COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Port Coquitlam (City) v. Ground X Site Services Ltd.,* 2025 BCCA 204

Date: 20250618
Docket: CA50081

Between:

City of Port Coquitlam

Appellant
(Plaintiff)

And

Ground X Site Services Ltd., 1134750 B.C. Ltd. and 1269447 B.C. Ltd.

Respondents
(Defendants)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated July 26, 2024 (*City of Port Coquitlam v. Ground X Site Service Ltd.*, 2024 BCSC 1348, Vancouver Docket S240631).

Counsel for the Appellant:	E.A. Anderson A.J. Scott
Counsel for the Respondents, 1134750 B.C. Ltd. and 1269447 B.C. Ltd.:	B.J. Greenberg, K.C. G. Khosa
Place and Date of Hearing:	Vancouver, British Columbia May 16, 2025
Place and Date of Judgment:	Vancouver, British Columbia June 18, 2025

Written Reasons by:
The Honourable Justice Iyer

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Mayer

Summary:

The appellant appeals the dismissal of its application for a statutory injunction against the respondent landowner. It argues that s. 489 of the Local Government Act, which prohibits alteration of certain lands unless the owner has obtained a development permit, means that a statutory injunction under the Community Charter is available against an owner who has not contributed to or condoned the alteration of the land.

Held: Appeal dismissed. As the appellant's notice of application did not plead the claim it seeks to advance on appeal, the owner did not have notice of that claim. The appeal fails on the basis of inadequate pleadings.

Reasons for Judgment of the Honourable Justice Iyer:

OVERVIEW

[1] In January 2024, Port Coquitlam commenced an action against a landowner and its tenant for alleged violations of environmental protection laws and municipal bylaws. In March 2024, it obtained an interlocutory statutory injunction under s. 274(1) of the *Community Charter*, S.B.C. 2003, c. 26, against the tenant, but its application to enjoin the landlord was dismissed.

[2] On appeal, Port Coquitlam argues the chambers judge erred in declining to enjoin the landlord, arguing that even if it had not contributed to or condoned the alleged violations, under s. 489 of the *Local Government Act*, R.S.B.C. 2015, c. 1 [*LGA*], its status as the owner of the land is a sufficient legal basis for a statutory injunction.

[3] While this Court has not previously addressed this issue, in my respectful view, it does not arise in this appeal because the notice of application did not plead that claim. I would dismiss the appeal on that basis.

BACKGROUND

[4] The respondents, 1134750 B.C. Ltd. and 1269447 B.C. Ltd (collectively "Bath Properties"), own four properties within the City of Port Coquitlam ("City"), which they lease to the respondent, Ground X Site Services Ltd. ("Ground X"). Ground X is a construction and waste removal company. I will refer to the properties collectively as the "Lands". The Lands are in a designated development permit area that is subject to s. 489 of the *LGA*.

[5] Ground X did not participate in this appeal.

[6] The leases permit Ground X to use the Lands for specified purposes, including storage of new and used construction equipment and material, recycling such material including by barging, crushing, screening, sorting and blending, and operating a hydrovac pit. The leases expressly require Ground X to comply with all

laws, bylaws, and permit requirements in conducting its operations. The lease for one property does not include such a term, but that is not material to the appeal.

[7] In January 2024, the City commenced an action against Ground X and Bath Properties for breaches of its bylaws, the *Environmental Management Act*, S.B.C. 2003, c. 53 and the *LGA*. It also advanced common law claims in trespass and nuisance. The relief sought includes a permanent statutory injunction under s. 274(1) of the *Community Charter*.

THE INTERLOCUTORY INJUNCTION APPLICATION

The City's Application

[8] In March 2024, the City applied for an interlocutory injunction under s. 274(1) of the *Community Charter* to prohibit Ground X and Bath Properties, among other things, from:

> … altering the Lands, or allowing or permitting their alteration, without a development permit issued by the [City] authorizing such alterations, contrary to the *Local Government Act.*

[9] As required by Rule 8-1(4) of the *Supreme Court Civil Rules*, the City's notice of application sets out the factual and legal basis for this relief.

[10] The factual basis part of the application defines as "Unlawful Activities" five activities the City says Ground X is carrying on without authorization. The application does not say Bath Properties is carrying out any of these activities. The City states it has notified both respondents that the Unlawful Activities are unlawful, but sets out only enforcement actions it has taken against Ground X:

> 19. On numerous occasions, the City has advised the Respondents that the Unlawful Activities are in violation of its Bylaws and has taken steps to enforce the Bylaws against Ground X. The City and the Province have also repeatedly demanded that Ground X cease its waste disposal and processing operations on 750 Kingsway and the City's Land, which contains the Dike.
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> 20. Despite these communications and enforcement efforts, the Respondents have failed, neglected, and refused to cease the Unlawful Activities.

[11] At the outset of the legal basis part of the application, the City cites s. 274 of the *Community Charter*. That section permits a municipality to seek an injunction to "enforce, prevent or restrain" a bylaw or resolution, the *Community Charter* or the *LGA*.

[12] In the following paragraphs, the City sets out the alleged contraventions justifying an injunction under s. 274 of the *Community Charter*, under four headings: "Soil Bylaw Violations"; "Waterways Protection Bylaw Violations"; "Public Places Bylaw"; and "Local Government Act Violations". The paragraphs under each heading say what the bylaw or law requires and then describes Ground X's contravening conduct, with references to the evidence. None of these paragraphs say Bath Properties is engaged in any contravening conduct. They do not refer to Bath Properties at all.

[13] Under "Local Government Act Violations" the City sets out the *LGA* provisions governing development permit areas, including s. 489, which it describes as providing that land within a designated development permit area must not be altered "unless the owner of the land first obtains a development permit". The City alleges Ground X is contravening s. 489 because it is altering the Lands without a development permit:

> 46. Ground X is contravening s. 489 of the *Local Government Act* by altering the lands on the Kingsway Properties and the City's Land through the Unlawful Activities without a watercourse development permit, and in particular by:
>
> (a) receiving and depositing contaminated soil, Hydrovac liquid waste, construction and demolition waste, and other items and contaminated substances onto 750 Kingsway and the City's Land, thereby significantly altering and disrupting the land and soils;
>
> (b) placing shipping containers on the Kingsway Properties; and
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> (c) driving heavy machinery and trucks over the City's Land and the Kingsway Properties, or permitting such activities.

[14] There is no allegation that Bath Properties is contravening s. 489 of the *LGA*.

[15] After having set out only Ground X's allegedly contravening conduct, the concluding paragraph of the legal basis section states: "[t]he Respondents are clearly breaching the City's bylaws".

Bath Properties' Application Response

[16] In its application response, Bath Properties acknowledges it is the landlord and owner of the Lands. It states that its leases require Ground X to comply with all laws and bylaws, and it has "reminded and insisted" that Ground X do so, explaining what it has done. It says it is "not in a position to determine as between the City's allegations and Ground X's responses, which party is correct".

[17] Bath Properties says the City's application does not set out any basis for granting an interlocutory injunction against it under s. 274(1) of the *LGA*:

> [The City] has not provided evidence or even allegation [*sic*] to establish that Bath Properties has contravened any bylaw or the provisions of the *Community Charter* or the *Local Government Act*.

[18] It says that the City has "deliberately and improperly conflated its allegations against Ground X" with it, which should attract an award of special costs.

The Chambers Judge's Reasons: 2024 BCSC 1348

[19] The chambers judge dismissed the injunction application against Bath Properties because the City, "does not allege that Bath Properties has undertaken any conduct that is in breach of [City] bylaws or permitting requirements": at para 147. She explained:

> [149] Port Coquitlam has not pleaded any legal principle that gives rise to vicarious liability of a landlord for the conduct of its tenant. In the notice of civil claim, it pleads that Ground X has committed nuisance and that a landlord is liable for nuisance where the nuisance arises from the natural and necessary result of what the landlord authorized the tenant to do. However, the injunctive relief sought on these applications is not based on nuisance, it is based on breach of bylaws and failing to have a development permit required by the Official Community Plan. Accordingly, that pleading does not support the relief that Port Coquitlam seeks on these applications. Nothing else in the pleading supports a claim for vicarious liability of Bath Properties for failures of Ground X in relation to bylaws and permits.

[20] The judge declined to grant an injunction against Bath Properties, in the "absence of a legal pleading, a legal foundation and a factual foundation" to ground the relief sought: at para. 153.

[21] The judge also found Bath Properties' conduct was consistent with requiring Ground X to comply with applicable laws through express terms in the leases and having "applied pressure to Ground X to come into line": at para. 155.

[22] While the judge denied Bath Properties' application for special costs, she considered the City's claim for an interlocutory injunction against Bath Properties so weak she awarded Bath Properties its costs of the application in any event of the cause and forthwith: at para. 164.

DISCUSSION

[23] Rule 8-1(4) of the *Supreme Court Civil Rules* governs the content of applications. In relevant part, it requires:

> (4) A notice of application must be in Form 32 and must
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> (a) set out the orders sought or attach a draft of the order sought,
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> (b) briefly summarize the factual basis for the application,
>
> (c) set out the rule, enactment or other jurisdictional authority relied on for the orders sought and any other legal arguments on which the orders sought should be granted
>
> […]

[24] In *Boury v. Iten*, 2019 BCCA 81, this Court described the rationale behind this sub-Rule:

> [31] … As I understand it, the purpose of the additional requirements introduced in R. 8-1(4) was two-fold. First, they were intended to avoid situations where the respondent on the application is caught by surprise at the hearing of the application when the applicant makes an argument that was not reasonably anticipated by the respondent. Second, when coupled with the requirement in R. 8-1(10) for the respondent to file an application response briefly summarizing the factual and legal bases for opposing the application, the additional requirements were intended to ensure that the parties understood the basic arguments to be made on the application so that they could properly assess their respective positions and possibly come to an agreement without using valuable court time for the hearing of a contested application.

[25] After quoting this passage, Justice Francis wrote in *Sharp v. Royal Mutual Funds Inc.*, 2019 BCSC 2357:

> [8] It flows from this that notices of application must provide sufficient detail to ensure that a respondent is not required to guess as to what the thrust of the applicant's submissions will be at the hearing. Rather, parties to applications are entitled to reasonable notice of the facts and law upon which the other side intends to rely.
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> [9] The notice of application and response to application are analogous to pleadings in an interlocutory application. They set out the framework of the material facts and law which may be relied on by the parties at the hearing. Rule 8 ensures that the scope of what may be considered by the court is disclosed well in advance of the hearing, ensuring that interlocutory applications proceed in a manner that is fair to both parties.

[26] A court should not make orders going beyond the scope of the application before them: *Paladin Labs Inc. v. British Columbia*, 2022 BCCA 365 at paras. 22–23.

[27] In my view, the chambers judge properly dismissed the City's application for an injunction against Bath Properties. As she found, the City's application did not set out any factual or legal basis for that injunction.

[28] In its reply factum, the City submits its application does state the basis for enjoining Bath Properties:

> 4. The City pled section 489; section 274(1); that Bath Properties owned the land; and that a breach of the LGA existed thereupon. Bath Properties argues that because the City did not also put these items together and plead the ultimate conclusion of law that "Bath Properties is liable in respect of the breach because it owns the unlawfully altered land", that the City cannot be said to have advanced that argument at all.
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> 5. The City's appeal is based on the theory that the chambers judge was distracted by Bath Properties' focus on "conduct" and "vicarious liability", neither of which formed the basis of the City's own arguments as to why an injunction should follow against Bath Properties. […]

[29] This misses the point. The purpose of Rule 8-1(4), like the purpose of pleadings, is to give the other side notice of the case they have to meet: *Workers' Compensation Board v. Sort*, 2022 BCCA 318 at para. 102. Having detailed numerous allegations and evidence justifying the basis for an injunction against Ground X, including s. 489 of the *LGA*, it was incumbent on the City to provide

similar clarity as to what it was alleging against Bath Properties. An application that expressly pleads Ground X's contraventions without alleging any contravening conduct by Bath Properties, or setting out a factual and legal basis for enjoining Bath Properties on the basis that it owned the Lands, does not give the other side notice of the claim against it.

[30] The City's reference to the chamber judge being "distracted" by Bath Properties' arguments about what might be the basis for an allegation against it supports the conclusion its pleading was inadequate. Had the City set out in its application the claim it seeks to advance on appeal, there would have been no uncertainty.

[31] As the application does not state the factual and legal basis for an interlocutory injunction against Bath Properties, the City's appeal cannot succeed.

DISPOSITION

[32] I would dismiss the appeal on the basis of inadequate pleadings relating to Bath Properties.

[33] Consequently, it is not necessary for this Court to determine whether a landowner's status under s. 489 of the *Local Government Act*, standing alone, provides a sufficient basis for an interlocutory statutory injunction.

"The Honourable Justice Iyer"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Mayer"