

CANADA / JUDGMENT

Mission (City) v. Obasohan

2023 BCSC 1919

COURT

Supreme Court of British Columbia

DECIDED

5 October 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 1919 Mission (City) v. Obasohan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mission (City) v. Obasohan,

2023 BCSC 1919

Date: 20231005

Docket: S234689

Registry: Vancouver

Between:

City of Mission

Petitioner

And

Belinda Obasohan and John Obasohan

Respondents

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

S. Dubinsky

The Respondents, appearing in person:

B. Obasohan

J. Obasohan

Place and Dates of Hearing:

Vancouver, B.C.

September 29 and

October 5, 2023

Place and Date of Judgment:

Vancouver, B.C.

October 5, 2023

Table of Contents

Background.. 3

Zoning and Building Bylaws. 4

Zoning Bylaw Requirements. 4

Building Bylaw Requirements. 5

Procedural History. 6

Facts. 7

Analysis. 10

Legal Framework for Bylaw Enforcement 10

Bylaw Contraventions. 11

Conclusion.. 11

Costs. 12

[1] In this hearing of petition, the City of Mission seeks final statutory injunctions and associated relief under s. 274 of the Community Charter, S.B.C. 2003, c. 26, to restrain the Obasohans' alleged breach of City bylaws regulating the use of land and construction of buildings and structures.

[2] Since 2018, the City has documented ongoing unlawful use of the property in issue, raising safety and fire concerns, including:

- (a) multiple unpermitted secondary suites;
- (b) construction of secondary suites without building permits;

- (c) occupancy of secondary suites without occupancy permits;
 - (d) improper fire separation between secondary suites;
 - (e) insufficient means of egress from secondary suites; and
 - (f) use of three bedrooms for boarding purposes while only two boarders are permitted under the zoning bylaw.
- [3] The City submits that, since 2018, it has attempted to address this unlawful and unsafe situation by discussion and correspondence, tickets, and an unsafe-to-occupy order, all of which has been in vain.
- [4] The evidence and submissions have established that the Obasohans have refused to cooperate or comply with their legal obligations regarding their home, despite numerous warnings and demands from the City, resulting in the need for these proceedings.
- [5] On the evidence, the City has proven multiple serious and ongoing bylaw breaches by the Obasohans for which I can see no defence. As a matter of law, the City is entitled to the relief it seeks.

Background

- [6] The home in question is at 32260 Holiday Avenue in Mission. The evidence is that it was constructed in approximately 1997 by previous owners.
- [7] The building permits at the time of construction allowed for a single-family dwelling with one kitchen and an unfinished basement. The City's evidence is that those are the only building permits obtained for the house. The unfinished basement is also referred to in the final inspection of the same date as the permits.
- [8] The home's occupancy permit, September 18, 1997, approves occupancy of a one-unit residential dwelling, as defined in the zoning bylaw, with an unfinished basement and no more than one kitchen.
- [9] The City's evidence is that the Obasohans have been the registered owners of the property since 2014. Mr. Obasohan advised, however, that he and his wife actually purchased the property in 2003, rented it back to the previous owners for three years, and then moved into it in 2006. Nothing turns on this discrepancy in the evidence.
- [10] Mr. Obasohan described some of his personal background, including that he worked as a classroom assistant in the Lower Mainland for many years starting in 1994. He was also an assistant pastor with a Baptist church from, I believe, around 1995 to 2003, where he assisted people in the Downtown Eastside with food and lodging. He and his wife have adult children who do not reside with them.

Zoning and Building Bylaws

[11] At all material times, the property has been subject to the City of Mission Zoning Bylaw 5949-2020 and the City of Mission Building Bylaw 3590-2003.

Zoning Bylaw Requirements

[12] Under the Zoning Bylaw, the property is zoned R558, urban residential. This permits one single-family dwelling per parcel, as set out in s. 901(B)(1). The only permitted residential accessory uses are one of:

- (a) bed-and-breakfast use,
- (b) boarding use,
- (c) residential care use, or
- (d) supportive recovery use.

[13] The R558 zone does not permit a secondary dwelling unit, secondary suite, or multi-unit residential building.

[14] "Boarding use" is defined in the Zoning Bylaw as:

A use accessory to a single-family dwelling or a duplex, for the paid temporary or full-time accommodation of persons that is contained entirely within a dwelling unit, and limited to not more than two bedrooms and a maximum of two persons. Meals for a board must be provided from the single-family dwelling or duplex.

[15] Section 103(A)(1) of the Zoning Bylaw provides that:

No person shall use land or a building for any use or facility unless it is specifically permitted as a use in the zone in which the land or building is located.

[16] It further provides that:

Any use not specifically permitted in a zone is an unlawful use.

[17] Section 103(D)(1) states that:

No person shall use any land or building or suffer or permit any land or building to be used in contravention of the zoning bylaw.

[18] Section 103(D)(2) states that:

It is unlawful for any person to cause or permit any building or structure to be constructed, reconstructed, altered, moved, or extended in contravention of the zoning bylaw.

Building Bylaw Requirements

- [19] The Building Bylaw applies to the construction and occupancy of buildings located within the City of Mission. Section 5.1 of the Building Bylaw prohibits a person from commencing or continuing any work related to construction unless that person has a valid permit.
- [20] Section 5.2(a) prohibits a person from occupying or permitting the occupancy of a building, or part thereof, unless the owner of the building has obtained an occupancy permit from the building official.
- [21] Section 5.2(b) prohibits a person from occupying or permitting the occupancy of a building, or part thereof, contrary to the terms of any permit, notice, or order issued by the building official.
- [22] Section 5.3 prohibits a person from occupying a building, or a portion of a building, if a change in the occupancy classification of the building or part of it has occurred from that which the building was previously designed.
- [23] Section 5.4 prohibits a person from commencing or continuing any construction that does not substantially comply in all material respects with the requirements of the Building Code.

Procedural History

- [24] The petition and supporting affidavits from a bylaw enforcement officer and a building official were served on the Obasohans on July 7, 2023, some three months ago. They have not filed a response or any evidence.
- [25] The City gave them notice of the hearing of the petition on September 29, although not required to do so (Rule 16-1(8)(a)).
- [26] At the hearing, despite the absence of a response or affidavit evidence, I heard the Obasohans' evidence and submissions. At the initial hearing on September 28, I also gave them until 4:00 p.m., October 3 to file affidavit evidence and consult a lawyer, and adjourned the continuation of the hearing until October 5. In the end, Mr. Obasohan did not provide an affidavit. Nevertheless, I reviewed the two dozen or so pages he handed up and listened to his further evidence and submissions.

Facts

- [27] In 2018, the City received a complaint about multiple secondary suites on the property. On April 16, 2018, the City wrote to the Obasohans, advising them of the complaint and requesting to inspect the property. The inspection occurred on June 20, 2018. Significant renovations were found to create multiple suites without approval or permits and contrary to the zoning.

- [28] On June 29, 2018, the City wrote confirming the zoning contravention and requesting that the secondary suites be vacated and the property be brought into compliance.
- [29] The City and the Obasohans continued to correspond about the bylaw contraventions from 2018 to 2021. Among other things, the City requested a copy of any notice from the Obasohans to evict their tenants from the secondary suites, but none was provided.
- [30] The Obasohans resisted further inspections, writing on March 17, 2021, for example, that this was an intrusion into their private lives.
- [31] On April 21, 2021, Harminder Gill, a City bylaw enforcement officer, and Karl Rohde, a City building official, conducted a further inspection of the property pursuant to an entry warrant. Their evidence of what they observed included:
- (a) three secondary suites, two constructed on the main floor and one in the basement;
 - (b) the basement had been fully finished, including with the construction of interior walls and the addition of plumbing fixtures and electrical panels;
 - (c) a lack of required fire separation between the secondary suites and the primary single-family dwelling; unapproved electrical work and plumbing throughout the house and lack of smoke alarms;
 - (d) a lack of adequate egress from the secondary suites;
 - (e) the stove from the kitchen of the one-bedroom suite on the main floor had been removed and placed in the front yard. The tenant of the one-bedroom suite advised the building officials that the Obasohans removed the stove from her suite the previous evening and put it in the front yard; and
 - (f) three bedrooms on the top floor of the dwelling would be used for boarding purposes. Each of the three bedrooms contained its own mini refrigerator and microwave. City staff spoke with three individuals who were present during the inspection, each of whom advised they were students paying to rent the rooms from the Obasohans. Ms. Obasohan told them that the three bedrooms were being rented out to students. They observed a lack of proper sanitation for the boarding rooms on the top floor, including a bucket of urine in one of the rooms.
- [32] The City witnesses put into evidence many photographs taken during the April inspection, including egress windows in the basement that did not meet code, exits blocked entirely by furniture, an enclosed patio installed without permits, the basement kitchen installed without permits and with unsafe gas outlets and non-operational smoke detectors.

- [33] On April 29, 2021, the City wrote to the Obasohans, summarizing in detail the contraventions, the steps required for compliance, and setting deadlines for them to take action -- including obtaining the requisite electrical, building, and plumbing permits for unpermitted work and to either remove the secondary suites or apply for rezoning to permit them.
- [34] From September 2021 to January 2022, the City continued to write to the Obasohans about the bylaw contraventions and what was needed to bring the property into compliance.
- [35] On March 7, 2022, the City's lawyers wrote a demand letter stating in part:

The City has sought our assistance in remedying the bylaw contraventions occurring at the property. We are informed that electrical, plumbing, and construction work has taken place on the property without the requisite permits and that it contains multiple dwelling units, contrary to zoning bylaw. We are writing further to the extensive contact we have had with the City staff regarding these issues, including repeated phone calls, site visits, emails, letters, inspections of the property, issuance of six bylaw offence notices, tickets, and a meeting at City Hall. The most recent inspection of the property on April 21, 2021, documented three dwelling units on the property.

Breaches of the City bylaw are also enforceable via proceedings commenced in Supreme Court to obtain an injunction to compel compliance and recover costs.

Required action: The current use of the property is unlawful unless ceased. You have been repeatedly advised of the requisite steps to bring the property into compliance, included in the City's letters of April 29, 2021, and December 16, 2021. Your failure to bring the property into immediate compliance may result in one or more of the above-noted proceedings being instituted against you.

Please be advised that we act exclusively in the interests of our client, will not provide any legal advice to you, and urge you to obtain independent legal representation.

- [36] On January 19, 2023, the City's building official and the bylaw enforcement officer posted an "unsafe-to-occupy" notice on the property, and the City sent a further letter repeating the bylaw breaches and safety issues.
- [37] On January 19, 2023, Mr. Obasohan left the bylaw officer a voicemail saying that the suites were part of the house when it was approved in 1996 and when they purchased it, and they required the suites to meet their financial responsibilities. He said he could not apply for rezoning because they did not have the resources.
- [38] During the hearing, Mr. Obasohan advised that his house is approximately 6,500 square feet on three levels. As I understood him, the main floor has two master bedrooms and two additional bedrooms where, at times, there have been boarders. In the basement, there are five bedrooms divided into two suites -- i.e., separate dwelling units with bedrooms and bathrooms and which share a kitchen -- and there is currently one person living down there.

- [39] He stated that, in 2003, he was told by City representatives that the house conformed with the zoning, although there is no admissible evidence of that.
- [40] Mr. Obasohan explained that he and his wife have a mortgage of around \$500,000, and they need to rent out the suites to pay for this and their property taxes.
- [41] He provided photos of neighbouring houses, which he said also have suites. He argued that this selective prosecution is a breach of s. 15 of the Canadian Charter of Rights and Freedoms. He submitted that it was also unfair because the City charged him additional utility fees for a secondary suite while, at the same time, saying they were illegal.
- [42] He argued that it was in the public interest for a house as large as his to have numerous tenants who might otherwise pay higher rent elsewhere or even be unhoused, and that it was not the court's job to decide the appropriate number of occupants in such a large house.
- [43] In terms of safety, he said that, in all the years they lived there, they had never made any claim on their home insurance and that there were reasonable exits from all bedrooms and suites in the house.

Analysis

Legal Framework for Bylaw Enforcement

- [44] Under s. 260(3) of the Community Charter:

A person who contravenes the bylaw regulation or requirement commits an offence that is punishable in the same manner as if the bylaw had expressly forbidden persons from doing or refraining from doing the act.

- [45] Section 17 provides that the authority of a council to require that something be done includes the authority to fulfill the requirement at the expense of the person who fails to take the required action.
- [46] Section 274 entitles a district to enforce or prevent or restrain the contravention of its bylaws and the Community Charter in a civil proceeding.
- [47] This includes an order requiring the violator to undo or correct the violation as far as possible and, thus, move toward compliance with the bylaw (*Denman Island Local Trust Committee v. Ellis*, 2007 BCCA 536, paras. 53-54).
- [48] To obtain a permanent statutory injunction, the local government must prove, on a balance of probabilities, a breach of the relevant bylaw (*Abbotsford (City) v. Mary Jane's Glass & Gifts Ltd.*, 2017 BCSC 237, at para. 43).

[49] If breach is established, the court has limited discretion to deny a statutory injunction to enforce or restrain the breach of a bylaw, reserved for exceptional circumstances. That the respondent may suffer hardship from the imposition and enforcement of the bylaws will not outweigh the public interest in having the law obeyed (*Burnaby (City) v. Oh*, 2011 BCCA 222, at para. 41, leave to appeal ref'd [2011] S.C.C.A. No. 462; *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494, at para. 38).

Bylaw Contraventions

- [50] The evidence establishes that the Obasohans have breached s. 103A and D of the Zoning Bylaw, by the use of the unlawful secondary suites in the house. It also establishes breach, at least at the time of the inspection, by more than two boarders and bedrooms. Under the zoning, all that is allowed is occupation by the single-family owners and two additional boarders. Under R558 Zoning, no secondary suites are permitted.
- [51] The City has also established breach of the Building Bylaw ss. 5.2 and 5.3, because there are no building permits, or applications for building permits, for the secondary suites or the finishing of the basement. There was also a breach of s. 11.3 by ignoring of the "unsafe-to-occupy" notices.

Conclusion

- [52] I can see no basis in the evidence or submissions of Mr. Obasohan to decline the injunction sought and associated relief to address those breaches, particularly in circumstances where there has been such a long history of such breaches and a refusal to cooperate.
- [53] I agree with the City that to comply with the City's bylaws, the Obasohans must:
- (a) apply for applicable building permits and certificates of compliance for the construction work in the house done without those permits and certificates;
 - (b) decommission the secondary suites, including removing the kitchens or obtaining rezoning of the property to allow the secondary suites;
 - (c) arrange and pay for a decommissioning and inspection with the City's bylaw department.
 - (d) not permit more than two boarders in the house at any one time.

Costs

[SUBMISSIONS ON COSTS]

- [54] THE COURT: Okay. So what I am going to order, then, Mr. Obasohan, is I am going to order that you pay the City \$2,000 in costs.
- [55] J. OBASOHAN: How much?
- [56] THE COURT: \$2,000.

[57] J. OBASOHAN: \$2,000?

[58] THE COURT: Yes. I am going to say that you can do that at a rate of \$500 a month starting in October. I am cutting them by more than half because of what you have told me about your financial situation. Even though you have not given me formal evidence on that, I will accept what you say. And Ms. Dubinsky, I think, is to some extent accepting it as well. So I respect what you are saying about your financial situation.

[59] I do think costs are appropriate in this circumstance though. From my review of the correspondence and the inspections, I really believe that, for a long time, you and your wife have not cooperated with the City regarding these issues and have just carried on with these illegal suites and, at times, too many boarders, despite the City telling you that you needed to stop doing that.

[60] So I will award the \$2,000 in costs payable at \$500 per month starting at some point in October. And you can arrange that with Ms. Dubinsky. But I have cut those costs by more than half because of your situation. I am giving you more time as well.

[61] All right. Unless there is anything else, then thank you both for your assistance with this. And if neither of you have anything additional, we will adjourn.

"Coval J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/19/2023BCSC1919.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mission-city-v-obasohan-2023>

Prepared on 29 October 2026 · Esheria