

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nanaimo (Regional District) v. Andersen*,
2016 BCSC 1747

Date: 20160923
Docket: S74522
Registry: Nanaimo

Between:

Regional District of Nanaimo

Plaintiff

And

Catherine Andersen

Defendant

Before: The Honourable Mr. Justice Thompson

Reasons for Judgment

Counsel for the Plaintiff:

R. Macquisten

Counsel for the Defendant:

J. Millbank
J. Rhodes (A/S)

Place and Dates of Hearing:

Nanaimo, B.C.
August 12, 2016
September 8, 2016

Place and Date of Judgment:

Nanaimo, B.C.
September 23, 2016

[1] Ms. Andersen owns and operates a water-hauling business; she also owns a five-acre rural property within the boundaries of the Regional District of Nanaimo (the “RDN”). The RDN says that Ms. Andersen is using her property in connection with her water-hauling business in such a way that she is contravening the RDN’s zoning bylaw. Ms. Andersen denies that this is so. The RDN brings an interlocutory application for a statutory injunction to enjoin certain trucking activity in relation to the Andersen property.

[2] The principal and threshold issue on this application is a question of fact. The evidence establishes that Ms. Andersen’s water trucks are frequently driven to and from her property. If the trucks are there to deliver water for Ms. Andersen to use in connection with her rural property, the RDN concedes for the purpose of this application that there is no basis to enjoin this trucking activity. It is another matter if the trucks are on the Andersen property for other reasons — that is, for commercial or industrial purposes unrelated to water delivery to Ms. Andersen *qua* customer of her own business. For instance, if the truck drivers are there to receive instructions from Ms. Andersen or the trucks are on the property for maintenance or cleaning, then the RDN contends that there is an ongoing and clear breach of the zoning bylaw and it is entitled to a declaration to this effect and an injunction to enforce, prevent and restrain the contravention of its bylaw.

Background

[3] On 9 January 2015, the RDN filed a notice of civil claim that alleges various bylaw breaches by Ms. Andersen — breaches of its building bylaw, zoning bylaw, official community plan bylaw, and noise bylaw. It seeks declaratory and injunctive relief. Section 274 of the *Community Charter*, S.B.C. 2003, c. 26, provides that a municipality may, by a proceeding brought in this Court, enforce, or prevent or restrain the contravention of a bylaw.

[4] This application is narrowly focused on trucking activity related to the property. I quote the following paragraph from the RDN’s notice of civil claim:

25. The Zoning Bylaw does not permit the use of the Lands for the purpose of business or commercial use, marshalling yard, storage, shipping yard, distribution centre, office, or other such use whether for commercial, business or other purposes, and the Defendant uses or allows the Lands to be so used in the form of, and not necessarily limited to, the operation of a water hauling, supply, and distribution business or enterprise from the said Lands, and marshals or stores vehicles, machinery, materials, equipment, product, or other items in connection with the business enterprise on and from the land, and operates the business or commercial enterprise from the Lands, all in contravention of the Zoning Bylaw.

[5] Ms. Andersen's response to civil claim includes the following paragraphs:

4. Ms. Andersen frequently fills her pond on her property with water, in part to retain the environment for water fowl, and in part to maintain fire level capabilities as the local fire department has designated it as a local water source for their pumper trucks.

5. This enforcement action is the culmination of a long standing neighbourhood vendetta against Ms. Andersen.

6. Ms. Andersen uses her property in a manner that is authorized by law.

[6] Up until September or October 2015, Ms. Andersen's water trucks were stored on her property. The RDN received complaints and told her that she could not park these trucks on her property. Ms. Anderson made an agreement with a local business owner to allow her to park her water trucks in a locked gated area at his business premises. Ms. Andersen deposes that she stores the equipment and tools for these trucks in a 20-foot shipping container. This container is also parked on this other business owner's property. Her further evidence is that none of the maintenance and servicing of the water trucks has ever been done at her property.

Discussion

[7] Many of Ms. Andersen's neighbours are up in arms about the water-truck traffic to and from the Andersen property. Their evidence is that this traffic is interrupting the peace and quiet of their rural surroundings.

[8] The RDN has the burden on this application of establishing on a balance of probabilities that this traffic contravenes its zoning bylaw. The RDN submits the neighbours' affidavits clearly establish that at least some of this traffic is connected with Ms. Andersen's commercial operation and has nothing to do with delivering

water for Ms. Andersen's use. Ms. Andersen submits her evidence establishes that since she responded last autumn to the RDN direction to park her trucks elsewhere, all visits of the water trucks to her property have been for the purpose of delivering water to her property for agricultural or residential use; she argues that the neighbours' evidence is in material respects false and is likely the product of collaboration that is part of what she characterizes as the neighbours' longstanding vendetta against her.

[9] The threshold question on this application is whether the water-truck traffic to and from the Andersen property is solely for water deliveries to this property. I reserved judgment on this application to give me the opportunity to re-read the considerable volume of evidence submitted on this application, and I have done so. I have tried but am unable to resolve the threshold issue of fact. I appreciate that in many cases it is possible to resolve issues of credibility or clear conflicts in the evidence without *viva voce* evidence. This is not one of those cases. It may be that the case for a statutory injunction will be made out at trial, but I cannot on this interlocutory application resolve the conflicts in the evidence and find the facts necessary to conclude that the trucking activity at Ms. Andersen's property since the autumn of 2015 constitutes a breach of the RDN's zoning bylaw. I will not say more about the evidence so as to avoid embarrassing the trial of the issue in due course.

[10] The RDN makes an alternative submission. It argues that if the evidence does not establish an ongoing or apprehended breach of the zoning bylaw, then the past activity — the parking of her water-hauling trucks on her property — is a sufficient basis for the Court to grant the statutory injunction. I am not persuaded. I appreciate that the principles in equity that apply to injunctive relief are not necessarily applicable to statutory injunctions. That said, I doubt the propriety of issuing an injunction without proof of an ongoing breach or proof that the conduct sought to be enjoined is likely to occur. Injunctions are intended to prevent or avoid harm rather than remedy harm already inflicted.

[11] Recall that in 2015 the RDN advised Ms. Andersen of its position that she was in breach of the zoning bylaw by using her property to park her business' trucks. Ms. Andersen responded by making arrangements to park her trucks at another property. In its oral submissions, the RDN advises that this aspect of the matter appears to have been resolved. In these circumstances, I see no point in an order enjoining Ms. Andersen from using her property as a parking facility or marshalling yard. There is no evidence that this conduct is continuing or likely to recur.

[12] Finally, I acknowledge Ms. Andersen's submission that the Farm Industry Review Board is the place for any complaints about water deliveries to her property. She argues that the conduct complained of is "exclusively related to the very real need for water at her lawfully operating farm." She submits the trucking of water to her property is a "normal farm practice" protected from bylaw interference by the *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c. 131, and the determination of whether these water deliveries are a "normal farm practice" or otherwise is a question within the exclusive jurisdiction of the Farm Industry Review Board.

[13] I will not further describe and detail this argument which, in my respectful view, has several flaws. It is enough for this stage of the proceeding to simply say that I agree with the RDN's submission that the argument misses the mark. If Ms. Andersen is trucking water to her property for farm use, the RDN does not seek to enjoin this activity.

Order

[14] The RDN's interlocutory application for a statutory injunction is dismissed. The issue of costs of this application is reserved to the trial judge.

"Thompson J."