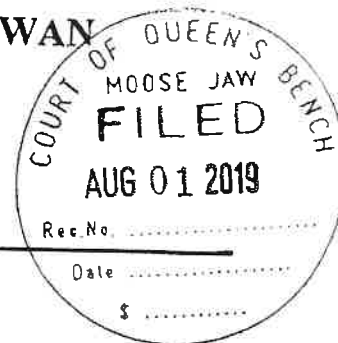


QUEEN'S BENCH FOR SASKATCHEWAN

Date: 2019 07 31
Docket: QBG 68 of 2019
Judicial Centre: Moose Jaw



BETWEEN:

**THE RURAL MUNICIPALITY OF BAILDON NO. 131
and its DEVELOPMENT OFFICER.**

APPLICANT

- and -

JERRY BARON KAISER

RESPONDENT

Counsel:

Lauren J. Wihak
Julian Nahachewsky

for the applicant
for the respondent

**FIAT
July 31, 2019**

HILDEBRANDT J.

[1] The applicant, The Rural Municipality of Baildon No. 131 and its Development Officer [collectively "RM of Baildon"], had brought an originating application seeking an order to enforce its zoning bylaw and building bylaw, and to compel compliance by the respondent, Jerry Baron Kaiser [Mr. Kaiser], with three Stop Work Orders made pursuant to s. 242 of *The Planning and Development Act, 2007*, SS 2007, c P-13.2.

[2] Following commencement of the originating application and after

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considerable materials had been filed by the RM of Baildon, both in support of the application and in response to a counter application and several affidavits filed by Mr. Kaiser, the respondent prudently sought the assistance of counsel.

[3] When the matter was heard in Chambers, Mr. Nahachewsky, on behalf of the respondent, advised that Mr. Kaiser was withdrawing his application to strike the originating application and was withdrawing all handwritten affidavits, including those of May 8, May 15, May 17 and May 24, 2019.

[4] Counsel for both parties confirmed that a draft consent order had been agreed between them, with the terms thereof already being put into play. Only one item of the draft order has a blank to be completed, in para 6, pertaining to costs. The terms of the consent order filed are as follows:

The Court orders:

1. That the Respondent shall amend the permit application dated May 22, 2019, requesting the construction of a new house on Parcel D of 24-15-26-W2 (the "New House Permit Application") and submit the amended New House Permit Application to the Applicants by no later than July 8, 2019;
2. That, upon receipt of a complete amended New House Permit Application by July 8, 2019, the Amended New House Permit Application shall be approved by the Applicant by July 10, 2019;
3. That, upon receiving notice of the Applicant's approval of the amended New House Permit Application, the Respondent shall submit to the Applicants complete permit applications with respect to the relocation of the Garage, the Church and the Concrete Pad to Parcel D of NE 24-15-26-W2 (the "Relocation Permits") by no later than August 12th, 2019;

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4. That upon receipt of complete Relocation Permits by August 12, 2019, the Relocation Permits shall be approved by the Applicants by August 14, 2019 and the liens registered against the Garage and the Church shall thereby be vacated;
5. That the Respondent shall complete the work required by the Relocation Permits by November 30, 2019, unless the Court otherwise orders;
6. That the Applicants shall be awarded costs of this application fixed at _____ payable within 60 days of the date of this Order;
7. That, in the event of any non-compliance with this Order by the Respondent, the Applicants shall have leave on 14 days' notice to have this matter brought back before the Court; and
8. That the parties shall have leave on 7 days' notice to seek direction or further order of this Court in respect of the orders made herein.

[5] I find the terms of the order to be reasonable in the circumstances and, for the reasons discussed in the following, direct that the consent order may issue with this wording, with the amount \$10,000.00 being included in para 6, and with an amendment to enable payment within 90 days rather than 60 days.

Analysis

[6] The RM of Baildon seeks costs on a solicitor and client basis or, alternatively, on an enhanced basis relying upon the combined effect of ss. 369(1)(c) and 372 of *The Municipalities Act*, SS 2005, c M-36.1, along with Rules 11 – 1(3) and 11 – 1(4) *The Queen's Bench Rules [Rules]*. The RM of Baildon further requests that this court fix costs, rather than ordering that they be taxed. It is noted that, as at July 4, 2019, the actual legal costs for the RM of Baildon pertaining to this originating application were \$26,941.56.

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[7] On behalf of Mr. Kaiser, it is conceded that the RM of Baildon is entitled to some costs, given the considerable amount of effort required to address Mr. Kaiser's conduct as well as the materials he filed with the court. However, counsel for Mr. Kaiser submits that party and party costs based on the Tariff, in the approximate amount of \$2,000.00, would be appropriate. Mr. Kaiser's counsel further submits that s. 369 of *The Municipalities Act* does not justify a complete indemnification in the context of an award of costs. Mr. Nahachewsky also notes that in previous litigation between these parties, *Kaiser v R.M. of Baildon No. 131*, 2018 SKQB 292 [*Kaiser 2018*], Justice Kalmakoff declined to order costs on a solicitor-client basis and the award of enhanced costs he granted was only \$8,000.00. As such, the nearly \$27,000.00 claimed by the applicant in this case is high.

[8] The parties are well known to one another as Mr. Kaiser owns land within the boundaries of the RM of Baildon and has had many interactions with the applicant regarding regulation and permits relating to the use of his property. Along with internal enforcement and appeal proceedings, Mr. Kaiser has launched two actions against the RM of Baildon, QBG 84 of 2016 and QBG 88 of 2018. Both of these actions were dismissed in *Kaiser 2018*, with Justice Kalmakoff noting that they disclosed no reasonable claim, were vexatious, and amounted to an abuse of process.

[9] With respect to the garage, church and concrete pad—which underlie the originating application brought by the RM of Baildon—interactions between the parties commenced in January of 2015 when Mr. Kaiser submitted an incomplete application for a building permit, and declined to pay the permit fees, alleging that the building bylaw discriminated against small land holdings.

[10] Despite being declined a permit, Mr. Kaiser continued to build on the property and ultimately a stop work order was issued on June 23, 2015, with respect to

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the garage. The details of the appeal process, and Mr. Kaiser's lack of success before the Saskatchewan Municipal Board Planning Appeals Committee, as well as the lien ultimately filed by the RM of Baildon against Mr. Kaiser's title are set out at paras 17 through 33 of the affidavit of Christine Breitzkreuz, sworn April 30, 2019.

[11] In June of 2016 the RM of Baildon learned that Mr. Kaiser was planning to move into a hall on land he owned within the RM of Baildon. This would require a change in zoning as the area was zoned commercial. Mr. Kaiser responded that the hall was not his residence but a church, and that he was a deacon of a religious sect.

[12] The Saskatchewan Assessment Management Agency [SAMA] obtained confirmation that Mr. Kaiser was indeed living in the church. SAMA classified the building as residential and valued the property accordingly. Mr. Kaiser challenged this and, again, after considerable appeal processes, the RM of Baildon issued a stop work order on April 20, 201, in relation to Mr. Kaiser continuing to reside in the church without the necessary development permit. A further series of unsuccessful appeals by Mr. Kaiser followed. The full process is set out at paras 34 through 45 of the April 30, 2019, affidavit of Christine Breitzkreuz.

[13] Also in April of 2017, Mr. Kaiser began constructing a concrete pad on his property, advising a councillor that he was building a monument honouring pioneer women for Canada's 150th birthday. The RM of Baildon advised Mr. Kaiser that he needed to obtain a development permit, which is free of charge. However, Mr. Kaiser refused and the RM of Baildon issued a stop work order on April 20, 2017, and registered a lien on May 7, 2017.

[14] Mr. Kaiser also appealed this stop work order, both to the Local Development Appeals Board and the Saskatchewan Municipal Board Planning Appeals

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Committee. Those appeals were dismissed and Mr. Kaiser sought leave to appeal the latter decision to the Saskatchewan Court of Appeal. His leave application was dismissed on November 14, 2018. Again, the affidavit of Ms. Breitkreuz provides details of the issue related to the monument, at paras 46 through 54.

Self-represented Status

[15] The RM of Baildon is understandably frustrated with Mr. Kaiser and the multiplicity of proceedings. The population of the RM of Baildon is 620 and, due to Mr. Kaiser's conduct, the legal costs of dealing with Mr. Kaiser's various legal matters amount to approximately 7% of the RM of Baildon's entire levy, which was \$1,041,570.00 for 2018. Ms. Breitkreuz describes Mr. Kaiser as the "single most time-consuming and demanding ratepayer" in the RM of Baildon.

[16] Mr. Kaiser, until very recently, has been a self-represented litigant and has "had issues navigating the legal system". As his counsel argued, since retaining a lawyer, Mr. Kaiser has "gained an appreciation for his legal position" and has taken reasonable steps to comply with the stop work orders and to obtain proper permits for future developments. Indeed, the assistance of Mr. Nahachewsky in negotiating a consent order on this matter has been invaluable.

[17] Mr. Kaiser's previous self-represented status does not excuse him from his responsibility to conduct himself in a reasonable manner. Nor does it exempt him from the consequences of his actions. It is evident that considerable time and cost could have been saved by both parties had Mr. Kaiser retained counsel earlier.

[18] In this regard, the Supreme Court of Canada, in *Pintea v Johns*, 2017 SCC 23, [2017] 1 SCR 470 [*Pintea*], at para 4, endorsed the *Statement of Principles on Self-*

Represented Litigants and Accused Persons established by the Canadian Judicial Council in 2006, which includes the following at page 9:

For Self-Represented Persons

1. Self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case.
2. Self-represented persons are expected to prepare their own case.
3. Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.

[19] Prior to *Pintea*, the British Columbia Court of Appeal commented on self-represented litigants in *Hanlon v Nanaimo (Regional District)*, 2007 BCCA 538, at para 16:

... Yet the mere fact a party is self-represented is not a basis on which to depart broadly from the rules that govern litigation, for the administration of justice is not well served by an imbalance in the latitude afforded to litigants.

Section 369 of The Municipalities Act

[20] Sub-section 369(1)(c) of *The Municipalities Act* permits a municipality to collect costs for remedying a contravention of a bylaw by means of the tax roll:

369(1) A council may add the following amounts to the tax roll of a parcel of land:

...

(c) unpaid expenses and costs incurred by the municipality in remedying a contravention of a bylaw or enactment if the contravention occurred on all or part of the parcel.

[21] This is a specific mechanism for collection of expenses. On behalf of the RM of Baildon, it is argued that s. 369 also supports the notion of full indemnification

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to the applicant. Reliance is placed on the decision of *Rural Municipality of Edenwold No. 158 v Schmidt*, 2015 SKQB 216 [*Schmidt*], which involved a contempt application.

[22] In *Schmidt*, Justice Pritchard acknowledged the provisions of s. 369, but noted, at para 36, that “s. 369(1)(c) does not specifically refer to solicitor/client costs”. She then included s. 369 as one of the considerations which led her to conclude that the situation before her called for “complete or near complete” indemnification of costs. She set those costs at \$15,000.00 in circumstances where the solicitor-client costs incurred by the RM of the Edenwold, prior to the May 11, 2015, court appearance, totalled \$13,370.00.

[23] Other possibilities including either a fine or imprisonment—the latter of which was not seriously pursued by the RM of Edenwold—were then rejected by Justice Pritchard, as she noted at para 38 of *Schmidt*:

Significant additional costs may be incurred by the RM and added to the tax rolls for Parcel A and became [*sic*] payable by Mr. Schmidt if he does not purge his contempt within the time allotted hereunder and before the RM moves to remove the offending equipment from Parcel A. Mr. Schmidt will also be responsible for his own legal fees. In all, Mr. Schmidt’s failure to comply with the Court Order could end up being an extremely expensive mistake for him. Contempt proceedings are not for punishment *per se*, but for upholding the rule of law and respect for court orders. As such, a fine as requested by the RM will not be imposed, because the court is concerned that any additional financial sanction may be more akin to punishment and may cause severe hardship to Mr. Schmidt.

[24] It is not the role of this court to make an order pursuant to s. 369. However, that section, as Justice Pritchard recognized, is a consideration for the court. I am mindful that the RM of Baildon may elect to utilize its tax roll provisions, and trust that such would only be done with the appropriate guidance of its counsel.

[25] As Justice Pritchard effectively awarded solicitor-client costs in *Schmidt*, given the amounts noted in para 22 above, I turn to a consideration of whether such is

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appropriate in this case.

Solicitor – Client Costs

[26] On behalf of Mr. Kaiser it is argued that the characterization of the award of costs in *Schmidt* and here would be “problematic” for the RM of Baildon, given that Justice Kalmakoff declined to order costs on this basis in *Kaiser 2018*. The court in *Kaiser 2018* determined that the level of misconduct was not sufficient to satisfy the test in *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246 [*Siemens*]. Further, the circumstances of *Schmidt* involved contempt, which is not the case here.

[27] In *Siemens*, the Saskatchewan Court of Appeal, at para 111, cited the Ontario Court of Appeal decision in *Gerula v Flores* (1995), 126 DLR (4th) 506 (Ont CA), and noted that solicitor-client costs will only be awarded “in rare and exceptional cases” but may be justified where one party’s conduct is:

- (i) a deliberate attempt to frustrate the proceedings by fraud or deception;
- (ii) calculated to harm the other party; or
- (iii) unreasonable to the point that it unnecessarily compounds the complexity of the proceedings.

[28] It is the element of unreasonable conduct which must be considered in the current case. But for the intervention of Mr. Nahachewsky in advising Mr. Kaiser to withdraw the application to strike and remove the handwritten affidavits, this court would readily consider Mr. Kaiser’s conduct in this matter to be unreasonable. After refusing to even apply for a permit with respect to the concrete pad, and having

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exhausted all appeal mechanisms in relation to the garage, church and concrete pad, Mr. Kaiser still declined to abide by the stop work orders. This made the RM of Baildon's application necessary, complete with its lengthy affidavit evidence and volumes of exhibits. Mr. Kaiser's conduct in relation to the application, prior to engaging counsel, was also not reasonable.

[29] But the court must recognize that Mr. Kaiser ultimately did make the wise choice to seek legal assistance. As such, I am not prepared to penalize him by an award of costs on a solicitor – client basis.

Enhanced Costs

[30] That being said, like Justice Kalmakoff in *Kaiser 2018*, I recognize that Mr. Kaiser's conduct prior to engaging Mr. Nahachewsky showed "a disregard for his legal obligations and the authority of statutorily-appointed decision makers." As such, the circumstances call for enhanced costs, substantially above the tariff.

[31] Further, Mr. Kaiser was already awarded significant costs in *Kaiser 2018*. On Mr. Kaiser's behalf it was argued that this was sufficient chastisement for his conduct. However, that related to previous conduct and the award of costs there should have served as a warning to Mr. Kaiser. Yet he did not heed that warning.

[32] Rule 11-1 confirms the broad discretion of this court with respect to cost orders. In the circumstances, I order that Mr. Kaiser pay the RM of Baildon costs of this application, which I set at \$10,000.00. The draft order submitted required this to be paid within 60 days. I am, however, directing that Mr. Kaiser be given 90 days to pay.


B.R. HILDEBRANDT J.