

# Owners, Strata Plan BCS3648 v. Podwinski, [2016] B.C.J. No. 2533

British Columbia and Yukon Judgments

British Columbia Supreme Court  
New Westminster, British Columbia  
F.E. Verhoeven J. (In Chambers)  
Heard: August 24, 2016.  
Oral judgment: August 24, 2016.  
Docket: S177490  
Registry: New Westminster

[2016] B.C.J. No. 2533 | 2016 BCSC 2253

Between The Owners, Strata Plan BCS3648, Petitioners, and Sasha Raine Podwinski and Royal Bank of Canada, Respondents

(28 paras.)

## **Counsel**

---

Counsel for the Petitioners: S.M. Smith.

Counsel for the Respondents: A. Mand.

---

## **Oral Reasons for Judgment**

### **F.E. VERHOEVEN J. (orally)**

1 This is the hearing of a petition brought under the *Strata Property Act*, *S.B.C. 1998, c. 43 [Act]*. The petitioner is a strata corporation. The strata development is a multi-family, apartment-style condominium complex located in Surrey. The respondent Ms. Podwinski is the owner of a strata lot in the strata development.

2 The issue between the respondent and the strata corporation has to do with unpaid monies that the strata corporation characterizes as unpaid strata fees, and for which it seeks a lien.

3 In or about mid-March of 2012, Ms. Podwinski rented her condominium to a new tenant. A former tenant moved out, and a new tenant moved in. The strata corporation's position is that Ms. Podwinski failed to submit the appropriate form, a Form K, with respect to the former tenant moving out, and that she similarly failed to file a Form K as required when the new tenant moved in. The strata corporation also contends that Ms. Podwinski failed to comply with the relevant by-laws concerning moving in and moving out, which regulate such matters as giving notice, reserving the elevator, scheduling moving times, paying moving fees, and similar matters. Another fine was imposed for having a dog off-leash and failing to pick up animal waste. In total the fines are in the range of \$3,000.

4 The validity of the fines is not the issue before the Court. The issue is whether the unpaid fines can now be characterized as strata fees under the *Act*.

5 The *Act* distinguishes between strata fees and fines, and authorizes a strata corporation to register a lien against

## Owners, Strata Plan BCS3648 v. Podwinski, [2016] B.C.J. No. 2533

an owner's strata lot for unpaid strata fees under s. 116(1)(a). Section 116(3)(c) specifically provides that a strata corporation may not register a lien if the amount owing is in respect of a fine. Sections 129-132 and 135 deal with the imposition of fines. Section 99 deals with the calculation of strata fees.

6 Ms. Podwinski has been regularly paying her monthly strata fees by way of pre-authorized payments from her bank on the 1st of every month. However, she has not paid any of the fines discussed above.

7 Approximately two years after the fines were imposed, in October 2014, the by-laws of the strata corporation were amended. The amended by-laws include the following provisions:

1(1) An owner must pay strata fees on or before the first day of the month to which the strata fees relate;

...

(9) Monies received by the strata corporation from an owner on or behalf of the owner shall be applied against the account relating to that owner's strata lot in the following order of priority:

(a) The oldest charge on the strata lot account followed by the next oldest charge and any other charges based on chronological order of original entry of those charges.

8 The strata corporation's position is that due to the implementation of the new by-law, effective November 1, 2014, the monthly strata fees that Ms. Podwinski was paying were to be applied against the fines that were outstanding from 2012. On this basis the strata corporation maintains that strata fees, and not fines, are currently owed by Ms. Podwinski, and therefore the strata corporation is entitled to file a lien against Ms. Podwinski's strata lot. The strata corporation seeks to enforce the lien in accordance with the relevant provisions of the *Act*.

9 Ms. Podwinski contends that the strata corporation cannot use its by-law to convert unpaid fines into unpaid strata fees.

10 The amount of the claim as initially presented on this hearing was \$3,813.72, comprised of \$3,437.18 in unpaid strata fees plus \$376.54 in interest. During the course of submissions, the strata corporation conceded that \$484.78 levied on April 22, 2015 for lien collection and administration costs cannot be considered strata fees and therefore should be removed from the claim. Therefore the strata corporation claims: (1) unpaid strata fees of \$2,952.40 and (2) interest of \$323.38, making for a total claim of \$3,275.78. It seeks what is in effect an order *nisi* for payment of that amount, and the right to sell the condominium unit if payment is not made within 30 days.

11 The ordinary remedy available to a strata corporation for unpaid fines is to start an action against the owner, and if a judgment is obtained then the strata corporation may execute against any property of the owner, including the strata lot. Currently the procedure would probably be to proceed by way of an action in the Provincial Court, although I am advised that the jurisdiction may have been taken over by the new Civil Resolution Tribunal.

12 Another potential remedy available to the strata corporation is to refuse to provide a certificate of payment under s. 115 of the *Act* in the event that the owner wishes to sell the property. This would compel the owner to pay any amounts outstanding, including fines.

13 On the hearing of this petition, the strata corporation argues that such procedures are cumbersome and expensive. It argues that the lien procedure for unpaid strata fees under the *Act* is more efficient.

14 As noted, the strata corporation received monies from the respondent pursuant to a pre-authorized payment form. Ms. Podwinski signed that form on January 4, 2011. That pre-authorized payment form allowed the strata corporation, through its management company Leonis Management, to receive monthly strata fees in the amount of \$203.37 directly from Ms. Podwinski's bank account.

15 The pre-authorized payment form states as follows:

The undersigned agrees to the following:

1. By signing this form I/we hereby authorize Leonis Management and Consultants Ltd., on behalf of the Strata Corporation, to debit my/our account monthly, covering monthly strata fees due to the strata corporation;

...

**16** The form also allowed for automatic adjustment of the strata fees.

**17** A schedule of payments shows that the strata fees increased to \$232.79 per month in 2012.

**18** The strata corporation argues that the pre-authorized payment form should not be viewed as determinative that the payments it received from Ms. Podwinski each month were for strata fees. Relying on its by-law, the strata corporation's position is that it was entitled to apply those payments against the oldest amounts owing on the account. Therefore, in this case Ms. Podwinski's pre-authorized payments were applied against the fines, and as a result the strata corporation contends that strata fees and not fines remain outstanding.

**19** The respondent's position is that the pre-authorized payments were for strata fees, that all fees have been paid, that the amounts owing, if any, are for fines, and that she is entitled to dispute those fines in court or through the Civil Resolution Tribunal, whichever is the applicable forum.

**20** The strata corporation contends that the owner cannot stipulate that the amounts paid are for fees only. It argues that no matter what interpretation may be made of the pre-authorized payment form, the owner is bound by the strata corporation's by-laws, including those respecting the allocation of funds by the strata corporation.

**21** In my view, the effect of the strata corporation's argument is to preclude owners from contesting or refusing to pay fines while continuing to pay strata fees.

**22** It is also my view that to give effect to this interpretation of the by-law would render the by-law contrary to the intent and plain wording of the *Act*. The *Act* is clear that a strata corporation may register a lien for unpaid strata fees but not for unpaid fines.

**23** Section 116 of the *Act* provides in part:

Certificate of Lien

116(1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

- (a) strata fees;
- (b) a special levy;
- (c) a reimbursement of the cost of work referred to in section 85;
- (d) the strata lot's share of a judgment against the strata corporation;
- (e) [Repealed 1999-21-25.]

...

(3) Subsections (1) and (2) do not apply if

...

(c) the amount owing is in respect of a fine or the costs of remedying a contravention

**24** An owner must pay fees, but may choose to contest fines, in which case the issue is dealt with in legal proceedings, unless perhaps the owner is otherwise compelled to pay the fines in order to obtain a certificate of payment in the event of a sale of the strata property.

**25** In my view, the by-law is invalid to the extent that it would preclude an owner from stipulating that fees are being paid and that fines are not, thereby denying the owner the remedies set out in the *Act*. The by-law must be read down in order to avoid that result.

**26** In addition, on the facts of this case, I find that in keeping with the terms of the pre-authorized payment form, Ms. Podwinski has paid the strata fees. I find that the strata corporation accepted the monies on that basis and only that basis. I reject the strata corporation's argument that the terms of the by-law override the terms of the pre-authorized payment form.

**27** In summary, I find that no fees are outstanding. As a result, the petition is dismissed.

[SUBMISSIONS RE COSTS]

**28 THE COURT:** Well, it is not public interest litigation, so I am not with you on that submission. The costs should follow the event. Ms. Podwinski has been successful, so she is entitled to costs on the ordinary scale.

F.E. VERHOEVEN J.

---

End of Document