standards for safety, I find there is an added element of a public interest. In my view, builders who flout municipal building codes and the permitting process should be deterred from doing so.

- [34] Indeed, both the Building Bylaw and the British Columbia Building Code are aimed at the health, safety, and protection of persons and property. They achieve this aim by ensuring that construction meets minimum legislated standards for safety, health, accessibility, and fire and structural protection, and is appropriately inspected and approved. General deterrence of would-be violators of these regulations is an important sentencing principle in this circumstance. Such deterrence is all-the-more important if what the respondents say is true with respect to the unpermitted construction of rental units being commonplace in Surrey.
- [35] While there is no evidence that the construction of the Addition or the Secondary Suite present any health hazards or risks to the public, the practice of offering unlawful suites for rent and inviting members of the public to occupy uninspected buildings without occupancy permits to my mind poses at least a theoretical risk to the health and safety of the community. To think otherwise, would render the municipal building and occupancy bylaws meaningless.
- [36] In respect of the principle of specific deterrence, I am satisfied that the respondents have demonstrated not only a disregard of the April Order, but also a disregard for the City of Surrey's regulatory authority by occupying the Addition and the Secondary Suite despite the various enforcement steps taken by the City of Surrey against the respondents. In my view, the City of Surrey was left with no viable option but to proceed to court to obtain the April Order in order to prevent the respondents from continuing to occupy and use the Property.
- [37] The City of Surrey submits that the respondents are motivated by profit, both in bypassing the permitting and inspection process and their associated costs, and in utilizing the Property for an unpermitted number of separate dwelling units to maximize rental revenue from multiple tenants. I accept the City of Surrey's argument that the respondents' actions were financially motivated, but temper it slightly, on the basis that, in my view, the respondents did not appreciate the gravity of their actions, either through willful blindness or because they thought they would not get caught and saw other builders successfully skirting permit requirements.
- [38] I am sensitive to the potential difficulties the respondents say they encountered in making efforts to evict the occupants of the Addition and the Secondary Suite. They argue the occupants did not want to leave the Property and the respondents did not know how to remove them. While not raised by either party, it is possible that the respondents may face some issues with the occupants depending on the nature of their rental agreement. That said, the respondents only have themselves to blame for these difficulties because they had the Property occupied without first obtaining the permits from the City of Surrey.
- [39] Further, there was no evidence presented to me that the respondents took any concrete efforts to require the occupants to leave, for example, by alerting the occupants that there was a court order preventing the Property from being used or occupied. In this regard, I note that Ball J.'s April Order was posted on the Property after it was pronounced. There was

also evidence before me suggesting that at least some of the individuals began renting the Addition and the Secondary Suite in late August or early September 2022--i.e., well after the April Order. By that time, it would have been clear to the respondents that they were prohibited from using or occupying the Property. Thus, it appears the respondents, despite the April Order, took steps to occupy the Property in direct conflict with the clear terms of Justice Ball's order.

[40] Given the foregoing, I find that the following penalty is appropriate to be imposed upon the respondents:

- a) \$6,000 total fine payable to the Minister of Finance to be delivered to the New Westminster Court Registry by December 15, 2022, for which Mr. Singh and Mr. Sahota are jointly and severally liable, for the contempt of the April 14, 2022 Order of the Honourable Mr. Justice Ball; and
- b) an additional \$13,000 fine, for which Mr. Singh and Mr. Sahota are jointly and severally liable, payable to the Minister of Finance to be delivered to the New Westminster Court Registry by January 23, 2023, if any individuals are occupying or using the Addition and the Secondary Suite on January 1, 2023, unless written permission to the contrary is provided by the City of Surrey to the respondents or by further order of this Court.

[41] I note that the City of Surrey sought a contingent penalty if the occupants had not left the Property by December 1, 2022. I have extended the date to January 1, 2023. I do so to accommodate the potential difficulty for the occupants in finding new accommodations on short notice, especially given the December holidays. However, to compensate for this longer period, which allows the respondents additional time to purge their contempt, I have increased the contingent penalty from the amount of \$10,000 requested by the City of Surrey to \$13,000. This amount, in my view, reflects the gravity of the need for the respondents to ensure that the April Order is complied with such that the Property is not occupied by January 1, 2023.

[42] As well, given that the respondents have been using the Addition and the Secondary Suite to generate rental income, the contingent penalty must be sufficiently severe so as to discourage the respondents from continuing to rent out the units and to merely consider the penalty as a 'cost of doing business'. Accordingly, I have increased the contingent penalty to blunt any financial incentives the respondents may have in continuing to remain in contempt of the April Order.

[43] Finally, in reaching my conclusion on the amount of the penalty, I have also factored the respondents' submissions that they have been facing financial difficulties. That submission, however, is somewhat attenuated by the fact they have been receiving rent from the occupants of the Addition and the Secondary Suite for several months.

- [44] In sum, I recognize that I have set the penalty at an amount below that requested by the City of Surrey. I am nonetheless satisfied that it will achieve the objectives of deterring the respondents from continuing to defy orders of the court and generally deter members of the building community from doing the same, without being a "crushing penalty" for the respondents: Langford at para. 21.

VI. COSTS

- [45] The Petitioner seeks special costs. Special costs are intended to resemble closely the reasonable fees charged by a lawyer to his or her counsel and are generally reserved for circumstances where a party has engaged in reprehensible conduct. As stated by Donald J.A. in Langford, it is "axiomatic that contempt of a court order is reprehensible conduct": at para 28.
- [46] Further, there is a long-standing practice to award special costs to the successful applicant in a civil contempt proceeding on the basis that a party who obtains an order from the court is entitled to have that order obeyed without incurring further expense: Langley at para. 33. The Court of Appeal has determined that special costs in contempt proceedings are appropriate, and particularly when a party has been prosecuted at public expense for civil contempt in respect of a breach of a local bylaw: North Vancouver (District) v. Sorrenti, 2004 BCCA 316 at para. 20.
- [47] In my view, given the City of Surrey is a local government, funded by taxpayers' dollars, and was required to incur the costs of these contempt proceedings solely because of the respondents' actions, it is appropriate to award special costs. Further, as noted above, the respondents have failed to make any significant efforts to purge the contempt which may have attenuated the City of Surrey's need for the applications.
- [48] I have some sympathy for the respondents and their stated belief that they could apply after the fact to remedy their various infractions. However, in my view, their actions have forced the City of Surrey to take steps and incur costs to enforce orders of this Court.
- [49] For clarity, I award special costs to the City of Surrey for the contempt proceedings, which includes the application for contempt and the application regarding the penalty. I am aware that the City of Surrey has an outstanding petition against the respondents in respect of alleged building code violations concerning the renovations to the Property. My order for special costs does not apply to that petition, as any issues of costs for the initial petition are properly left for the court adjudicating those issues. Further, the respondents are to pay the City of Surrey their costs by 30 days from the date of this order.

VII. CONCLUSION

[50] While I have ordered that the respondents are to ensure that the occupants have vacated the Property by January 1, 2023, I encourage the respondents to make efforts to have the Property unoccupied in advance of that deadline.

[51] If the parties require any clarification of this order, they may make arrangements through Trial Scheduling to do so.

"Gibb-Carsley J."

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