

CANADA / JUDGMENT

West Vancouver (District) v. Este

2025 BCSC 2319

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2319 West Vancouver (District) v. Este

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

West Vancouver (District) v. Este,

2025 BCSC 2319

Date: 20251110

Docket: S247392

Registry: Vancouver

Between:

District of West Vancouver

Petitioner

And

Rosa Donna Este and Mina Esteghamat-Ardakani

Respondents

Before: The Honourable Madam Justice W.A. Baker

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

E. Anderson

Counsel for the Respondent, Mina Esteghamat-Ardakani:

E. Cribb

The Respondent, Rosa Este, appearing in person:

R. Este

Place and Date of Hearing:

Vancouver, B.C.

November 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 10, 2025

- [1] THE COURT: In the application before me, Dr. Este, the respondent to this petition, seeks the following orders. First, an order allowing the preservation of the status quo of the home at 2668 Bellevue Avenue, West Vancouver, and to prevent the District of West Vancouver from pursuing any steps to demolish the home, any steps to terminate the water services, and an order to allow all utility services to remain until the determination of the appeal proceeding CA50401
- [2] Alternatively, the applicant seeks the exercise of this court's equitable jurisdiction on an ex parte basis to grant an order to prevent the District from taking any steps towards the demolition of Dr. Este's home at 2668 Bellevue Avenue, and that the District not interfere with the use and enjoyment of her home and to allow water and other utility services to her home until the determination of the appeal in this matter in CA50401, *supra*.
- [3] In oral submissions, Dr. Este stated she was seeking enforcement of an order made by Mr. Justice Butler in the Court of Appeal. She argued that Mr. Justice Butler ordered the status quo should be maintained until her appeal was heard and that meant that all utilities should continue to be supplied to her home.
- [4] It was evident that the primary issue for Dr. Este was the fact that West Vancouver has recently stopped supplying water to her home. Although I repeatedly sought clarification from Dr. Este as to whether she was seeking enforcement of the Butler order or a new order from this court, I cannot say that Dr. Este did confirm exactly what she was seeking, other than she sought an order she could continue to remain in her home with utilities being supplied to it until some point in the future. As to the point in the future, in her notice of application she refers to the determination of her appeal and in argument she referenced two applications set for hearing in January.

- [5] To understand this application, I must review some of the background to this dispute. In doing so I will refer to the reasons for judgment in the many hearings that have been brought since 2020. In 2022, the court decided a petition for a judicial review Dr. Este brought challenging the District's decision to refuse to grant a building permit and its decision to order the demolition of the home on the property: *Este v. District of West Vancouver*, 2022 BCSC 584.
- [6] In that decision [2022 BCSC 584], the court outlined some of the relevant background and at para. 2 the court referred to an earlier matrimonial decision involving Ms. Este from 2020 [*Este v. Esteghamat-Ardakani*, 2020 BCCA 202] where the court said:
- [3] In 2003, Mina [Dr. Este's mother] and Donna [Dr. Este] purchased the property. Donna resided in the residence on the property until 2015, when a fire caused such extensive damage to the residence that it must be demolished.
- [12] In the context of the dispute before us, Donna and Mina do not agree that the residence should be rebuilt. Donna wishes to rebuild it using insurance proceeds and has requested Mina to sign an authorization to secure demolition and building permits; Mina has refused, preferring that her application for partition and sale proceed without rebuilding the residence.
- [7] Also in the 2022 decision [2022 BCSC 584], the court says:
- [5] Ms. Este submits the Demolition Decision was unreasonable because it relied on the District's unreasonable interpretation of the relevant bylaw and that demolishing the structure on the Property without issuing a building permit would create a health and safety hazard, thus undermining the purpose of the Decision itself. Finally, the petitioner says the Demolition Decision was procedurally unfair because the District refused to adjourn the Council meeting until such a time that her legal counsel could attend and the Council failed to consider the evidence she adduced as part of her written submissions.
- [32] The petitioner and Mina are the two registered owners of the Property. The Property houses a single-family residential structure. However, the structure was severely damaged by a fire in 2015 and has been uninhabitable since. Since 2020, the petitioner has sought to obtain demolition and building permits for the Property. The District has refused to grant the permits, on the basis that the Building Bylaw requires signatures from both co-owners where one owner has notified the District that they have denied consent for the permit application.
- [51] The petitioner argues that the Building Bylaw does not require the consent of both co-owners prior to the issuance of a permit. I disagree. I accept the District's submission that the express or implied consent of all owners is required prior to the issuance of building permits.

- [8] The court dismissed the petitioner's challenge to the permit decision. The court then considered whether or not the demolition decision was reasonable [2022 BCSC 584]:
- [60] As noted above, the Property houses a derelict structure which has been uninhabitable since a fire in 2015. The petitioner does not dispute the dilapidated state of the building -- indeed, she has repeatedly sought a permit to demolish it on her own.
- [9] The court [2022 BCSC 584] refers to various evidence that was before council in making its decision:
- [84] The First Staff Report cites various expert reports recommending the structure be demolished and which were commissioned by the petitioner. According to an architectural report issued in February 2016, over 75% of the structure was "completely destroyed" in the fire and suffered "ongoing damage" from exposure to the elements. The architectural report recommended demolition. Moreover, an engineering report from May 2016 also recommended complete demolition.
- [97] Moreover, while the petitioner argued that ordering the structure be demolished without a building permit would create a health and safety hazard, I find the Council was reasonable in rejecting this position. There was sufficient evidence before the Council to find letting the structure remain intact would create a greater risk to health and safety than demolishing it. This determination was a matter of assessing evidence and applying the facts to the specific statutory context within which the Council operates. The Council examined both the District and the petitioner's evidence and preferred the District's. Part of that referenced the fact that the District required any demolition to be done in a safe manner with the property to be left in a safe condition. The Council is owed deference in this regard.
- [10] The 2022 decision was appealed and the appeal was unsuccessful. The court of appeal said with respect to the demolition order [2022 BCCA 445]:
- [29] Dr. Este does not expressly take issue with the reviewing judge's dismissal of her procedural unfairness argument. Nor does she make out any case to set aside the issuance of the demolition order (other than the argument it should not have been made without approval of a building permit).
- [11] Dr. Este then sought leave to the Supreme Court of Canada, which was unsuccessful.
- [12] The District started the petition which is before me seeking injunctive relief to prevent Dr. Este from interfering with the execution of the demolition order which is the order that has been thoroughly litigated and upheld in the earlier petition. In November 2024, the parties appeared before Madam Justice Mazari in this current petition brought by the District. Justice Mazari gave reasons in December 2024 [West Vancouver (District) v. Este, 2024 BCSC 2363] where she stated at para. 7:

- [7] The application is opposed by Dr. Este, who argues passionately to save the House from demolition on several grounds, including on the basis that it is a beautiful house, the invalidity or inapplicability of the Demolition Order to the House, and her asserted legal right to obtain permits to restore the House despite the Demolition Order and without her co-owner's consent.

That is a position that is similar to what Dr. Este said to me today.

- [13] Justice Mazari reviewed the history of the earlier petition beginning at para. 22. I will just begin at para. 25:
- [25] By reasons for judgment indexed at 2022 BCSC 584, Justice Burke dismissed the petition for judicial review, finding that the Permit Decision was reasonable, and the Demolition Order was both reasonable and procedurally fair. In doing so, the Court agreed with the District's interpretation of the bylaw, concluding that it was reasonable for the District to refuse to consider an application for a building permit that was not made by or on behalf of all registered owners: paras. 51-54.
- [14] The Court of Appeal dismissed Dr. Este's appeal for judicial review by reasons for judgment indexed at 2022 BCCA 445, with leave to appeal to the Supreme Court of Canada refused 40599, 22 June 2023. Finally, on October 26, 2023, Dr. Este's application for a stay of execution of the demolition order was dismissed by Justice Tammen.
- [15] Justice Mazari set out the position of the parties before her at para. 34:
- [34] The District says that the following breaches are established on the evidence before me:
- a) Dr. Este has not complied with the Demolition Order;
 - b) Dr. Este is proceeding with demolition of parts of the House without a demolition permit;
 - c) Dr. Este is proceeding with construction on the Property without a building permit;
 - d) Dr. Este is interfering with stop work orders and the work of District contractors and officers seeking to enforce the Building Bylaw and the Demolition Order.

None of these breaches are seriously in contention before me.

- [16] Dr. Este does not dispute that she has not complied with the demolition order. Her argument is that she should not have to demolish the house in its entirety because the demolition order is either invalid or obsolete because the house is no longer in poor repair. In either event, she argues the demolition order is unenforceable.
- [17] Dr. Este also does not dispute that she went ahead with demolition of fire damaged portions of the house and with reconstruction of the house without the required permits or that she has interfered with the posted stop work orders. Instead, her argument is that she has a right to a building permit for the work she has done to date on the house and these permits have been wrongfully withheld by the District.

- [18] In her own words, when asked whether she went ahead without a permit, she acknowledged doing so but argued she did so openly and disclosed to them that "I am going to do this". She argued that the further permits she applied for without her mother's consent and not in accordance with the demolition order were wrongfully withheld and that the breach was therefore not an intentional one or one that broke the law.
- [19] Madam Justice Mazari had this to say about the prior orders made in the judicial review challenging the building permit and demolition order:
- [42] With respect to Dr. Este's arguments that the Demolition Order is not valid or applicable, or that there are triable issues with respect to its enforceability or applicability to the House and the Property, I find that this Court's determination on judicial review, confirmed on appeal, is determinative of these issues.
- [43] I find that the myriad of arguments Dr. Este makes that directly or indirectly question the fairness of the process by which the Demolition Order was passed by the District have also been finally resolved by this Court, and are now *res judicata*.
- [44] Efforts to raise new or fresh evidence to reopen those arguments are now far too late. That may have been available on appeal, which was taken. They are no longer available to Dr. Este.
- [20] The court made the following orders with respect to the injunction sought by the District at para. 67:
- [67] I hereby grant the following orders:
- a) An interlocutory order, pursuant to s. 274(1) of the Community Charter, enjoining and restraining the Respondent Rosa Donna Este, her agents, servants, employees, contractors, or any other person having notice of this order from doing any of the following on or from the lands and premises with a civic address of 2668 Bellevue Avenue, legally described as PID 013-216-422, Lot 5, Block 33, District Lot 555, Plan 3058 (the "Property"):
 - i. carrying out any construction or demolition work upon the Property without a valid and subsisting permit issued to that person for the subject work, contrary to section 5.1 of the Building Bylaw;
 - ii. removing, defacing, obscuring or otherwise tampering with any Stop Work Order posted on or near the Property, contrary to section 5.3 of the Building Bylaw;
 - iii. obstructing the entry of the District's Building Inspectors, including Bylaw Officers, on and into the Property, contrary to section 5.4 of the Building Bylaw; and
 - iv. obstructing the entry of District building contractors on and into the Property, contrary to the District of West Vancouver Demolition Order dated December 14, 2020 (the "Remedial Action Requirement");

- b) An interlocutory order, pursuant to s. 274(1) of the Community Charter, preventing the Respondent Rosa Donna Este from further interfering with the carrying out of the Remedial Action Requirement by prohibiting her from attending on or within 100 feet of the Property, until the demolition work ordered by the Remedial Action Requirement has been fully completed.
- [21] In July 2025, in the appeal that was taken from the Mazari decision, the District produced an affidavit setting out some earlier correspondence in 2017 between Madam Justice Marzari, when she was still counsel, and the District, which related to the demolition of Dr. Este's house. On July 10, 2025, Dr. Este sought leave to appeal the Marzari decision. One of the bases advanced was that there was a reasonable apprehension of bias on the part of Madam Justice Marzari given her earlier involvement in the file.
- [22] Dr. Este also sought a stay of the Marzari orders pending the appeal. The grounds of appeal are described in the decision of Mr. Justice Butler in his decision dated July 10, 2025 [Este v West Vancouver (District), 2025 BCCA 269]:
- [9] On appeal, Dr. Este claims the judge erred concerning the reasonableness, validity, and applicability of the Demolition Order. She also maintains she did not violate the Building Bylaw. In addition, Dr. Este argues the judge was not made aware of certain facts pertaining to Ms. Esteghamat-Ardakani's health and seeks to adduce fresh evidence in that regard.
- [10] According to Dr. Este, the judge also erred by failing to recuse herself based on a reasonable apprehension of bias. Dr. Este's concern is that before being appointed to the bench, the judge had worked at the firm representing the District. During the hearing below, in oral submissions, Dr. Este raised this issue prior to the hearing and advanced an application asking the judge to recuse herself on this basis. The judge dismissed the application, noting that almost seven years had elapsed since she had worked at the firm and stating she could not recall having ever been involved in the file or related matters.
- [23] Leave to appeal was granted. On the issue of a stay, Mr. Justice Butler found that Dr. Este met the low bar to establish some merit in the appeal on the ground of reasonable apprehension of bias. He found the other grounds of appeal were weak. The court held at para. 33, dealing with the merits of the appeal:
- [33] In addition, the issue raised is significant to the action itself. Success on the appeal would prevent the District -- at least until the matter is reheard or the underlying petition resolved -- from removing Dr. Este from the property and executing the Demolition Order.
- [24] In relation to the stay, the court said:

- [35] For the same reasons, I would grant the application for a stay of the terms of the order. As noted, there is some merit to Dr. Este's argument concerning a reasonable apprehension of bias. If the stay were refused, the appeal may be rendered moot and steps could be taken that could lead to irreparable harm to Dr. Este. The balance of convenience, and particularly the overriding concern for maintaining judicial independence and impartiality, weighs in favour of granting a stay.
- [36] However, I would only stay those terms of the order set out in para. 67 a) iii); a) iv); and b) in the RFJ. In my view, this reflects a fair balancing of the interests of the parties and would preserve the current status.
- [25] The decision of Mr. Justice Butler does not in any way impact the validity of the demolition order. It simply stays the injunctions against Dr. Este preventing her from interfering with the City's execution of the demolition order. Most importantly, nothing in the litigation on the demolition order, or in the petition before me brought by the District to enforce the demolition order, mentions the requirement of the City to supply utilities to the subject property.
- [26] Dr. Este submits that the order of Mr. Justice Butler requires the status quo to be maintained pending the appeal and suggests that includes maintaining the supply of the utilities to the house to allow for her to live in the house. It does not on its face do any such thing. Mr. Justice Butler stayed certain paragraphs of the Marzari order and nothing more. If Dr. Este thinks Mr. Justice Butler intended more than what his reasons express, that is an application to the Court of Appeal and is not an order I can make.
- [27] Was there any other basis to make the orders sought? I find there is not. The demolition order remains in place. It has not been set aside. The petition which is before me does not give rise to any orders relating to the supply of utilities to the property.
- [28] Dr. Este submits that she is bringing an application to have the petition converted to an action, but that has not happened. She has not provided draft pleadings which could support the order she is seeking should the petition be turned into an action. She says she is bringing an application to cross-examine various members of the building department based on the new disclosure of documents that involved Madam Justice Marzari and she suggested she would apply to set aside the prior decision on the demolition order on the basis of newly discovered evidence. However, such applications, if brought, could only occur if this petition was converted to an action and the pleadings asserted issues which could support such cross-examination. This is a remote contingency that I do not accept supports the orders she seeks. I say this particularly in light of the findings in the litigation around the demolition order where the court refers to Dr. Este's own evidence that supported the demolition of the house.

- [29] It is not clear that the recently disclosed evidence relating to advice given by Ms. Marzari several years before that litigation started would be sufficient to overcome the evidence, including engineering and architectural reports produced by Dr. Este herself in her submissions to the council, that supported the demolition of the house.
- [30] Finally, and most importantly, the documents involving Ms. Marzari cannot overcome the conclusion of the court that the signatures of both owners of the property were required on an application for a building permit. The evidence remains that the second person on title, her mother, has not signed an application for a permit and therefore the council cannot issue a permit even if it wanted to do so.
- [31] The route Dr. Este proposes to take in this litigation on its face would be a collateral attack on the demolition order that has survived challenges up to the Supreme Court of Canada. Such a challenge would require considerable more evidence than has been shown to me on this application.
- [32] On this application, I find that Dr. Este has not established any legal basis that would support the order she seeks. For all of these reasons, I decline to make the order sought by Dr. Este.
- [33] THE COURT: Is the District seeking costs?
- [34] CNSL E. ANDERSON: The District would like its costs given the number of times we've been here.
- [35] THE COURT: All right. I will award costs to the City, who was successful on this application.
- [36] THE CLERK: Order in chambers. Chambers is adjourned.
- "W.A. Baker J."

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