

CANADA / JUDGMENT

Osoyoos (Town) v. Bloom

2024 BCSC 1680

COURT

Supreme Court of British Columbia

DECIDED

11 September 2024

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2024 BCSC 1680 Osoyoos (Town) v. Bloom

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Osoyoos (Town) v. Bloom,

2024 BCSC 1680

Date: 20240911

Docket: S243655

Registry: Vancouver

Between:

Town of Osoyoos

Petitioner

And

Murray Randall Bloom and Kathy Lynn Bloom

Respondents

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Petitioner:

S. Dubinsky

The Respondents, appearing in person:

M.R. Bloom

K.L. Bloom

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 6, 2024

Place and Date of Judgment:

Vancouver , B.C.

September 11, 2024

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Introduction

[1] Murray Randall Bloom and Kathy Lynn Bloom (the "Respondents") obtained a building permit to construct a new home at their property in Osoyoos in June 2018. The building permit was extended three times. Six years later, the Respondents have not completed construction. The Town of Osoyoos ("Osoyoos") say the Respondents have run afoul of a number of municipal bylaws with a partially constructed building that is an eyesore while they live out of a motorhome parked at the property. Osoyoos seeks declarations that the Respondents are in breach of various bylaws. The town seeks an injunction to prohibit the Respondents from residing at a motorhome on the property and from further construction work until a proper permit has been obtained. In addition, Osoyoos seeks orders that the Respondents bring their property into compliance.

Factual Background

- [2] Osoyoos filed affidavits from a building inspector, a bylaw enforcement officer, the director of operations and the former director of corporate services for Osoyoos. While the handwritten response filed by the Respondents referred to two affidavits from the Respondents, none were filed. The Respondents appeared at the hearing and made oral submissions. The Respondents confirmed during the oral hearing that they did not file any affidavits.
- [3] The Respondents are the owners of 5810 Oleander Drive, Osoyoos (the "Property"). The evidence shows the Respondents obtained a building permit in June 2018 to construct a new home. This permit has been extended three times, most recently in August 2022 for a period of six months, expiring in February 2023.
- [4] The construction of the home is not complete. The home is still in the framing stage. Many of the windows and doors have not been installed. Siding has not been attached. No occupancy permit has been issued. However, the Respondents have resided at the Property since August 2022 in a motorhome parked there or inside the incomplete home. Since at least 2022, Osoyoos has received a number of complaints about the unsightly state of the Property and the Respondents' occupancy of a motorhome on the Property. On June 14, 2023, the building inspector attended at the Property and issued and posted a stop work order and do not occupy order.
- [5] On July 21, 2023, the building inspector attended at the Property. Photographs taken that day show the home as incomplete, with some of the windows not installed, and large areas of the home with no siding attached.
- [6] On July 27, 2023, counsel for Osoyoos wrote a letter to the Respondents, setting out the various bylaw infractions and demanding the Respondents cease occupancy at the Property and to apply for a building permit.
- [7] At a council meeting on August 18, 2023, council passed resolutions authorizing legal proceedings if the motorhome was not removed by August 25, 2023 and occupancy terminated, and if the Respondents did not apply for a building permit with a satisfactory engineer's report by September 8, 2023. A meeting occurred between the Respondents and town officials on August 18, 2023. At that time, the Respondents agreed to remove the motorhome from the front yard by August 25, 2023, and to allow an inspection of the Property on August 25, 2023.
- [8] On August 22, 2023, a bylaw enforcement officer attended at the Property and delivered a notice of inspection for an inspection on August 25, 2023. A letter from counsel was also delivered setting out the deadline for removal of the motorhome and the date of the inspection. The bylaw enforcement officer observed the do not occupy order and the stop work order were no longer posted at the Property.

[9] On August 25, 2023, a bylaw enforcement officer and a building inspector attended the Property for the inspection. The motorhome was still present. A handwritten notice was posted at the front door of the building. The notice read "Notice: No Trespassing. No Admittance Except By Your Agreement to Our Terms of Service. Entry Constitutes Agreement". Mr. Bloom was present and refused entry for the inspection. No inspection was conducted.

[10] On September 11, 2023, Osoyoos received a handwritten "Notice and Demand" from the Respondents. The following are excerpts:

We, the equitable owners of private property, located at 5810 Oleander Dr. Osoyoos, British Columbia, make notice and demand to the officers and officials of The TOWN OF OSOYOOS, a corporation, any implied, or tacit, or otherwise agreement to be governed by a corporation is revoked immediately. Should the TOWN believe a contract is in existence, it must be produced within 3 days by return mail

Additional letters received from the TOWN OF OSYOOS (sic) are also rejected as agreement has not been expressed or given by the recipients, including tacit agreement

Notice: Your presumption that your bylaws have any force or effect over the equitable owners of private property is incorrect and must be accompanied by contractual evidence. You have 7 days to produce the law and evidence that compels compliance of any bylaw, and the names of all individuals, corporations, persons, claiming that they have a contract with the equitable owners, or they claim ownership, or claim they have special rights to our private property on the private side

[11] The "Notice and Demand" ends with a list of costs for various items. For example, posting of orders on the Property will incur a cost of \$7,500; any Osoyoos employee entering the Property without invitation will incur a cost of \$7,500; and every attempt to force compliance with bylaws requiring a court appearance will incur a cost of \$25,000 per hour. If Osoyoos wants the Respondents to apply for a building permit, Osoyoos has to pay the Respondents a fee of \$32,000.

[12] In September 2023, the building inspector prepared a report to the town council, setting out the contraventions of the B.C. Building Code [Building Code] occurring at the Property. These included no roofing, no cladding, lack of windows and doors, lack of handrails and guards, no insulation and no fire safety systems. The building inspector outlined concerns about the integrity of the structure as the house was still in the framing stage, and has not had protection from the elements since construction began in 2018. The building inspector had concerns about the structural integrity of the building due to the length of time the materials have been exposed to the elements. The report noted that the last inspection of the Property was in September 2020. The building inspector was denied entry for an inspection in August 2023.

- [13] The report noted that a framing inspection had not occurred, and could not occur until the house is brought up to lock up stage, meaning the windows, doors, shingles and building wrap have been installed, and the electrical, mechanical and plumbing components roughed in and inspected. The report included a detailed timeline of the steps needed to complete the construction. These steps include providing a sealed report from a structural engineer confirming that the structural integrity of the house is acceptable before construction can continue; applying for and obtaining a new building permit; bringing the home up to lock up stage with electrical, mechanical and plumbing components roughed in and inspected; and completing a framing inspection.
- [14] On September 26, 2023, council passed a resolution to impose a remedial action requirement (the "RAR") on the Respondents. The RAR set out timelines for when the Respondents must apply for a building permit, submit an engineer's report, and comply with construction deadlines. In the RAR, the Respondents are provided 52 weeks in total to complete the construction after a building permit has been obtained. The RAR noted in the alternative, the Respondents can apply for a demolition permit and complete the demolition. The Respondents may request that council reconsider the RAR within 14 days of service of the resolution. If the deadlines are not met, Osoyoos may do any of the required steps at the Respondents' expense.
- [15] The RAR was served on the Respondents on October 4, 2023. The Respondents did not seek any reconsideration.
- [16] On October 24, 2023, the building inspector attended the Property and noted that since July, work had occurred on the roof, contrary to the stop work order.
- [17] During construction, home builders are connected to the town's water and sewer services. However, final approval of the connection to and use of the water and sewer infrastructure occurs when the property passes final inspection and receives an occupancy permit. Osoyoos then begins to invoice the owners for the use of these services. The Property was connected to the water and sewer services during construction in April 2021. The fee for the initial connection was paid, but the Respondents have never paid for the use of the services. On December 21, 2023, a letter was served on the Respondents advising that water and sewer services will be discontinued effective February 1, 2024. Further notices were sent on January 8 and January 15, 2024. Water was turned off on February 1, 2024; however, the sewer service remains connected as it was impractical to disconnect the sewer service, as that would require excavation.

Applicable Bylaws

- [18] The relevant portions of the various bylaws are set out below:

Town of Osoyoos, Building Code Administration Bylaw No. 1251 (2009) [Building Bylaw]

5.4 A Building Official may order the cessation of work that is proceeding in contravention of the Building Code or this Bylaw, or any related Town of Osoyoos Bylaw, by posting a "STOP WORK ORDER" as prescribed by the Building Official on the property where such work is undertaken.

7.3 Every owner of real property on which a "STOP WORK ORDER" has been posted pursuant to section 5.4 of this Bylaw, or whose building permit has been revoked pursuant to Section 13.11 of Part 2 of this Bylaw, shall cease all work thereupon immediately and shall not commence any work until all provisions of this Bylaw have been fully complied with, and the "STOP WORK ORDER" has been removed by the Building Official.

9.1 No person shall commence or permit the commencement of construction or demolition unless a valid permit has been issued for the work by the Building Official.

9.2 No person shall occupy or permit the occupancy or use of any building or part thereof in the absence of an occupancy permit required by this Bylaw and contrary to any terms of any permit, notice or certificate given by the Building Official.

9.3 No person shall reverse, alter, deface, cover, remove or tamper with any notice or certificate posted on or affixed to any building pursuant to any provision of this Bylaw.

10.1 Every owner shall apply for and obtain a permit before constructing, altering, repairing, demolishing or moving a building or structure.

19.1 Prior to occupancy of any building or part thereof after construction or alteration, or any change in use or class of occupancy, the owner shall obtain an occupancy permit from the Building Official in accordance with this section.

19.4 Where a person or persons occupy a building or buildings in contravention of Section 19 of this Bylaw, the Building Official may post a "DO NOT OCCUPY" notice. The owner of a building on which a do not occupy notice has been posted shall cease occupancy of the building immediately and shall refrain from further occupancy until the notice has been removed by the Building Official.

Town of Osoyoos, Zoning Bylaw No. 1085, 1998 [Zoning Bylaw]

3.5 Every person who:

6 prevents or obstructs or attempts to prevent or obstruct the authorized entry of any authorized personnel, shall be deemed to be guilty upon summary conviction of an offence under this Bylaw.

4.4.2 An accessory building or structure shall not be used for human habitation.

4.4.4 An accessory building or structure shall not be located in a front yard.

4.17 Unless otherwise specified in this Bylaw:

1 no parcel of land shall be used for the storage of vehicles or as an auto wrecker or salvage yard;

2 no front or side yard shall be used for outdoor storage;

3 no parcel of land within a Residential zone shall be used for outdoor storage.

Town of Osoyoos, Good Neighbour Bylaw No. 1277, 2011 [Good Neighbour Bylaw]

3.1 No owner of real property shall cause, suffer or permit:

(c) the real property to become or remain unsightly;

Town of Osoyoos Water Regulations and Rates Bylaw No. 1388, 2023 [Water Bylaw]

86 The rates, fees and charges enumerated in Schedules are hereby imposed and levied for water supplied or ready to be supplied by the Town and for connections to the mains of the Town, and all rates, fees and charges shall form a charge on the parcels of the respective owners using the water and if not paid in full by December 31st may be recovered in the same manner and by the same means as overdue taxes.

Town of Osoyoos Sewer Regulations and Rates Bylaw No.1389, 2023 [Sewer Bylaw]

53 The owner of a parcel that is intended to be connected to a service connection or to a sewer must first

a) apply to and obtain approval from the Director of Operations; and

b) pay the applicable charges;

and must not commence the use of the service prior to having been granted formal occupancy permit for the use of the premises

The Respondents' Position

[19] The Respondents argue they do have a valid building permit which expires in August 2024. As I understand it, the Respondents argue their build has always been treated by Osoyoos staff as a "Complex Building" pursuant to the Building Bylaws. The Respondents argue a building permit for a "Complex Building" is valid for two years. As the last extension was granted in August 2022, the Respondents take the position their permit is valid until August 2024.

[20] The Respondents argue the Osoyoos staff through the years always treated their build as a "Complex Building", and the Respondents say they were always told their renewals were for two years. The Respondents in oral submissions claim that they were never advised there was any problem with their construction until July 2023. They argue their neighbour has a camera pointed towards the Property, and they believe the neighbour has something to do with Osoyoos' enforcement actions. The Respondents seem to believe the "Notice and

Demand" they served on Osoyoos absolves them of any wrongdoing. I note the Respondents have not tendered any evidence to support their claim.

Analysis

- [21] Osoyoos seeks injunctive relief pursuant to s. 274 of the Community Charter, S.B.C. 2003, c. 26. Osoyoos seeks an injunction to prevent the Respondents from occupying any building or structure on the Property, and from carrying out any further construction without a permit. The requested injunction is a statutory remedy that engages the public interest. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances: *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at paras. 37-38.
- [22] In addition, Osoyoos seeks pursuant to s. 274 of the Community Charter orders requiring the Respondents to bring the Property into compliance with the various bylaws, as well as compliance with the RAR. If the Respondents do not wish to bring their Property into compliance, they may elect to apply for a demolition permit and complete the demolition, as stated in the RAR. Osoyoos is entitled to enforce the RAR in the same way as a bylaw: *Madaninejad v. North Vancouver (District)*, 2015 BCSC 895 at para. 88. If the Respondents do not comply with the bylaws and the RAR, Osoyoos seeks authorization to impound the motorhome and demolish the building on the Property at the expense of the Respondents.
- [23] The requested injunction and compliance orders are a statutory remedy which requires the Court to determine whether the Respondents have breached the bylaws. Courts have recognized once a breach of a bylaw has been established, there is a limited discretion to deny a statutory remedy as it is in the public interest to have the bylaw enforced: *Burnaby (City) v. Oh*, 2011 BCCA 222 at para. 41.
- [24] The Court is satisfied there is no valid building permit for the Property. The last permit expired in February 2023, six months after it was extended in August 2022.
- [25] The Respondents' argument relies on the following provisions of the Building Bylaw:

3. In this Bylaw:

The following words and terms have the meanings set out in section 1.4.1.2 of the B.C. Building Code, as amended from time to time: building, building area,

"Complex Building" means:

- (b) all buildings exceeding 600 square meters in building area or exceeding three storeys

13.3 The permit shall lapse in the event that the work authorized by the permit remains incomplete 12 months after the permit was issued for standard buildings and 24 months for complex buildings.

13.4 A building permit that has expired before the work has been completed may be extended, at the discretion of the Building Official, for a period of not greater than 6 months provided this request is made in writing to the Building Official, prior to the expiry date.

- [26] The Building Bylaw incorporates the definition of "building area" from the Building Code: s. 3, Building Bylaw. The Building Code's definition of "building area" is not based on the total square footage of the home, but is defined as "the greatest horizontal area of a building above grade, within the outside surface of exterior walls". This appears to refer to the single largest floor of a structure that is above the basement. While the Respondents' home may exceed 600 square metres in total floor area when accounting for all the floors, that does not meet the requirement of a "Complex Building". I note there is no evidence of the total square footage or the single largest floor of the Respondents' home.
- [27] In any event, regardless of whether the Property is a "Complex Building", the Building Bylaw is clear that any extension of a building permit is discretionary, must be submitted before the expiry of the permit, and cannot be extended more than six months: s. 13.4, Building Bylaw. The evidence is the last extension was granted in August 2022. The permit expired six months after that point, in February 2023. There is nothing in the Building Bylaw which allows for extension of building permits for a "Complex Building" for two years.
- [28] As for the Respondents' argument that they were advised by Osoyoos staff that their build was a "Complex Building", I note there is no evidence which supports that claim. In any event, I agree with Osoyoos that even if the Respondents were in the past provided incorrect information, that does not prevent Osoyoos from enforcing its bylaws though it may constitute a basis for an action for damages: *Columbia Shuswap (Regional District) v. Darnell*, 2016 BCSC 1674 at para. 12, citing *City of Surrey v. Holden*, 54 A.C.W.S. (3d) 788, 1995 CanLII 1930 (B.C.S.C.).
- [29] As for the Respondents' reliance on their "Notice and Demand", I find the reliance is misplaced. The "Notice and Demand" is not based on any legal authority. The Respondents have not brought forth any legal authority which supports their argument that they can impose terms on Osoyoos with regard to the process of construction of their home. Osoyoos has the power to enact and enforce bylaws: ss. 8, 260, 274, Community Charter.
- [30] In my view, there is ample evidence the Respondents have breached the various bylaws and the RAR.
- [31] There is evidence the Respondents have breached the Building Bylaw by doing construction without a valid permit (s. 9.1, s. 10.1); occupying the Property without an occupancy permit (s. 9.2; s. 19.1); doing so after the posting of a stop work order and a do not occupy order (s. 7.3, s. 19.4); and removing those signs from the Property (s. 9.3).
- [32] The evidence shows the Respondents have breached the Zoning Bylaw by using the Property for outdoor storage and recreational vehicle storage lot where the Property is not zoned for those uses. These breaches reference the construction materials stored outside and the

motorhome where the Respondents are residing parked in the front of the Property. Further, the motorhome is a breach of the Zoning Bylaw prohibiting an accessory building to be located in a front yard (s. 4.4.2 and s. 4.4.4). Additionally, the Respondents are in breach as they prevented authorized staff from entering the home to conduct an inspection (s. 3.5).

- [33] There is evidence the Respondents are in breach of the Good Neighbour Bylaw by allowing the Property to be unsightly, in an unfinished and deteriorating condition (s. 3.1). The photos show an incomplete building with missing windows and doors, vast interior areas open to the elements, no siding, thin weathered looking wooden strips erected as fencing on the top floor, with construction materials strewn about outside.
- [34] There is evidence the Respondents have breached the Water Bylaw and the Sewer Bylaw by failing to pay for water services (s. 86) and user charges for the sewer service (s. 97), and receiving sewer service without an occupancy permit (s. 53).
- [35] There is evidence the Respondents did not complete any of the steps required in the RAR.
- [36] In my view, there is no basis to deny the relief sought by Osoyoos. The response of Osoyoos to the Respondents' construction has been measured. The evidence shows Osoyoos tried various means of enforcement before resorting to the court, including issuance of stop work and do not occupy orders, retaining counsel to send demand letters, meeting with the Respondents, passing a resolution to authorize a RAR, and shutting off the water supply. The Respondents have not complied. The Respondents advised during the hearing that they ran into some unexpected events since construction started, including health conditions of aging parents and forest fires. However, the Respondents seemed committed to completing the construction of their home.
- [37] There will be an order in the form drafted by counsel for Osoyoos.

Conclusion

- [38] The Court declares the Respondents are in breach of the Zoning Bylaw, the Building Bylaw, the Good Neighbour Bylaw, the Water Bylaw, the Sewer Bylaw and the RAR.
- [39] The Respondents are required to bring the Property into compliance with the Zoning Bylaw and the Sewer Bylaw within 30 days.
- [40] The Respondents are required to bring the Property into compliance with the Good Neighbour Bylaw, the Building Bylaw and the RAR within the timelines set out in the RAR.
- [41] Osoyoos is authorized to impound the motorhome on the Property and demolish the building on the Property at the expense of the Respondents if they fail to comply with this Order.
- [42] The Respondents are restrained and enjoined from occupying or permitting the occupancy of any building or structure on the Property.

- [43] The Respondents are restrained and enjoined from, by themselves or by an agent, employee, contractor or otherwise, carrying out construction at the Property without first obtaining the requisite permits.
- [44] As Osoyoos has been successful, it is entitled to costs at the ordinary scale. Osoyoos asks the Court to award lump sum costs. It has submitted a draft bill of costs. I am satisfied cost for a half day is justified. Osoyoos is entitled to an order of \$4,464 for costs.
- [45] The Court approves of the draft order submitted by Osoyoos. If the Respondents do not sign the draft order within 14 days of receipt, the order should be forwarded to the Court for signature.

"Chan J."

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