

CASE LAW UPDATE

Tiffany Tsun, Associate, WeirFoulds LLP

W.J. Holdings Limited v City of Toronto

2011 ONSC 6315 (Released October 26, 2011)

Municipality – Civil Contempt – Conditions on Demolition Permits

The City of Toronto was found in contempt of an Ontario Municipal Board order requiring the City to issue demolition permits without conditions. The subject buildings remained vacant in the High Park neighbourhood for the past five years while the City refused to issue the permits. In May 2011, a fire broke out at one of the vacant buildings. This decision is the latest in a series of proceedings related to a proposed condominium redevelopment.

The applicants first applied for the demolition permits in 2006. When the City failed to respond, the applicants appealed to the Board in 2007. City Council voted in 2008 to refuse the permits application and to impose conditions on the permits even if the Board subsequently orders the permit issuance. In September 2009, the Board released written decision ordering the City to issue the permits and allowed the City six months to impose any conditions. The City appealed the decision, which was upheld by the Divisional Court in November 2010.

On February 24, 2011, the Board issued its final order requiring the City to issue the permits. The City continued to refuse to issue any permits until the applicants comply with certain conditions. The City had not officially filed any conditions with the Board at any time prior to the Board's final order in 2011. In March 2011, the applicants filed the Board's final order as an order of the Court then sought a declaration that the City was in contempt of the order.

The City took the position that the conditions it sought to impose had been identified by City Council in July 2008. It argued that the Board's final order did not affect the July 2008 Council Decision to impose conditions. The applicants argued that the Board's final order clearly directed the City to issue demolition permits without conditions, and that the City's refusal to issue the permits constitutes civil contempt.

Before addressing the contempt issue, the Court found no legislative basis for the City to refuse issuing the permits as directed by the Board. Nothing in the *City of Toronto Act, 1991* (which was the applicable statute) allows the City to override an order of the Board or of the Court.

The Court found the City in contempt of the Board's final order as the three-part test for contempt had been established.

First, the Board's final order, filed as an order of the Court, was clear and unequivocal that the City must issue the permits without conditions. The Court found that the Board had provided the six-month window to allow the City to impose the conditions and the applicants an opportunity to raise any related concerns. In issuing the final order, the Board had specifically noted that the City did not identify any conditions within the six-month time period of the decision.

Second, the City's disobedience of the order was voluntary and deliberate. The Court noted that it was apparent from the proceedings' history that the City had delayed its decision to issue demolition permits and taken numerous routes of appeal.

Third, there was contempt beyond a reasonable doubt as the City has continued to refuse the issuance.

Accordingly, the Court imposed a 30-day deadline for the City to purge its contempt by issuing demolition permits without conditions. Failure to purge the contempt would result in a penalty of \$75,000 and an additional \$150 for each day that the City failed to issue the permits.