

CANADA / JUDGMENT

Bowen Island (Municipality) v. Pelletier

2023 BCSC 2320

COURT

Supreme Court of British Columbia

DECIDED

7 December 2023

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2023 BCSC 2320 IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Bowen Island (Municipality) v. Pelletier, 2023 BCSC 2320 Date: 20231207 Docket: S229254 Registry: Vancouver Between: Bowen Island Municipality Petitioner And David Pelletier Respondent Before: The Honourable Justice Gropper Oral Reasons for Judgment In Chambers Counsel for the Petitioner: S. Dubinsky The Respondent, appearing in person: D. Pelletier Place and Date of Hearing: Vancouver, B.C. December 7, 2023 Place and Date of Judgment: Vancouver, B.C. December 7, 2023

- [1] THE COURT: The petitioner, Bowen Island Municipality, applies for a statutory injunction to enforce Building Bylaw No. 489, 2019, as amended. The bylaw regulates the construction of building structures within Bowen. It applies to all land, including the surface of water, air space, buildings and structures within the boundaries of the Bowen Island Municipality: s. 3.1.
- [2] The respondent, Mr. Pelletier, is a registered owner of property legally described as: LOT 7 BLOCK C DISTRICT LOT 3042 PLAN 10585, with a civic address of 856 Captains Way on Bowen Island (the "property"). The property is a waterfront parcel facing Howe Sound, but it does not include the one chain strip of land belonging to the provincial Crown.
- [3] Since 2021, Bowen has documented unlawful construction and occupancy of structures on Mr. Pelletier's property and the adjacent Crown land. Specifically, there are structures proceeding from the respondent's residence on the property, down through the Crown land, to that portion of Howe Sound immediately to the west of the property, including: two sets of stairs leading down to a deck; a deck; a further set of stairs leading from the deck to the shoreline and to the top of a gangway; and a gangway leading to a floating dock
- [4] Bowen has attempted to obtain the respondent's compliance with its bylaws unsuccessfully. Mr. Pelletier has not obtained a building permit to construct anything on his property or documented provincial authorization for the construction, placement and use of the Crown land. He has not removed the structures on his property and on the adjacent Crown land in accordance with Bowen's demands.

- [5] Bowen's attempts to attain compliance include multiple site visits; emails; letters from municipal staff; issuance of bylaw offence notices; issuance of Stop Work and Do Not Occupy orders; and two demand letters from legal counsel.
- [6] On September 29, 2021, Bowen's Building Official issued an order requiring the respondent to remove the unpermitted structures. The respondent has not complied.
- [7] The Building Bylaw applies to the design, construction or occupancy of new buildings or structures and the alteration, reconstruction, demolition, removal, relocation or occupancy or change of use or occupancy of existing buildings and structures.
- [8] Bowen has demonstrated that the respondent's actions in respect of the unpermitted structures on his property and on Crown land contravene the Building Bylaw, in particular, sections: 4.1; 4.2; 4.5; 5.1; 5.2; 6.8; 7.1; 7.3; 8.2; 10.1(b); 10.6; 10.41; 10.42; and 10.43
- a) construction of structures without requisite building permits;
 - b) occupancy of structures without an occupancy permit;
 - c) construction of structures on Crown land without the requisite approval;
 - d) continued occupancy of structures after a do-not-occupy order is imposed;
 - e) removal of a stop-work order and a do-not-occupy order without the permission of the building official; and
 - f) failure to remove unpermitted structures as required by the building official.
- [9] The Building Bylaw applies to work that was completed by a prior owner of the land, and applies to the current owner of the property. It enables Bowen to require the current owner to obtain permits or otherwise comply with it.
- [10] The respondent asserts that Bowen has a vast array of structures similar to those that lead from his property on the Crown land and to the water and that Bowen has effectively singled Mr. Pelletier out by ignoring all the other structures. He says that everyone uses the Crown strip of land as their own property, including his neighbour, who he describes as disgruntled.
- [11] The respondent says, further, that he did build the unpermitted structures, there are no photographs of him constructing the structures, and it would be wrong to require him to remove them, particularly when nothing is on his property.
- [12] I have reviewed the evidence provided by the neighbour, Ms. Cruise, demonstrating that the respondent has personally altered the Crown land and installed structures and that he uses and occupies them and that several of those structures have been put in place since 2016.
- [13] As noted, the Building Bylaw applies to unpermitted structures that were installed by a prior owner and unlawful occupancy by the current owner.

- [14] In respect of the respondent's position that he is being singled out, as his neighbours are also in noncompliance and have not faced the permanent statutory injunction, I do not have evidence of that. The alleged non-enforcement on others is not something that can be relied on in response to this petition. Further, the respondent cannot rely on his trespass as a basis for his using the property, and the evidence is clear that he has been trespassing and using the property.
- [15] There is little discretion for the court to decline an injunction to enforce a bylaw. It is in rare cases reserved for exceptional circumstances. This is not one of those special circumstances.
- [16] I consider permanent statutory injunction to be justified, and I therefore issue it.
- [17] The petitioner has suggested it is appropriate in this case to summarily address costs. Certainly, Bowen is entitled to its costs of this proceeding having been successful in obtaining the injunction that it sought.
- [18] I have the bill of costs that Bowen has provided, and I am satisfied that it is in accordance with the rules of court in respect of costs. The units claimed are modest and the disbursements are justifiable in the circumstances.
- [19] I therefore allow the costs of \$4,366.08 and order that the respondent is responsible for payment of those costs.
- [20] I will consider your draft order.
- [21] THE COURT: I order that the respondent is in breach of the Bowen Island Building Bylaw. The respondent is required to bring the property with a civil address of 856 Captains Way on Bowen Island and the adjacent foreshore and land covered by water into compliance with the Building Bylaw, and that the respondent is required to submit a complete demolition permit application to Bowen for demolition and removal of unlawful staircases, deck, and gangway within 30 days of the date of this order.
- [22] I also order that in accordance with s. 274(1) of the Community Charter, S.B.C. 2003, c. 26, that the respondent is required to complete the demolition of the unpermitted structures within 30 days of the issuance of a demolition permit by Bowen, and in accordance with s. 274(1) of the Community Charter the respondent is restrained and enjoined from permitting the occupancy of any structure on the site, in contravention of the building bylaw, by himself or by an agent, employee, contractor, or otherwise from carrying out construction at the site without first obtaining the requisite permits.
- [23] If the respondent fails to remove the unpermitted structures as required by this order, the petitioner is authorized by its employees or contractors to remove the unpermitted structures at the expense of the respondent.

[24] I approve the draft order provided by Bowen, and I will include the amount of the costs that I have ordered, \$4,366.08. "Gropper J."

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