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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

NATHAN RIMMER,

Plaintiff,

v.

CITY OF EDMONDS, a municipal corporation of
the State of Washington,

Defendant.

No. 23-2-05426-31

**Plaintiff’s Reply in Support of Motion for
Summary Judgment re: Liability for
Violation of Federal Constitutional Rights
Under 42 U.S.C. § 1983**

I. The City Concedes Liability Under 42 U.S.C. § 1983

The City of Edmonds concedes that Judge Appel’s January 31, 2024, oral ruling establishes its liability under the Civil Rights Act of 1871, 42 U.S.C. § 1983, for depriving Mr. Rimmer of rights secured by the Fifth and Fourteenth Amendments to the U.S. Constitution. City Resp. Br. at 1, 7–8. Mr. Rimmer is therefore entitled to an order ruling that the City is liable for damages, attorneys’ fees, and costs under 42 U.S.C. §§ 1983 and 1988 in an amount to be proven at trial.

II. The Date of the Constitutional Violation Is Established as a Matter of Law

The City does not contest that it violated the doctrine of unconstitutional conditions on May 10, 2022, when Senior Planner Clugston first stated that the City would not issue Mr. Rimmer’s building permit unless he submitted to its unconstitutional tree-replacement condition. Rimmer Dec., Dkt. # 17, ¶ 9. Indeed, it cannot credibly do so. It is black-letter law that

1 when a permit applicant “refuses to cede a constitutional right in the face of coercive pressure,” as
2 is the case here, “the impermissible denial of a governmental benefit is a constitutionally
3 cognizable injury.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607, 133 S. Ct.
4 2586, 186 L. Ed. 2d 697 (2013). And that injury remains compensable “regardless of whether the
5 government ultimately succeeds in pressuring someone into forfeiting a constitutional right.” *Id.* at
6 606. Thus, the date of the constitutional injury to Mr. Rimmer is established as a matter of law.

7 **III. The City’s Arguments Regarding the Cause of Delay in Permit Issuance Are Too**
8 **Late, Improper, and Beyond the Scope of This Motion**

9 Mr. Rimmer’s motion seeks only a ruling that “the City is liable for damages, attorneys’
10 fees, and costs under 42 U.S.C. §§ 1983, 1988” in an amount to be proven at trial. Mr. Rimmer
11 has not asked this Court to predetermine the precise period of time for which the City will be held
12 liable for delay damages, as the City suggests in its response. Instead, Mr. Rimmer’s motion sets
13 out the date of the constitutional violation (May 10, 2022) and the date the permit was eventually
14 issued (April 29, 2024)—dates that the City does not contest. Those dates merely set the outer
15 brackets on the two-year period that will be at issue in the contested damages proceeding.
16 Likewise, Mr. Rimmer’s discussion of delay damages was presented in argument setting out the
17 various types of damages available in an unconstitutional conditions case—establishing an
18 entitlement to relief which is an element of liability. *Sessions v. Chrysler Corp.*, 517 F.2d 759,
19 760–61 (9th Cir. 1975). Thus, the City’s request that the Court partially deny the summary
20 judgment motion on the precise period of delay that is attributable to the City addresses an issue
21 that is not presented and is without merit.

22 Even so, the City’s attempt to blame Mr. Rimmer for delaying the issuance of the building
23 permit (rather than taking responsibility for its unconstitutional demand) has no basis in law or
24 fact. Indeed, the City has offered no authority for the proposition that a permit applicant must

1 continue to satisfy costly permitting requirements (such as updating engineering plans) *after* the
2 government has said that it will not issue the permit unless and until the applicant accedes to an
3 unconstitutional demand and *after* the applicant has (repeatedly) objected to the condition. That is
4 because there is no such law. As stated above, *Koontz* holds that a violation of the doctrine of
5 unconstitutional conditions occurs the moment the government conditions issuance of a permit
6 upon an unlawful demand.

7 The City’s argument is also at odds with this Court’s prior ruling on the combined cross-
8 motions for summary judgment and petition for a writ of mandate/prohibition. There, the parties
9 fully litigated the question whether Mr. Rimmer was entitled to immediate issuance of the building
10 permit. And when addressing that question in its earlier briefing, the City advanced the same
11 argument that it was under no duty to issue the building permit because there were additional
12 matters that its permitting officials would have to review before approving the permit. Resp. Br.
13 at 23–24. The Court, however, rejected all of the City’s arguments why it wasn’t under a present
14 duty to issue the building permit and granted Mr. Rimmer’s petition for a writ of mandate, ruling
15 that “There is nothing left for the City to do but grant the permit. The City will do so.” Hodges
16 Dec., Dkt. # 28, at Ex. A (Transcript of January 31, 2024, oral ruling at 10–11), Ex. B (minute
17 order granting writ and denying City’s cross-motion for summary judgment). The City offers no
18 explanation why that ruling is not binding here. Thus, to the extent the City also argues that
19 concerns with Mr. Rimmer’s application caused the City to withhold permit approval (and not the
20 unconstitutional tree-replacement demand) for nearly two years, its argument was rejected in the
21 prior proceeding. For these reasons, the Court should deny the City’s request that Mr. Rimmer’s
22 motion for a summary determination of liability be partially denied. But there is more.

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1 The City also lacks a factual foundation for this argument. Throughout the permitting and
2 initial summary judgment proceedings, the City took the position that the sole basis for its decision
3 to withhold Mr. Rimmer’s building permit was his refusal to accede to the unconstitutional tree-
4 replacement condition. Resp. Br. at 21–23. Indeed, Senior Planner Clugston stated so much in the
5 permitting record, where he wrote that there is only “one outstanding item [that] needs to be
6 submitted before I can approve the permit”—namely, execution of the Notice to Title dedicating
7 the tree-replacement area. Rimmer Dec., Dkt. # 17, at Ex. J. When a party has given clear answers
8 that negate the existence of any genuine issue of material fact, “that party cannot thereafter create
9 such an issue with an affidavit that merely contradicts, without explanation, previously given clear
10 testimony.” *Berry v. King Cnty.*, 19 Wn. App. 2d 583, 589, 501 P.3d 150 (2021) (citations omitted).
11 Neither the City nor Senior Planner Clugston address his prior, unequivocal statement and cannot,
12 therefore, credibly claim for the first time in this proceeding that Mr. Rimmer caused the City to
13 withhold the building permit. Again, to the extent the City wanted to make this argument, it was
14 obligated to do so a year ago when the mandate petition was fully and finally litigated.

15 **CONCLUSION**

16 For the reasons set forth above, the Court should issue summary judgment declaring that
17 the City is liable for damages, attorneys’ fees, and costs under 42 U.S.C. §§ 1983 and 1988 in an
18 amount to be determined later.

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1 RESPECTFULLY SUBMITTED this 5th day of December, 2024.

2 PACIFIC LEGAL FOUNDATION

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1 **CERTIFICATE OF SERVICE**

2 I certify that on December 5, 2024, I caused the foregoing to be served electronically on
3 Counsel of Record for the Defendant City of Edmonds, at the addresses below. I also caused
4 courtesy copies to be sent to the counsel listed below via U.S. Mail.

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20 I further certify that a Judge’s Working Copy will be sent via U.S. Mail.

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