IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Meade v. Armstrong (City),*
2017 BCSC 2317

Date: 20171214
Docket: S40909
Registry: Kamloops

Between:

Stuart Meade

Plaintiff

And

The City of Armstrong

Defendant

And

John Does #6.1, #6.2, #6.3, #6.4, #7.1, #7.4, #8.5, #8.6, #8.7, #8.8, #8.9, #9.1, #9.2,#9.4, #10.2, #10.4, #10.5, #10.6, #10.7, #10.8, #11.1, #11.2, #11.4, #12.1, #12.2,#12.4, #13.1, #13.2, #13.3, #14.1, #14.2, #14.3, #14.5, #14.6, #14.7, #14.8, #14.9

Defendants

And

Shelley Thibodeau

Defendant

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Stuart Meade appeared on his own behalf

Counsel for the Defendant, The City of Armstrong: A.D. Price

Place and Date of Trial: Kamloops, B.C.
October 31 - November 3, 2017

Place and Date of Judgment: Kamloops, B.C.
December 14, 2017

INTRODUCTION

[1] Stuart Meade experienced a series of misfortunes between 2004 and 2006. These events led to the City of Armstrong (the "City") determining that some of his personal property constituted a nuisance and disposing of his property.

[2] Mr. Meade seeks damages from the City and its former Chief Bylaw Officer, Shelly Thibodeau (now Shelly Welch), for trespass to chattels and conversion, negligence, misfeasance in public office, and conspiracy. The essence of Mr. Meade's claim is that the City was acting in the interests of the owner of the property where he was storing his personal property, Anna Kunze, and exceeded its authority in disposing of his personal property.

[3] The City and Ms. Thibodeau maintain that:

1. the City's actions were authorized by the *Community Charter*, S.B.C. 2003, c. 26 [*Charter*] and an Order to Comply under its *Unsightly Premises* and *Zoning Bylaws*;

2. the City acted properly to address unsightliness and nuisance issues and not in bad faith on behalf of Ms. Kunze;

3. the City acted in a reasonable manner, allowing Mr. Meade to recover many of the items he had stored on Ms. Kunze's property;

4. Mr. Meade's causes of action are barred by the expiry of one or more limitation periods under the *Local Government Act*, R.S.B.C. 1996, c. 323 [*LGA*];

5. Ms. Thibodeau is protected from personal liability by s. 738 of the *LGA*; and

6. even if the City and/or Ms. Thibodeau is/are liable, Mr. Meade's damages are nominal.

BACKGROUND

[4] Mr. Meade is a commercial truck driver. In 2004, his truck was in an accident and written off, leaving him with substantial debt and limited means to earn an income.

[5] After his truck was written off, Mr. Meade worked part-time and began a program of retraining to become a welder. Mr. Meade's retraining did not lead to the type of well-paid work he was hoping to find.

[6] In 2005, Mr. Meade and his former common law partner sold their former family home. Mr. Meade began living with his new partner in his travel trailer on the property of an old friend, Junior Kunze, and his wife, Anna, at 2425 Okanagan Street in the City. Mr. Meade says he had an agreement with Mr. Kunze to do odd jobs for Mr. Kunze in exchange for living in the travel trailer and storing his personal property on the Kunze property.

[7] Mr. Meade diligently moved his personal property, including household items, building materials, vehicles, tools, beekeeping equipment and various other items onto the Kunze property. Some items were stored within a large permanent shed. The shed had open sides which were partially draped with tarps. Many other items were stored in the open. Unfortunately, soon after Mr. Meade moved his personal property onto the Kunze property, Mr. Kunze died.

[8] The City says neighbours subsequently complained to it about the "unsightly" condition of the Kunze property. The City inspected the property and, on December 5, 2005, Ms. Thibodeau issued an Order to Comply under the City's *Unsightly Premises* and *Zoning Bylaws*. The Order to Comply required that the Kunze property be cleaned up by December 20, 2005, failing which the City would clean up the property at the expense of the property owner, Ms. Kunze. The City was subsequently informed that Ms. Kunze and the Kunzes' son, Doug, no longer wished to have Mr. Meade or his personal property on the Kunze property.

[9] On January 9, 2006, City council passed a resolution (the "resolution") declaring various items on the Kunze property, including Mr. Meade's personal property, to be a nuisance under the *Charter* and requiring removal of "all items" from the property by February 28, 2006.

[10] Mr. Meade secured a specific time at a regularly scheduled City council meeting on February 27, 2006 for a reconsideration of the resolution. Mr. Meade was late for the hearing. City council subsequently declined to hear from him on the basis that others who intended to speak to the reconsideration had already left. The resolution remained in place and Mr. Meade was informed that the February 28, 2006 deadline still applied. City staff began their "clean up" of the property in earnest on March 6, 2006.

[11] Mr. Meade never directly told the City that he was willing to move all of his items off the Kunze property and just needed more time. Mr. Meade was, however, able to salvage many items of value from the Kunze property both before and during the City's clean up. Other items, including some of sentimental value, were damaged by the City and/or taken by the City to the local landfill.

[12] The City billed Ms. Kunze for its clean up efforts and Ms. Kunze paid the City's invoice.

[13] Mr. Meade filed a Writ of Summons against the City on February 27, 2007 alleging that the City removed and disposed of his "goods and materials" without lawful authority (the "First Action"). The First Action was dismissed for failing to comply with the six-month limitation period provided by s. 285 of the *LGA*. Mr. Meade then commenced this action by filing a Writ of Summons on December 27, 2007. Mr. Meade amended the Writ and filed a Statement of Claim on April 4, 2008.

[14] Mr. Meade subsequently applied to add various City staff and one City contractor as defendants. The City cross-applied to dismiss the action on the basis of *res judicata* and abuse of process. Mr. Meade was successful in his application and the City was successful in having several causes of action struck but, in written

reasons indexed as *Meade v. Armstrong (City)*, 2011 BCSC 1591, Dley J. allowed several causes of action to proceed. Dley J. did so on the basis that, in this action, Mr. Meade "does not dispute the City's authority to pass its by-law or issue an order that the property be cleaned up or trespass and seize his items." Dley J. noted that Mr. Meade instead was proceeding on the basis that the City "had no authority to sell his possessions or deem them to be trash and dispose of them accordingly": para. 55.

[15] As a result of the order of Dley J., Mr. Meade filed an Amended Statement of Claim on March 23, 2012. Prior to trial, Mr. Meade discontinued his action against all individual defendants except for Ms. Thibodeau.

ISSUES

[16] The issues are:

1. Was the City's disposal of Mr. Meade's personal property authorized?
2. Is Mr. Meade's action barred in its entirety by s. 736 of the *LGA*?
3. Are any of Mr. Meade's causes of action barred by s. 735 of the *LGA*?
4. Is/are the City and/or Ms. Thibodeau liable to Mr. Meade for trespass to and conversion of Mr. Meade's chattels?
5. Is/are the City and/or Ms. Thibodeau liable to Mr. Meade in negligence?
6. Is/are the City and/or Ms. Thibodeau liable to Mr. Meade for misfeasance in public office?
7. Is/are the City and/or Ms. Thibodeau liable to Mr. Meade in conspiracy?
8. Is Ms. Thibodeau immune from personal liability by virtue of s. 738 of the *LGA*?
9. If the City and/or Ms. Thibodeau is/are liable to Mr. Meade, what are Mr. Meade's damages?

ANALYSIS

[17] The foundational issue is the lawfulness of the City's disposal of Mr. Meade's personal property. I will, therefore, begin my analysis by considering that issue. I will then analyze each cause of action on its merits. I will deal with the City's and/or Ms. Thibodeau's statutory defences and damages issues only if necessary.

Was the City's Disposal of Mr. Meade's Personal Property Authorized?

[18] Mr. Meade's Amended Statement of Claim alleges that the City and/or Ms. Thibodeau acted without lawful authority. This allegation must be read in light of, and narrowed by, the reasons of Dley J.

[19] True to his characterization of his claim before Dley J., Mr. Meade makes no argument that the City lacked the jurisdiction to pass any of its bylaws or the resolution, or that Ms. Thibodeau lacked the jurisdiction to issue the Order to Comply. Further, there was no evidence that the City sold any of Mr. Meade's personal property. The narrow issue before me is, therefore, whether the City had the lawful authority to dispose of Mr. Meade's personal property under the resolution and/or Order to Comply.

[20] I will first examine the City's actions under the *Charter* and the resolution.

[21] Section 74 of the *Charter* empowered the City to declare buildings, structures or erections of any kind, "a matter or thing that is in or about" a building, structure or erection of any kind, or other things the City council considered to be "so dilapidated or unclean as to be offensive to the community" to be a nuisance. Section 74 also empowered the City to impose a remedial action requirement in relation to any declared nuisance.

[22] Section 72 of the *Charter* empowered the City to require the owner of any matter or thing declared to be a nuisance, or the owner or occupier of the land on which any matter or thing declared to be a nuisance was located, to remove or demolish the matter or thing or "otherwise deal with" it in accordance with the directions of City council.

[23] Section 76 of the *Charter* required the City to give at least 30 days' notice to anyone affected by a remedial action requirement. Section 77 established that notice of a remedial action requirement was to be given by personal service or registered mail to the person subject to the requirement, the owner of the land where the action was to be carried out and any other person who was an occupier of the land. Section 79 of the *Charter* empowered the City to give less than 30 days' notice where City council considered there to be a "significant risk to health or safety."

[24] Section 78 of the *Charter* enabled a person affected by a remedial action requirement to request a reconsideration by City council. Section 78 also compelled City council to "provide the person with an opportunity to make representations to the council" following which City council could "confirm, amend or cancel the remedial action requirement".

[25] As Mr. Meade does not challenge the validity of the resolution, it is not necessary for me to delve into potential issues under ss. 76-78 of the *Charter*. Suffice to say, however, that Mr. Meade became aware of the resolution and was given an opportunity to make representations to City council regarding the remedial action requirement. Unfortunately, Mr. Meade was late for the City council meeting on February 27, 2006 and, therefore, missed his opportunity to make representations in support of his request to have the resolution reconsidered.

[26] In any event, if a person subject to a remedial action requirement failed to take a required action, s. 17 of the *Charter* empowered the City to "fulfill the requirement at the expense of the person" and "recover the costs incurred from that person as a debt."

[27] Finally, in the event that a remedial action requirement was not satisfied on the specified deadline, s. 80 of the *Charter* also empowered the City to sell "the matter or thing in relation to which the requirement was imposed or any part or material of it." The City could then retain the proceeds of sale to pay its costs with any remainder being paid to the owner of the matter or thing sold.

[28] In this case, on January 9, 2006, City council considered a report prepared by Ms. Thibodeau dated December 19, 2005 concerning two properties alleged to be nuisances within the City. One of them was the Kunze property. The report addressed the process for dealing with such properties under the *Charter*. Ms. Thibodeau's report included a description of the condition of both properties and the efforts of City staff to deal with the properties. Ultimately, City council declared both properties to be nuisances and imposed remedial action requirements.

[29] In relation to the Kunze property, City council passed a resolution:

> …(T)hat Council declare the storage sheds, the holiday trailer, the unlicensed vehicles, trailers and miscellaneous debris that is piled around the property located at 2425 Okanagan Street a nuisance, and that a notice pursuant to Section 77 of the Community Charter be imposed on the owner of the vehicles and trailers [and] the owners of the property…, requiring them to remove all items from the property no later than February 28th, 2006.

[30] As neither Ms. Kunze nor Mr. Meade satisfied the required action to "remove all items from the property no later than February 28th, 2006", Ms. Thibodeau directed City staff to attend at the property to effect the remedial action requirement. Specifically, Ms. Thibodeau directed the City's Public Works foreman to set aside items of value for eventual sale and to "throw out" any garbage, including items in the open-sided shed. Ms. Thibodeau described the open-sided shed as a "pole barn".

[31] City Public Works staff began their clean up work on the property on March 6, 2006. They put some items of apparent value, such as a set of table and chairs, into the travel trailer and set other items of apparent value aside. The Public Works staff threw many items, including items within boxes that were stored in the open-sided shed, into a large disposal bin they had brought onto the Kunze property. The City ultimately disposed of the material in the disposal bin at the local landfill. In the meantime, the City hauled Mr. Meade's travel trailer to its Public Works yard and many of the items of apparent value set aside by the City began disappearing. Ms. Thibodeau assumed that Mr. Meade picked up the items that disappeared.

[32] Mr. Meade learned of the City's actions and worked through the early hours of March 7, 2006 with his partner and friends to recover many items of value, including by going through the items in the disposal bin. Unfortunately, some items of value to Mr. Meade had been destroyed by being thrown into the disposal bin.

[33] Though the timing was not clear, an Agreed Statement of Facts establishes that, at some point after December 5, 2005, Mr. Meade recovered from the property: a utility trailer with welder attached; a canoe; farm jacks; some beekeeping equipment; computers; one or two photo albums; a flat deck truck; a weed eater; a filing cabinet; a pickup truck; and some clothes. Mr. Meade also recovered his travel trailer, including the table and chairs inside, from the Public Works yard.

[34] Mr. Meade was hard-pressed to precisely describe items of value that he lost but these included: "some household items"; family photo albums and videos; an unspecified quantity of lumber; an unspecified quantity of steel pipes; beekeeping equipment, including a shed on blocks used to over-winter bees; a riding lawn mower; a second set of table and chairs; and eight concrete blocks. Mr. Meade adduced very little evidence of the condition of these items or their value.

[35] Dealing first with the City's authority to deem Mr. Meade's property to be a nuisance, in the context of judicial reviews, courts in British Columbia apply a deferential standard of reasonableness to determinations made by local governments as to what constitutes a nuisance: *Vernon (City) v. Sengotta*, 2009 BCSC 70 at paras. 50-54.

[36] Though Mr. Meade does not directly challenge the resolution, based on the photographs I have seen, the City's determination was reasonable. With the greatest respect to Mr. Meade, the Kunze property had the appearance of a "junk" yard and the items within the large permanent shed were an outright mess. The tarps on the large permanent shed did not cover all sides of the shed so many of the items inside were visible from the outside. City council knows the community best and was well informed and well positioned to determine that the appearance of the Kunze property was not in keeping with community standards and constituted a nuisance.

[37] I will deal next with the City's authority to dispose of Mr. Meade's personal property.

[38] Section 17 of the *Charter* clearly empowered the City to undertake the work the City had directed Mr. Meade and/or Ms. Kunze to complete through the resolution but which they failed to do, namely to "remove all items from the property". The question is whether the *Charter* empowered the City to not only remove but also to dispose of Mr. Meade's personal property.

[39] In *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271, our Court of Appeal restored a Heritage Alteration Permit granted by the Township of Langley which had been set aside by the chambers judge. Germane to this case, at paras. 11-18, the Court had the following to say regarding the correct approach to interpreting municipal legislation:

> [11] …(I)t is always salutary to remind oneself of the basic principles of statutory interpretation applicable in construing this species of delegated legislative authority.
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> [12] Counsel, of course, cited the Supreme Court of Canada's decision in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and then noted Tysoe J.A.'s reformulation of the direction in the context of a municipal law case in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 13:
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> > ... the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment].
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> [13] Again, in the context of municipal empowering legislation and bylaws enacted pursuant thereto, this Court said in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550 (at 554 per Hinkson J.A.):
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> > In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.
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> [14] In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, Mr. Justice Bastarache stated for the Court (at paras. 6 and 8):
>
> > 6 The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes

> empowering municipalities. ... The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced...
>
> ...
>
> 8 A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. ...

[15] These common law rules must be married with the expressions of intent by the Legislative Assembly.

[16] Generally, in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 we are told that:

> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] Specifically, under s. 4(1) of the *Community Charter*, S.B.C. 2003, c. 26, we are directed so:

> 4(1)The powers conferred on municipalities and their councils under this Act or the *Local Government Act* must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in *Neilson*, "with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose".

[40] In this case, the purpose of the enabling provisions of the *Charter* and of the resolution was the same. Both were directed at returning nuisance properties to an inoffensive condition, whether through the efforts of the owners of the real and personal property at issue or through the efforts of the City itself.

[41] To give effect to the intention of the enabling legislation and the resolution, I find that the City's authority to "remove" the items which City council determined to be a nuisance also included the power to dispose of the items. The resolution was very broadly worded and clearly described some specific items that City council considered to constitute a nuisance. The resolution specifically identified "the sheds", which, in context, must have been understood to include the items visibly stored within the sheds. The resolution also characterized some of the items on the

Kunze property to be “debris”. It could not have been the intention of the enabling legislation or the resolution to allow the City to remove but not dispose of such items. Otherwise, the City would have been limited to selling or indefinitely storing items of little or no value, including, if present, garbage.

[42] City staff made a sincere effort to set aside items that may have had value. I accept that what remained appeared to City staff to be “junk”. Mr. Meade may have been busy working part-time and retraining but he had plenty of notice to remove his personal property from the Kunze property. That he did not do so lent credence to the City’s belief that the items in the sheds and on the property had little value.

[43] After carefully considering all of the evidence, I have concluded that the actions of City staff in disposing of Mr. Meade’s property was authorized by the resolution and s. 17 of the *Charter*.

[44] Having made this finding, it is not necessary for me to analyze whether the City’s actions were also authorized by the Order to Comply.

Is/are the City and/or Ms. Thibodeau liable to Mr. Meade for trespass to and conversion of Mr. Meade’s chattels?

[45] The tort of conversion is a wrongful act in dealing with goods inconsistent with the owner's rights, and includes the destruction or sale of such goods. The wrongful act must be intentional and not by way of negligence. The tort of trespass to chattels is the intentional interference with another's possession of goods, and includes the intentional and unlawful seizure of such goods: *Jarvie v. Banwait*, 2013 BCSC 337 at para. 45 and G. H. L. Fridman, *The Law of Torts in Canada*, 2nd ed. (Toronto: Carswell, 2002) at 121-123. See also Philip H. Osborne, *The Law of Torts*, 5th ed. (Toronto: Irwin Law, 2015) at 321-323.

[46] It is a defence to both trespass to and conversion of chattels that the defendant’s act was authorized by statute: Fridman at 132-133 regarding trespass to chattels and at 150 regarding conversion. See also Osborne at 330. For example, in the context of determining the scope of the limitation defence provided by s. 735 of

the *LGA*, in *Gringmuth v. North Vancouver (District)*, 2002 BCCA 61 at para. 21, our Court of Appeal described that an expropriation of land would amount to trespass and conversion if not authorized by statute.

[47] Having found that the City's disposal of Mr. Meade's personal property was authorized by the resolution and s. 17 of the *Charter*, I must dismiss Mr. Meade's action against the City and Ms. Thibodeau in trespass and conversion.

Is/are the City and/or Ms. Thibodeau liable to Mr. Meade in negligence?

[48] Mr. Meade's claim in negligence is founded on the City's and/or Ms. Thibodeau's alleged failure to ensure that City staff acted in a lawful manner and did not damage his personal property.

[49] The burden is on Mr. Meade to establish that the City and/or Ms. Thibodeau owed him a duty of care, that one or both breached that duty and that damages resulted from the breach: *Clements v. Clements*, 2012 SCC 32 at paras. 6-7 and *Fontaine v. British Columbia (Official Administrator)*, [1998] 1 S.C.R. 424 at para 23, 156 D.L.R. (4th) 577. See also Osborne at 50.

[50] The City makes submissions on each aspect of Mr. Meade's negligence claim but I find it unnecessary to deal with all of the City's submissions. Mr. Meade's claim in negligence fails on the very simple basis that there is no duty of care not to do what a defendant is authorized to do: *Nicholls v. Richmond (Municipal Corporation)*, 52 B.C.L.R. 302 at 315, [1984] 3 W.W.R. 719. I agree with the City's submission that it would be absurd to hold the City and/or Ms. Thibodeau liable in negligence for carrying out actions which were authorized by the resolution and s. 17 of the *Charter*.

[51] I must dismiss Mr. Meade's action against the City and Ms. Thibodeau in negligence.

Is/are the City and/or Ms. Thibodeau liable to Mr. Meade for misfeasance in public office?

[52] In the leading case of *Odhavji Estate v. Woodhouse*, 2003 SCC 69, the Supreme Court of Canada explained the elements of the tort of misfeasance in public office, at paras. 22-23, as follows:

> [22]. What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts: see for example *Powder Mountain Resorts*, *supra*; *Alberta (Minister of Public Works, Supply and Services)* (C.A.), *supra*; and *Granite Power Corp. v. Ontario*, [2002] O.J. No. 2188 (QL) (S.C.J.). It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort's constituent elements. It is thus necessary to consider the elements that are common to each form of the tort.
>
> [23] In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.

[53] Having found the City's and Ms. Thibodeau's actions to have been authorized by the resolution and s. 17 of the *Charter*, a "Category B" misfeasance in public office claim is not available to Mr. Meade. For Mr. Meade to establish his misfeasance in public office claim, he must prove that the City and/or Ms. Thibodeau specifically intended to injure him as required under "Category A".

[54] Mr. Meade presented his case on the basis that the City acted for the improper purpose of assisting the Kunzes rather than in the public interest and that the City must have known that he would be harmed as a result. Mr. Meade adduced some evidence in support of his belief about the City's motivations.

[55] Mr. Meade suspected from the outset that the Kunzes themselves were behind the "complaints" referred to by the City. When he asked for information about the complaints, the City cited privacy concerns and refused to disclose any information. Ms. Thibodeau's report to City council dated December 19, 2006 referred to "several" complaints but she testified that the City received only one verbal complaint and one written complaint from neighbours. The City has never disclosed or produced any documentation regarding the complaints.

[56] A number of documents from the City's files detail communications between the City and the Kunzes.

[57] On December 5, 2005, the City's contract Bylaw Enforcement Officer, Leanne Robertson, sent an email to Ms. Thibodeau detailing some communications Ms. Robertson had had with Doug Kunze. Ms. Robertson was apparently informed that Doug Kunze was "getting his mother… to sign a letter indicating she would like the occupants removed from the property." Ms. Robertson was also apparently informed that the property had been "sold in principal to a developer", that the sale "should be completed in January" and that Doug Kunze wanted the name of the purchasers to remain confidential.

[58] The City's files included an undated letter from Ms. Kunze informing the City that Ms. Kunze did not want Mr. Meade or his new partner to remain on the Kunze property. Ms. Kunze gave her "permission" to the City to "have them removed."

[59] On December 13, 2005, a letter was sent from a lawyer acting on behalf of Ms. Kunze to Ms. Robertson. The letter read, in part: "At this point in time it appears both we and the City share the same objectives. Specifically, we both seek the removal of Mr. Meade and (his partner) along with their property." The letter also

asked for an extension of time to allow Ms. Kunze to remove some of her property which was subject to the Order to Comply.

[60] On the same day, Ms. Thibodeau responded to Ms. Kunze's lawyer that Ms. Thibodeau planned to submit reports to City council on January 9, 2006 asking council "to declare the situation on (the Kunze) property to be a nuisance pursuant to s. 74 of the Community Charter." Ms. Thibodeau also indicated she would ask City council for an extension at that time.

[61] On January 16, 2006, Ms. Robertson emailed Ms. Thibodeau indicating that, at his request, she would be meeting with Doug Kunze on the property on January 23, 2006 to "give him direction on what needs to be removed from the property." Ms. Robertson also reported Doug Kunze's belief that if the Kunzes "removed any of Mr. Meade's items off the property (the Kunzes) could be charged with theft."

[62] Even though the Order to Comply and the resolution applied equally to Ms. Kunze and Mr. Meade, the City's documents and the other evidence at trial demonstrate that the City did not treat them equally.

[63] The City shared Mr. Meade's written communications to the City with Ms. Kunze's lawyer but did not share written communications sent by or on behalf of the Kunzes with Mr. Meade. Ms. Robertson agreed to meet with Doug Kunze on the property but the City did not respond to Mr. Meade's request for a meeting. In January 2006, the City demonstrated an openness to giving Ms. Kunze additional time to comply with the City's directions. On February 27, 2006, the Mayor agreed to allow Mr. Meade to reschedule his request for a reconsideration to the next regularly scheduled council meeting but, in response to a question from the City Administrator, the Mayor indicated that City council was not extending the existing deadline for clean up of the Kunze property. The City then proceeded with its cleanup before the next scheduled City council meeting, making Mr. Meade's request to reschedule the reconsideration moot.

[64] In my respectful view, the evidence relied on by Mr. Meade raised no more than a suspicion of wrongdoing by the City and/or Ms. Thibodeau and does not come close to constituting the type of clear cogent evidence necessary to establish bad faith on the part of a public official: *Powder Mountain Resorts Ltd. v. British Columbia*, 2001 BCCA 619 at para. 8 and *Vernon (City) v. Sengotta*, 2009 BCSC 70 at para. 90.

[65] While I cannot understand why the City did not treat Mr. Meade in the same fashion the City treated the Kunzes, the difference does not establish that the City was acting in the private interests of the Kunzes and in disregard of the City's public duties.

[66] Prior to the events at issue, Ms. Thibodeau did not know Mr. Meade and there was no evidence to even remotely suggest that Ms. Thibodeau or the City had any reason to put Ms. Kunze's private interests ahead of their public duties or to want to harm Mr. Meade. The storage of Mr. Meade's personal property on the Kunze property constituted a nuisance. The City took steps against another offending property at the same time as it was taking steps against the Kunze property. Personal property of Ms. Kunze was also subject to the Order to Comply and the resolution. Mr. Meade had more than two months' notice to remove his personal property from the Kunze property. The City took care to set aside items of apparent value and Mr. Meade recovered some, if not all, of this property.

[67] Given these undisputed facts, I accept Ms. Thibodeau's testimony that her actions and, more broadly, the City's actions were not motivated by any desire to assist Ms. Kunze or harm Mr. Meade. I accept Ms. Thibodeau's testimony that she and the City were acting only in the discharge of public duties to seek compliance with the City bylaws, the Order to Comply and the resolution.

[68] Mr. Meade has not established that Ms. Thibodeau or the City acted in deliberate disregard of their official duties. In fact, I find that the motivations of Ms. Thibodeau and the City were to properly discharge their public duties and that their

actions were authorized by the resolution and s. 17 of the *Charter*. I must, therefore, dismiss Mr. Meade's claim in misfeasance in public office.

Is/are the City and/or Ms. Thibodeau liable to Mr. Meade in conspiracy?

[69] In *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452 at 471-472, 145 D.L.R. (3d) 385 at 398-399, the Supreme Court of Canada defined the two branches of the tort of conspiracy, as follows:

> Although the law concerning the scope of the tort of conspiracy is far from clear, I am of the opinion that whereas the law of tort does not permit an action against an individual defendant who has caused injury to the plaintiff, the law of torts does recognize a claim against them in combination as the tort of conspiracy if:
>
> > (1) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
> >
> > (2) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.
>
> In situation (2) it is not necessary that the pre-dominant purpose of the defendants' conduct be to cause injury to the plaintiff but, in the prevailing circumstances, it must be a constructive intent derived from the fact that the defendants should have known that injury to the plaintiff would ensue. In both situations, however, there must be actual damage suffered by the plaintiff.

[70] As for the tort of misfeasance in public office, compelling evidence is required to establish the tort of conspiracy: *Golden Capital Securities Limited v. Rempel*, 2004 BCCA 565 at para. 46.

[71] Leaving aside the question of whether Mr. Meade was required to name Anna and/or Doug Kunze as defendants, the mere fact that the Kunzes wanted, and the City required, that Mr. Meade's personal property be removed from the Kunze property does not establish that the City and/or Ms. Thibodeau were acting in concert with Anna and/or Doug Kunze.

[72] I did not hear from the Kunzes but the circumstances suggest that they wanted their property cleaned up in order to complete a sale of the property. The evidence was clear that the City and Ms. Thibodeau wanted the Kunze property to

be cleaned up for a different purpose, namely to comply with the City's bylaws, the Order to Comply and the resolution.

[73] Further, regarding the first branch of the tort of conspiracy, with the greatest respect to Mr. Meade, for the reasons already expressed, Mr. Meade has not come close to establishing that the predominant purpose of the City and/or Ms. Thibodeau was to injure Mr. Meade.

[74] Finally, regarding the second branch of the tort of conspiracy, for the reasons already expressed, Mr. Meade has not established that the conduct of the City and/or Ms. Thibodeau was unlawful.

[75] For these reasons, I must dismiss Mr. Meade's claim in conspiracy.

Statutory Defences and Damages

[76] Having dismissed all of Mr. Meade's claims on their merits, it is not necessary for me to address the statutory defence and damages issues.

CONCLUSION

[77] The circumstances of this claim are most unfortunate. Mr. Meade lost a number of personal treasures but not as a result of any actionable wrong on the part of the City or Ms. Thibodeau. For the reasons I have stated, I dismiss Mr. Meade's action in its entirety.

[78] The City and Ms. Thibodeau made no submission on the issue of costs. I grant the City and Ms. Thibodeau until February 28, 2018 to bring the issue of costs before me, failing which the parties will bear their own costs.

[79] I thank counsel for the City and Ms. Thibodeau for the courtesy and respect he showed Mr. Meade throughout the trial and for his thoughtful, thorough and

helpful submissions. I thank Mr. Meade for his respectful participation in the trial and I wish him the best in the future.

"L.S. Marchand J."

MARCHAND J.