

CANADA / JUDGMENT

White Rock (City) v. Mashiana

2023 BCSC 2352

COURT

Supreme Court of British Columbia

DECIDED

20 December 2023

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2023 BCSC 2352 White Rock (City) v. Mashiana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

White Rock (City) v. Mashiana,

2023 BCSC 2352

Date: 20231220

Docket: S234199

Registry: Vancouver

Between:

The Corporation of the City of White Rock

Petitioner

And

Charanjiv Singh Mashiana and Sonya Kaur Mashiana

Respondents

Before: The Honourable Justice Chan

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

M. Voell

Counsel for the Respondents:

R. Rakhra

Place and Date of Trial/Hearing:

Vancouver, B.C.

December 20, 2023

Place and Date of Judgment:

Vancouver, B.C.

December 20, 2023

Introduction

- [1] THE COURT: The City of White Rock ("City") brings a petition seeking declarations that the respondents, the Mashianas ("Homeowners"), are in breach of the Community Charter, S.B.C. 2003, c. 26, and the City of White Rock, Bylaw No. 1529, Street and Traffic Bylaw (1999) ("Bylaws"), by building structures without a permit outside their property on City lands. White Rock seeks a statutory injunction requiring the respondents to remove the structures and, if they do not do so, that the City of White Rock be permitted to do so at the Homeowners' expense.
- [2] The dispute concerns various retaining walls, fences, stairs, gravel and a concrete pad built by the Homeowners on the west side of their home at the corner of Oxenham Avenue and Anderson Road in the City. The Homeowners contend they installed the retaining walls and fencing out of concern for the safety of their young children due to a steep slope on the west side of their property. They further argue there is no evidence of any harm to the City from these structures and that they are prepared to assist with any remediation issues with respect to drainage concerns the City may have.
- [3] The City's position is the evidence shows the Homeowners are clearly in breach of both the Community Charter and the Bylaws. Once the City has proven on a balance of probabilities that a breach has occurred, a permanent statutory injunction follows. The Court only has a narrow discretion to deny a statutory injunction and that narrow discretion ought not to be exercised in this case.

Background Facts

- [4] The Homeowners own a residence at 14705 Oxenham Avenue, White Rock. It is not disputed that the area west of the Homeowners' property where the disputed structures have been installed is City property. The property sits on the corner of Oxenham Avenue and Anderson Road, both of which meet the definition of a highway pursuant to the Community Charter and the Bylaws.

- [5] The area of Anderson Road west of the home does not appear to be used for traffic. However, there are City sewer lines and water main lines that run underneath Anderson Road and a manhole exists to access the piping. The area is sloped and a City park is further to the west.
- [6] The Homeowners purchased the property some time in 2020. Some time after November 2020, the Homeowners erected a series of retaining walls, stairs, fencing, a gravel area, and a concrete pad used for parking. The Homeowners never obtained any permits from the City for any of these structures.
- [7] When this issue was first brought to the attention of the City in June 2022, the City sent a letter to the Homeowners requesting them to remove the retaining wall constructed on top of the sanitary main and the gravel covering the storm sewer manhole. The City provided a deadline to the Homeowners of July 31, 2022.
- [8] The Homeowners did not respond. In fact, after receiving the letter, the Homeowners installed additional structures, including fencing and gates.
- [9] The City sent more letters requesting the structures be removed in September and December 2022. The Homeowners did not respond. The City filed this petition in June 2023.
- [10] The Homeowners commissioned a geotechnical report in September 2023 and had a land survey conducted. The Homeowners argue the geotechnical report determined that impact to the stability of the slope by their structures is negligible and the impact of the runoff is minimal.
- [11] The Homeowners argue no remedial measures have been recommended in the geotechnical report, but that they are willing to assist with any optional remedial measures the City wishes to impose.

The Legal Framework

- [12] Section 274 of the Community Charter provides that a municipality may bring a proceeding in Supreme Court to "enforce or prevent or restrain" contravention of a bylaw.

- [13] The City has enacted the Bylaws. Section 35 of the Bylaws states:

No person shall excavate in, cause a nuisance on, encumber, obstruct ... improve or damage any portion of any highway ... without first obtaining a Permit.

"Highway" is defined as "every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles."

Injunctive Relief

- [14] The City seeks injunctive relief pursuant to s. 274 of the Community Charter. The requested injunction is a statutory remedy that engages the public interest. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances: *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at paras. 37-38.
- [15] Justice Maisonville in *Powell River v. Sliwinski*, 2013 BCSC 737 sets out this narrow discretion at paras. 27-32, citing the comments of Esson J. in *Burnaby (City) v. Pocrnic*, 1999 BCCA 652.
- [16] The cases where the courts have exercised this narrow discretion to refuse to grant a statutory injunction are factually distinguishable from this case, in my view: see *District of West Vancouver (Corporation of) v. Liu*, 2016 BCCA 96 [West Vancouver].
- [17] In *West Vancouver*, there had been ongoing negotiations between the respondent and the city about her purchasing the portion of the city land on which the encroachments were erected. It is further noted that the encroachments were erected before Ms. Liu had purchased the property. It is in the unusual circumstance of that case that the majority of the Court of Appeal denied the district of West Vancouver statutory injunction at that time.
- [18] The requested injunction is a statutory remedy which requires the Court to determine whether the Homeowners have breached the Bylaws. Courts have recognized once a breach of a statute has been established, it is in the public interest to have the law enforced. Effective enforcement of the city's bylaws and the public interest requires unpermitted structures be demolished and removed: *Surrey (City) v. Singh*, 2022 BCSC 1455 at para. 46.

Analysis

- [19] The City argues the evidence is clear that the Homeowners breached the Bylaws. The Homeowners carried out extensive construction to build the retaining walls, fencing, gravel and concrete pad on City property. The City argues it needs to access the piping underground in the event of any flooding and requires access to the manhole.
- [20] The City argues the evidence is it has used and always used the roadway as City utilities are located underground. Further, the City takes issue with the Homeowners' claim that they built the structure for the safety of their children, as the City argues it appears the structures built are extensive and includes a putting green.
- [21] The Homeowners do not dispute they have erected their structures on City land without a permit. They argue as there is no harm caused by their structures, the Court ought to exercise its discretion to refuse the City's request for an injunction.

- [22] In my view, the evidence is overwhelming that the Homeowners have erected structures on City property without any authorization. There is no legal basis for the encroachments on City land. No permits were applied for, no permits were granted, and the City made several requests for the Homeowners to demolish and remove the structures once the City was made aware of them.
- [23] Instead of complying with these demands, the Homeowners built additional structures. It appears from the evidence the Homeowners wanted to increase the size of their home by simply taking over the City's property.
- [24] I conclude the structures built by the Homeowners are unauthorized. I find there is no basis for the Court not to grant the injunction. If the injunction is granted, the City will be able to access its utilities. There is no basis to argue an injunction would not remedy the problem.
- [25] In this case, I find the Court ought not to exercise its limited discretion to not grant the injunction sought by the City. The evidence is the Homeowners were made aware that their structures were unauthorized, but continued to put up more structures. The City acted promptly to advise the Homeowners of the encroachments once it was made aware of the structures.
- [26] In my view, the reasons put forth by the Homeowners as to why they put up the structures do not absolve them of liability. If they had concerns about safety, they ought to have brought this to the attention of the City.
- [27] The order sought by the City is granted. There will be a declaration that the respondents are in breach of s. 46(1) of the Community Charter and in breach of s. 35 of the Bylaws by placing encroachments on highway lands without permission.
- [28] The respondents are required to apply for a demolition permit within 30 days of this order and to remove the encroachments within 60 days of receiving the required permits. If the respondents do not do so, the City is authorized to remove the encroachments at the expense of the respondents.

[29] Is there anything further?

[SUBMISSIONS ON COSTS]

[30] THE COURT: In my view, the petitioner is entitled to its costs at the ordinary scale.

"Chan, J."

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