

Information Nos. 09 1022, 1023,
10 3113, 3114 and 3115

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

BARBARA MILNE, GARY SANTUCCI and
1687602 ONTARIO INC.

TRANSCRIPT OF PROCEEDINGS

HEARD BEFORE HER WORSHIP JUSTICE OF THE PEACE W. CASEY
at the Ontario Court of Justice, 45 Main Street East,
Hamilton, Ontario, on August 10, 2012

APPEARANCES

Clayton, L.

Charko, R.

Municipal Prosecutor

Counsel on behalf of the Defendants

R v. Barbara Milne, Gary Santucci and
1687602 Ontario Inc.

FRIDAY, AUGUST 10, 2012

5 MS. CLAYTON: I think we're here - well, I know
we're here, the remaining matters on the list,
Barbara Milne, Gary Santucci, numbered
corporation 1687602 Ontario Inc., for your
decision today on the motion that was made on an
earlier date.

HER WORSHIP: Correct.

MS. CLAYTON: Thank you.

10 HER WORSHIP: Thank you.

COURT REPORTER: And could we just have some
introductions on the record, please?

15 MR. CHARKO: Oh, I'm sorry. Robert Charko,
initial R, counsel for Barbara Milne, Gary
Santucci and 1687602 Ontario Inc., and Mr. Gary
Santucci is also present, acting on behalf of
Barbara Milne and the numbered company, 1687602
Ontario Inc.

20 HER WORSHIP: Excuse me. In the back, stop
talking, sir. Thank you.

RULING

25 HER WORSHIP: On March the 23rd, 2012, the court
heard a motion by the City of Hamilton regarding
the use of the property at 16 Steven Street, in
the City of Hamilton, owned by Barbara Milne,
Gary Santucci and 1687602 Ontario Inc. I will
not review all the submissions in detail. The
motion was to determine whether the current use
30 of this property contravenes the present zoning
by-law or if it is exempted from the current
status by virtue of a legal non-confirming use of

2.
Ruling

the building. In 1951 the City of Hamilton zoned the area H Commercial and it remained so until about 1976 when the zoning was changed to D zoning. D zoning means that property in a specific area can only be used for single or duplex family dwellings. At the time exemptions to the by-law were allowed considering the nature of the specific neighbourhood, the type of businesses, and size of the buildings involved. 16 Steven Street is a warehouse facility with over 12,000 feet of space and it was allowed to operate as a commercial venture. Mr. Santucci gave evidence that he had researched the history of this property, and although the prosecution indicated that his evidence was hearsay, in the absence of any contradictory evidence from the City prosecutor, the court is prepared to consider Mr. Santucci's research as credible. He testified that the property has warehouse space on three or four floors and has been known for years as the Canadian Pearl Company. Now it's currently known as the Canadian Pearl Company and Art Centre. There were a number of buildings in the affected area which were allowed to continue operating as normal and were given the non-conforming legal right to do so. This building was one of them. According to Mr. Santucci's research it was quite probably the Reid Paper Box Company, although the building has housed many different businesses on each floor. The property is currently being used as a theatre, art gallery, and an eating establishment, and

3.
Ruling

5 although Mr. Santucci has owned this property since 2006, and paid commercial taxes, he may, if my ruling goes against him, be required to either change his business to conform totally with the letter of the law or vacate the building.

10 The prosecution was focussed on a very narrow interpretation of the original non-conforming use allowed. In this case I don't think it's possible the building could be used strictly in compliance with its uses in 1951 or even earlier, no matter who owns it. This has been a very difficult motion to contemplate. The prosecution is proceeding on the letter of the law however, 15 the court has to concern itself with the spirit of the law. Mr. Santucci had, upon purchasing this property, a reasonable expectation of the presumptions of regularity given the history of the building, including the fact that this building is taxed commercially. I understand the 20 prosecution's submissions that commercial taxation does not relate to the uses of the building, but with the greatest of respect I feel that the average person would link the fact that the building being taxed commercially at a higher 25 rate than housing means it was able to deal in commerce.

30 During the course of this hearing there were references to the City of Hamilton study to create, and I'll quote, "healthy neighbourhoods". In part the motion now being studied by council

Ruling

5 includes a review of the City policies and by-laws to help grow the City's art and cultural industry. To take away an established use of this building on what may be determined in the future to be a building designated for this purpose seems to the court to be fundamentally unfair at this time. Mr. Santucci in essence is trying to preserve what may be a cultural improvement to the area as a whole.

10 As indicated in Exhibit 6 this appears to be something the City itself is looking to accomplish. This court wants to be fair to both the City and Mr. Santucci, and with the present situation being in the prevue of City council, I'm going to put the hearing over for one year to allow council to determine the best course of action and the direction they wish to take in this section of the City. I am therefore seized. Nothing will happen in this matter with this motion and we'll come back before this court on Thursday, August the 9th, 2013, courtroom 320.

20 MR. CHARKO: Was that 1:30, Your Honour (sic)?

HER WORSHIP: One thirty.

25 MR. CHARKO: And, Your Worship, in your initial submissions you indicated it was a motion by the City. It was actually a motion by Mr. Santucci.

HER WORSHIP: Oh, I see. I'm sorry. I apologize.

30 MR. CHARKO: Thank you.

MS. CLAYTON: Thank you, Your Worship.

5.
Certification

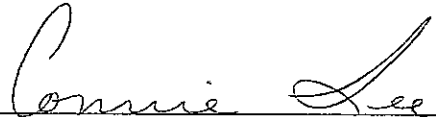
FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

5
10 I, Connie Lee, certify that this document is a true and
accurate transcription of the digital recording of *R. v.*
Barbara Milne, Gary Santucci and 1687602 Ontario Inc., in the
Ontario Court of Justice held at 45 Main Street East,
Hamilton, Ontario taken from the digital recording in
15 courtroom 320 on August 10, 2012, which has been certified by
the undersigned.

September 13, 2012

Date



Signature of Authorized Person

20

25

30