IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bea v. The Owners, Strata Plan LMS2138,* 2014 BCSC 826

Date: 20140512
Docket: S116228
Registry: New Westminster

Between:

Cheng-Fu Bea

Plaintiff

And:

The Owners, Strata Plan LMS 2138

Defendants

Before: The Honourable Mr. Justice Grauer

Reasons for Judgment
In Chambers

The Petitioner appearing on his own behalf:	Cheng-Fu Bea
The Application Respondent appearing on her own behalf:	Huei-Chi Yang Bea
Counsel for the Respondent (Applicant):	Philip J. Dougan
Place and Date of Hearing:	New Westminster, B.C. April 15, 2014
Place and Date of Judgment:	Vancouver, B.C. May 12, 2014

INTRODUCTION

[1] In what are, thankfully, very unusual circumstances, the respondent applies for an order finding Huei-Chi Yang Bea ("Mrs. Bea") in contempt of court, and imposing a very unusual penalty. This application is the culmination of multiple proceedings in this Court and in the Court of Appeal over the last six years that have occupied countless court hours, frustrated dozens of judges, severely tested the patience of registry staff, and put the strata owners represented by the respondent to a great deal of expense they can ill afford.

BACKGROUND AND PROCEDURAL HISTORY

[2] These proceedings all arise out of disagreements Mr. and Mrs. Bea had with the strata council at the condominium complex where they live in unit 1. It is important to note that throughout, only Mrs. Bea has been the registered owner of that unit. This is important because most of the proceedings were pursued only in the name of Mr. Bea, who purported to be acting as agent for his wife.

[3] The conflict concerned parking regulations. Disputes over parking at the complex led the council to pass a parking bylaw in August 2006. That bylaw provided that all parking areas were common property, and that owners and residents may only park in the parking spaces assigned to their lot by the strata council. The Beas took exception to this, preferring the former regime of unrestricted parking; they were fined under the bylaw a number of times for parking in spaces other than the one assigned to unit 1.

[4] In these circumstances, Mr. and Mrs. Bea did what they are perfectly entitled to do. On May 14, 2008, they filed a petition against the respondent and the developer, bringing their dispute to this court for resolution. They argued that the strata corporation did not have the authority to assign common property parking stalls, exceeded its jurisdiction, and acted oppressively and in bad faith.

[5] That petition, New Westminster No. S113052 ("petition #1"), came on for hearing before Mr. Justice Masuhara on April 22, 2008. His Lordship delivered Oral

Reasons for Judgment, indexed at 2008 BCSC 1331, finding that the strata council acted within its jurisdiction, and conducted itself in a manner designed to achieve the greatest good in the best interests of all the owners. Accordingly, Masuhara J. dismissed the petition and awarded costs against Mr. and Mrs. Bea at Scale B.

[6] Mr. and Mrs. Bea did not appeal that decision. But they also did not accept it. Instead of appealing, Mr. Bea commenced a second petition, New Westminster No. S114949 ("petition #2"), on September 8, 2008. In it, he sought the same relief as he had in petition #1 in relation to the parking bylaw and the fines imposed under it. Mrs. Bea was not named as a party. One of the positions taken by the respondent was that Mr. Bea had no standing to pursue his application because he was not the owner of unit 1.

[7] Petition #2 came on for hearing before Madam Justice Brown on October 29, 2008. Significantly, on October 27, 2008, Mrs. Bea signed a form authorizing Mr. Bea to act on her behalf as her agent in relation to all matters concerning her ownership of the unit, and the strata council.

[8] Madam Justice Brown dismissed petition #2 on the ground that the relief sought was *res judicata*, as the issues it raised had already been dealt with by Mr. Justice Masuhara. Brown J. awarded costs to the respondent on Scale B against Mr. Bea.

[9] Once again, Mr. Bea did not appeal from this decision. Instead, on November 10, 2008, he commenced petition #3, the present proceeding, New Westminster No. S116228, once again claiming that the parking bylaw was *ultra vires*. Yet again, the respondent applied to have the petition dismissed. This application came before Master Taylor on March 13, 2009.

[10] In his Reasons, indexed at 2009 BCSC 783, Master Taylor noted the two earlier proceedings, and that Mrs. Bea had signed an assignment under the *Strata Property Act*, SBC 1998, c 43, indicating that Mr. Bea was now acting as her agent.

[11] By then, Master Keighley had pronounced a costs order against Mr. and Mrs. Bea in petition #1 of just under $5,000. The Beas appealed that costs order, which appeal was dismissed by Mr. Justice Williamson in January 2009. Further costs were awarded for that appeal. Master Keighley had also pronounced a costs order against Mr. Bea in petition #2 of just over $3,500.

[12] Master Taylor dismissed petition #3 (this proceeding) on the ground that it was vexatious and an abuse of the process of the court, pursuant to what were then Rules 19(24)(b) and (d) of the *Rules of Court*.

[13] Master Taylor concluded that he did not have jurisdiction to enjoin Mr. and Mrs. Bea from filing other proceedings against the respondents without leave, but he did issue an order prohibiting them from commencing any proceedings against the respondent in relation to the same subject matter of the parking stalls unless and until they first posted security for costs in the amount of $7,500.

[14] Master Taylor also awarded costs to the respondent in the amount of 60% of special costs, payable by Mrs. Bea. In this regard, Master Taylor accepted that Mrs. Bea was the one who owned the unit and had the asset in her name, and that Mr. Bea was essentially a straw man for her as he had no assets that were amenable to any order for costs.

[15] Things now begin to become quite tangled. Mr. Bea appealed Master Taylor's order to this Court. That appeal was dismissed with special costs by Madam Justice Gropper on June 1, 2009, in Reasons indexed at 2009 BCSC 723. Mr. Bea then appealed Gropper J.'s order to the Court of Appeal (CA37243) where, after he made several applications, Madam Justice Saunders ordered a stay of proceedings until Mr. Bea had posted security for costs of the appeal in the amount of $7,500, and $5,000 towards his costs below.

[16] In the meantime, the costs awarded by Master Taylor and Gropper J. in relation to petition #3 were assessed by Registrar Blok (as he then was), who issued

a certificate in the amount of $7,773.99, which judgment was secured against unit #1.

[17] When the respondent took steps to enforce that judgment, Mr. Bea applied to this court for a stay pending his proceeding with appeal CA37243. Mr. Justice Truscott granted a stay of 30 days which was to be lifted automatically if Mr. Bea failed to post the security for costs ordered by Saunders J.A.

[18] Mr. Bea did not post the security ordered by Saunders J.A., and that appeal became inactive. He did, however, file notice of appeal from the order of Truscott J., CA38137, and applied unsuccessfully before Chiasson J.A. for an order requiring the respondent to post security for costs. Mr. Bea applied to have that ruling reviewed by a division of the court.

[19] Then on June 16, 2010, Mr. Bea applied before Mr. Justice Groberman in the first appeal, CA37243, for a declaration that the respondent was in contempt of court for carrying on with the execution proceedings in the Supreme Court, notwithstanding the stay ordered by Saunders J.A. That application was dismissed by Groberman J.A. who expressed his frustration at trying without success to explain to the petitioner at some length that the stay order of Saunders J.A. applied only to his appeal and not to the proceedings in this Court. Mr. Bea then sought to have that ruling reviewed by a division of the court as well.

[20] Back in this Court, on August 23, 2010, the respondent applied before me in this proceeding for an order finding Mr. Bea in contempt, and restricting him and Mrs. Bea from taking further proceedings. Mr. Bea applied concurrently for an order staying proceedings in the Supreme Court, and in essence overturning what had been ordered by Groberman J.A. in the Court of Appeal. I had no difficulty dismissing Mr. Bea's application, and ruled as follows:

> [18] The respondents seek what counsel describes as a *Houweling* order based upon the recent decision of Mr. Justice Frankel for the Court in *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315. The proposed terms essentially prohibit Mr. Bea or his wife from filing or attempting to file any document in any Registry of this Court pertaining to or in any way connected with the subject matter of any of the three petitions, but is not to

apply to any order that is made against them at the behest of another party, et cetera.

[19] It is clear to me that the petitioner has habitually and persistently, without reasonable grounds, refused to accept the judgments delivered on his petitions and applications both in this Court and in the Court of Appeal. The clear orders of this Court and the Court of Appeal including orders for special costs in both courts have not deterred him from pursuing his goal though he has no legal ground left to him other than his pending appeals. In doing so, he has brought frivolous and vexatious applications impugning the character of the respondents and their counsel.

[20] I am satisfied that the petitioner on his own and as representative of his wife (who, in fact, is the only person with any possible claim in this matter) satisfies the test for a vexatious litigant within the meaning of s. 18 of the *Supreme Court Act*. This is not, however, the same situation as *Houweling, supra*. There, vexatious litigant orders had been made against Mr. Houweling. He was nevertheless persisting in applications for leave to commence further proceedings and applications for review when leave was denied. We are not yet there. Clearly, however, there must be an end to the petitioner's gross abuse of the litigation process. The petitioner has throughout this matter and even in his submissions before me purported to rely upon the law except when any decision has gone against him; then, suddenly, it seems to have no force and effect.

[21] Taking into account my authority under s. 18 of the *Supreme Court Act* and the inherent jurisdiction I have to control the process of this Court, I order that neither the petitioner nor his wife may, without leave, institute any further proceedings against the respondents in any Court and may not, without leave, file any further applications in this proceeding or in the two previous proceedings commenced against The Owners, Strata Plan LMS 2138, in this Court.

[22] Nothing I have ordered is to prevent the petitioner from pursuing his appeals, including any appeal from this order, subject to the directions and orders of the Court of Appeal, of course.

[23] It will not be necessary to obtain Mr. or Mrs. Bea's approval of the form of this order.

[24] This order is to be brought to the attention of this Court's Registry staff, who are authorized to refuse to accept any document that is attempted to be filed in contravention of this order.

[25] I should also say that the respondents brought, as an alternative (although it was the original application), an application for a finding of contempt of court against Mr. Bea. The respondents did not pursue that application at this hearing but I should say that I do not find any ground for holding Mr. Bea in contempt of court. His understanding of the law, no matter how misguided, cannot be held against him in that regard. He has not, as far as I can see, wilfully disobeyed any specific court order. The fact that he has not paid costs is a matter for execution, not for contempt. That application is accordingly dismissed.

[21] Mr. Bea filed notice of appeal from that order (CA38444). He also disobeyed it.

[22] In October 2010, a division of the Court of Appeal heard the two review applications from the orders of Chiasson J.A. and Groberman J.A. In Reasons for Judgment released October 21, 2010, and indexed at 2010 BCCA 463, the Court dismissed Mr. Bea's applications to discharge or vary the two orders, and prohibited Mr. Bea or anyone acting on his behalf from filing or attempting to file by any means whatsoever any document in the registry of the Court of Appeal for British Columbia pertaining to or in any way connected with the subject matter of appeals CA37243, CA38137 and CA38444.

[23] Given my order and that of the Court of Appeal, one might have thought that the superior courts of this province had seen the last of Mr. and Mrs. Bea, at least in so far as complaints arising out of strata parking regulations were concerned. Not so.

[24] In December 2010, Mr. Bea applied for leave to commence a further petition, and his notice of application was inadvertently accepted for filing by the registry before being brought to my attention. I responded with the following memorandum dated January 11, 2011:

> By direction of the Chief Justice, I have for consideration Mr. Cheng-fu Bea's requisition dated December 20, 2010, requesting leave to commence a further proceeding against The Owners, Strata Plan LMS 2138. The registry has also advised me that an amended notice of application was submitted by Mr. Bea naming The Owners, Strata Plan LMS 2138 as respondents, and was inadvertently accepted for filing on January 5, 2011. That application was submitted and filed in contravention of my order of August 23, 2010, and has accordingly been removed from the court list.
>
> Mr. Bea's request for leave to commence further proceedings, dated December 20, 2010, is denied. As I stated in my memorandum dated December 2, 2010, denying his previous request for leave, Mr. Bea has already had every opportunity to litigate his complaints alleging unfair or improper parking regulations, and he may not litigate them further, regardless of the basis of his complaint.
>
> It is clear from Mr. Bea's actions that he is unwilling to accept the directions of this Court, and continues to try to proceed with further litigation of the same matter. In doing so, he is abusing this Court's process. Accordingly, I hereby

> direct that the registry is not to accept for filing or consideration any documents of any kind from Mr. Bea, with the sole exception of a request for leave to file documentation or commence proceedings that do not relate in any way to the parking regime at LMS 2138-Brittany Park, provided that any such request is brought by counsel acting on Mr. Bea's behalf of at least five years' standing at the bar of this province.
>
> Mr. Bea should understand that any further attempts, through counsel or otherwise, to proceed against The Owners, Strata Plan LMS 2138 in relation to the parking regime at LMS 2138 – Brittany Park may expose him to proceedings for contempt of court.

[25] Among the highlights of proceedings that followed: on January 27, 2013, Mr. Justice Butler dismissed an application brought by Mr. Bea in contravention of my order, and awarded special costs. On March 27, 2013, Mr. Justice Groves dismissed yet another petition ("petition #4") commenced by Mr. Bea against the respondent and awarded costs of $2,500 payable by Mrs. Bea forthwith.

[26] In September 2013, petition #4 and yet one more petition ("petition #5") were brought to my attention. Both had been commenced in contravention of my order of August 23, 2010 and of Master Taylor's order of March 13, 2009. I issued the following memorandum:

> I have for consideration Mr. Cheng-Fu Bea's letter of September 3, 2013, requesting leave to file notice of hearing in relation to his petition, Vancouver No. 127141 [petition #5]. Leave is denied.
>
> Upon reviewing that petition as well as the petition filed in Vancouver under No. S130159 [petition #4], it is clear that the subject matter of both proceedings is the same as that previously raised by Mr. Bea in New Westminster Action No. S116228, in which I pronounced my order of August 23, 2010. By that order, I prohibited Mr. Bea or his wife or anyone acting on their half from filing or attempting to file any document in any registry of this court pertaining to or in any way connected with the subject matter of that proceeding and two others, without leave of the court.
>
> Mr. Bea did not seek leave to file either of the referenced petitions. It follows that the two proceedings were filed contrary to the terms of my order, and accepted for filing inadvertently [it had not been brought to my attention that Groves J. had dismissed petition #4]. Accordingly, in the exercise of my inherent jurisdiction to prevent the abuse of this court's process, I direct that the two petitions be struck.
>
> This is the second time that Mr. Bea has attempted to circumvent my order. For your reference, I attach a copy of my memorandum to Mr. Paul Beagan of January 11, 2011.

> Once again, I caution Mr. Bea that his continuing attempts to launch proceedings relating to the parking issues and fines at Brittany Park may expose him to proceedings for contempt of court.

[27] On December 6, 2013, two matters came before Mr. Justice Davies of this court. Mr. Bea sought leave to make further applications, and the respondent sought an order for contempt. Davies J. did not hear the contempt application because of the absence of evidence of personal service, dismissed Mr. Bea's leave application with special costs, and prohibited Mr. Bea from representing Mrs. Bea in any way in any further proceedings against the respondent.

[28] On January 31, 2014, the respondent applied in this proceeding (petition #3) for an order finding both Mr. Bea and Mrs. Bea in contempt of court. Mrs. Bea did not appear at that hearing, but the materials indicated that she had been served. The application was heard by Madam Justice Koenigsberg.

[29] After reviewing what I have set out above and more, Koenigsberg J. found both Mr. and Mrs. Bea in contempt and fined them $10,000. Her Ladyship further ordered:

- that the fine of $10,000 be paid by Mrs. Bea by Friday, February 7, 2014;
- that if the fine is not paid, warrant issued for the arrest of Mrs. Bea, and that she be brought before the court on the next court day following the arrest to be dealt with on an inquiry to determine whether she is committed a breach of the order granted;
- that the inquiry into any such alleged breach should first be conducted before me if available;
- that special costs be payable by Mrs. Bea in the amount of $2,500.

[30] The fine was not paid, and Mrs. Bea was brought before me on February 17, 2014. I ordered that an interpreter be present to assist Mrs. Bea. At that time, Mrs. Bea stoutly maintained that she had not been served with either the original contempt application materials that led to the order of Koenigsberg J. or with the order of Koenigsberg J. requiring her to pay $10,000. Mrs. Bea further maintained that she had no money in any event.

[31] The respondent filed affidavits from two process servers deposing to personal service of Mrs. Bea in each case. In these circumstances, I ordered an adjournment of the hearing so that the process servers employed by the respondent could be cross-examined by Mrs. Bea.

[32] The next hearing took place on March 3, 2014. After hearing from the two process servers, it was clear to me that Mrs. Bea had been served personally with the order of Koenigsberg J., but not until after the date for complying with the order had passed. More importantly, I could not be fully satisfied that Mrs. Bea had been served personally with the original contempt application materials because the process server could not positively identify Mrs. Bea as the person she served, and had to concede that her affidavit of service was inaccurate in stating that the woman she served had identified herself as the proper person to be served. In fact it was Mr. Bea who had identified the woman as the proper person to be served.

[33] In these circumstances, I vacated the order finding Mrs. Bea in contempt of court and directed that Mrs. Bea return before me on April 15, 2014, to show cause why I should not find her in contempt on the basis of the materials previously brought before Koenigsberg J.

[34] I should point out that the order of Koenigsberg J. finding Mr. Bea in contempt of court remains undisturbed. As far as I am aware, it has not been appealed, and the proceedings before me have concerned only the finding against Mrs. Bea. Regrettably, given the terms of that order, the result is that Mr. Bea remains unpunished for his contempt.

[35] In the meantime, I am told that on March 21, 2014, Mr. Bea made yet another application in the Court of Appeal, which was dismissed by Madam Justice Levine with costs in the amount of $10,000 payable by Mrs. Bea.

DISCUSSION

1. Was Mrs. Bea involved in Mr. Bea's actions?

[36] That Mr. Bea has persistently and deliberately disobeyed orders of this court is beyond question. Accordingly, he was quite properly found to be in contempt of court by Koenigsberg J. on January 10, 2014. But what about Mrs. Bea? Her name has not been used in the many proceedings commenced by Mr. Bea after petition #1 was dismissed, although judge after judge was sufficiently satisfied of her connection, given her appointment of Mr. Bea as her agent, to award costs against her. In order to find Mrs. Bea guilty of contempt, I need to be satisfied beyond reasonable doubt that she was a participant in the actions Mr. Bea took in contravention of orders of this court.

[37] At the two hearings before me on March 3 and April 15, 2014, Mrs. Bea maintained that she had no control over what Mr. Bea did, that in fact they were now divorced, and that she should not be punished for his breaches of various court orders.

[38] The suggestion that Mr. and Mrs. Bea are now divorced was pure prevarication. No court proceedings have been commenced under the *Divorce Act*, RSC 1985, c 3 (2nd Supp) and no court has pronounced an order for divorce. All that happened is that they filed a change of marital status form with the Canada Revenue Agency stating that they are now divorced. Mrs. Bea told me that she understood that because she and Mr. Bea were married in China, they did not need a court order from Canada to be divorced. I reject that explanation. I do not find Mrs. Bea to be at all credible. I am satisfied that the form they filed with the Canada Revenue Agency was just another attempt to evade her personal exposure to the consequences of the actions Mr. Bea was taking.

[39] Mrs. Bea then argued that the assignment form she signed giving Mr. Bea authority to act on her behalf in relation to matters connected to the strata unit was purely for internal strata council purposes, and not for litigation. In fact, she asserted, she had no idea what he was doing with all of his petitions and applications. I cannot accept that assertion.

[40] First, there is the timing of the assignment. Mr. Bea had commenced petition #2 in his own name alone, and the respondent took the position that he had no standing to bring it. Two days before the hearing of the respondent's application to dismiss the petition, the assignment document was signed.

[41] Second, there is ample evidence to demonstrate that Mrs. Bea knew perfectly well what her husband was up to. Judgment after judgment for costs was rendered against both Mr. Bea and Mrs. Bea, and registered against her title, leading to letters from the Land Title Office addressed to her personally in that regard. Letter after letter was written and either mailed or delivered to her home, addressed to both her and Mr. Bea. In addition, a letter was written to her alone in March 2013 concerning the order of Groves J., and the rapidly increasing value of judgments filed against her property. Finally, the respondent brought an application in this proceeding to have Mrs. Bea added as a petitioner. Mrs. Bea was served with that application, and opposed it. Because, in accordance with the Rules, Mrs. Bea could not be made a petitioner without her consent, the application failed. But it is clear that Mrs. Bea was aware of the proceeding.

[42] With all of this happening around her, not once did Mrs. Bea make any attempt to contact the respondent strata council or its solicitors to dissociate herself from her husband's actions. On the contrary, she routinely evaded or attempted to evade service of process in the various proceedings, instead of stepping forward to clarify what she now says was the real situation, as one would expect of an honest person whose name was being used against her wishes and to her detriment. Moreover, in her submissions before me, Mrs. Bea made it quite clear that she is *still* upset over the "injustice" of how she and her husband were treated by the strata

council in relation to the parking regulations and the fines levied against them as a result.

[43] In these circumstances, I am satisfied beyond any reasonable doubt that Mrs. Bea fully supported her husband's actions, and that he was indeed acting as her agent rather than pursuing some frolic of his own of which she was unaware. Given their repeated and persistent flouting of court orders, I find Mrs. Bea to be in contempt of court.

2. What remedy?

[44] The respondent submits that the only meaningful and appropriate order to make in the circumstances of this case is an order requiring Mrs. Bea to sell her unit, giving the strata council conduct of the sale, and requiring Mr. and Mrs. Bea to give up vacant possession. Only by removing the source of their dissatisfaction, asserts the respondent, will the Beas ever be moved to give up their relentless abuse of the court's process to the detriment of the respondent owners.

[45] The respondent points out that the development in question is a modest one whose owners are people of modest means. So far, the actions of the Beas have cost them in excess of $173,000 in legal fees, disbursements and taxes. The awards of costs registered or registrable against Mrs. Bea's title come to some $53,000, and we have seen how any further legal proceedings, such as are required under the *Court Order Enforcement Act*, RSBC 1996, c 78, lead only to further litigation, appeals, applications, and expense, expense and more expense. The owners cannot understand how it is that one recalcitrant couple can abuse the court system with such impunity, while the owners continue to bleed financially.

[46] The first question is whether I have jurisdiction to impose such a sanction. By Rule 22-8(1) of the *Supreme Court Civil Rules*:

> (1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

[47] The respondent argues that I have inherent jurisdiction to craft a different remedy for contempt of court notwithstanding the apparent limitation of this rule.

[48] In *John v Lee*, 2009 BCCA 313, the Court of Appeal considered, without deciding, the question of the jurisdiction of the trial court to impose a sanction for contempt other than imprisonment or a fine:

> [8] In these circumstances, we have not had full argument on the important question of jurisdiction of the court to impose a sanction other than imprisonment or a fine. There is conflicting authority on the issue. For example, McLachlin & Taylor, in *British Columbia Practice*, express a non-limiting view of the rule and its effect on inherent jurisdiction of the court. In contrast Fraser and Horn in *The Conduct of Civil Litigation in British Columbia*, hold to the view the traditional authority of the court is set out in the *Rules of Court* and in any case, the rules limit any broader inherent jurisdiction.

The court nevertheless noted the existence of common law authority for ordering publication of an apology, and for orders of attachment and sequestration, as sanctions for contempt. Neither of those is contemplated by Rule 22-8(1).

[49] The question is whether the Rule is intended to be procedural only, or rather operates as a substantive limitation on the court's inherent jurisdiction. If the latter, then I am limited to imprisoning Mrs. Bea since a fine clearly is impracticable; she cannot pay it. Yet that would prevent her from earning her living without any prospect of changing her behaviour. If the former, then I must still decide whether the sanction sought by the respondent is appropriate in the circumstances.

[50] Like the Court of Appeal in *John v Lee*, I have not had full argument on this important question because Mrs. Bea was not in a position to address it. Unfortunately, that is a situation that is unlikely to change since persons who flout the law with such abandon are almost always going to be self-represented. That should not, in my view, deprive the respondent's position of the attention it deserves.

[51] I turn first to the question inherent jurisdiction. There is no doubt that the power to punish for contempt has been part of this court's inherent jurisdiction for as long as the court has existed, and has been exercised since at least the 12th century:

R v Vermette, [1987] 1 SCR 577 at 581; and *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 at 931.

[52] It is not, of course, a power that is unlimited, as explained by Karakatsanis J. in *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at paras 23 and 26. It is not to be exercised in contravention of statute. But is the Court confined by its own rules when it comes to fashioning a remedy?

[53] It has long been acknowledged that the rules are the servant, and not the master, of the court in fulfilling the judicial function of administering justice according to law in a regular, orderly and effective manner. Thus our Court of Appeal stated in *R & J Siever Holdings Ltd v Moldenhauer*, 2008 BCCA 59 at para 14:

> …In addition to the powers conferred by the *Rules of Court*, the Supreme Court of British Columbia, as a superior court of record, has inherent jurisdiction to regulate its practice and procedures so as to prevent abuses of process and miscarriages of justice: see I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Current Leg. Prob. 23 at 23-25. As the authors said, at 25,
>
> > The inherent jurisdiction of the court may be exercised in any given case, notwithstanding that there are Rules of Court governing the circumstances of such case. The powers conferred by the Rules of Court are, generally speaking, additional to, and not in substitution of, powers arising out of the inherent jurisdiction of the court. The two heads of power are generally cumulative, and not mutually exclusive, so that in any given case, the court is able to proceed under either or both heads of jurisdiction.

[54] I conclude from this review that in the very rare circumstance where the traditional punishments of fine or imprisonment offer no reasonable prospect of bringing a halt to the contemnors' abuse of the court's process, of ending their affront to the court, and preventing the injustice that continues to flow from their behaviour, the court is not to be rendered feckless by the *Supreme Court Civil Rules*. They must be taken to be procedural. Other penalties may be considered. See also *Canada Post Corp v CUPW* (1991), 61 BCLR (2d) 120 (SC); *Westfair Foods Ltd v Naherny* (1990), 63 Man R (2d) 238 (CA); and *Health Care Corp of*

St John's v Newfoundland and Labrador Assn of Public and Private Employees (2000),196 Nfld & PEIR 275 (SCTD).

[55] As Chief Justice Green noted in the *Health Care Corp* case:

> The law of contempt is found in the development of the common law. That law is always evolving. The state of its development is not frozen at any particular date in judicial history. So also, with respect to the types of penalty which a court may employ to vindicate its contempt power. Differing penalties may be creatively employed, either singly or in combination, in new situations to achieve the purposes behind the exercise of the contempt power.

[56] The purpose behind the exercise of the court's power to punish for contempt is, of course, to cause the contemptuous conduct to cease, and to ensure that the court's orders are obeyed. To this end, the court may impose a coercive remedy of its own design: see, for instance, *BC Public School Employers Assoc v BC Teachers Federation*, 2005 BCSC 1443.

[57] The court's discretion is not, of course, unfettered. Any punishment must be proportional, reflecting both the gravity of the offence and personal culpability or blameworthiness of the contemnor (see, for instance, *Alberta Dental Assn v Unrau*, 2001 ABQB 315, cited with approval in *Point on the Bow Developments Ltd v William Kelly & Sons Plumbing Contractors Ltd*, 2007 ABCA 204 at para 14). Moreover, it must reflect the reality of the injustice the contemnor has caused, for there is no greater affront than for the court's process to be used to inflict injustice.

[58] May the punishment include the order that the respondent seeks? It is certainly not one that would take Mrs. Bea by surprise. The respondent has been attempting to persuade this court to impose that penalty for quite some time. Yet it is not one that, as far as I am aware, any court has seen fit to impose before.

[59] Some assistance may be garnered from litigation involving a conflict between a family called Jordison and the strata corporation at the development where they lived. There was a long history of unacceptable conduct on the part of the Jordisons in breach of the bylaws. In *The Owners Strata Plan LMS 2768 v Jordison*, 2012

BCSC 31, Mr. Justice Blair reviewed section 173 of the *Strata Property Act*, SBC 1998, c 43:

> **173** On application by the strata corporation, the Supreme Court may do one or more of the following:
>
> (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
>
> (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[60] Blair J. found that "the wording in s. 173(c) is sufficiently wide to provide the Court with the authority to make an order for sale against [the owner]" (para 67).

[61] The Court of Appeal differed (*The Owners Strata Plan LMS 2768 v Jordison*, 2012 BCCA 303), concluding that because no order had been made under subsections 173(a) or (b), there was no jurisdiction to make an order for sale under subsection 173(c). Mr. Justice Hall said this:

> [15] I consider that ss. 173(a) and (b) authorize a court to make mandatory or prohibitory orders against a party concerning obligations imposed by the *Act* or bylaws of a strata corporation. A failure to abide by any such order could found, *inter alia,* contempt proceedings. It could be a nice question as to whether the sort of order made by the judge here could be available as a remedy "to give effect to" an order made under (a) or (b) in circumstances where a failure to adhere to such order has been demonstrated. We need not decide that interesting issue here as it does not directly arise at this time and it would be preferable for any such issue to be fully argued and decided at first instance when it squarely arises for decision.

[62] That "nice question" was decided in *The Owners Strata Plan LMS 2768 v Jordison*, 2013 BCCA 484. There, the Court of Appeal considered further proceedings in which Blair J. made an order for sale under section 173(c) as ancillary to the Jordisons' failure to obey a court order requiring them to comply with the bylaws. The court expressly noted at para 3 that the issue was whether section 173 gives the Supreme Court power to force an owner to sell, not whether a

forced sale is an available sanction for contempt. The conclusion was that the section did indeed provide such a remedy if exercised reasonably.

[63] Notwithstanding that the sanction of forced sale was ordered and approved in the context of section 173, it was noted both at trial and in the two appeal proceedings that the question arose in circumstances that constituted contempt of court.

[64] In the present case, section 173 does not appear to be applicable. We nevertheless are faced with circumstances in which, as in the *Jordison* litigation, the residents "have intentionally, wilfully, and in a blameworthy fashion disobeyed the order of this court" (per Blair J., 2013 BCSC 487 at para 34). Whereas the actions of the Jordisons were found to have amounted "to an assault upon those residents of the strata who have been for some years subjected to the Jordisons' misbehaviour in all its varied forms" (per Blair J., 2012 BCSC 31 at para 59), here, the actions of the Beas have amounted to an assault upon the finances of the residents of the strata who have had to pay the high cost of defending against the Beas' vexatious abuse of the court's process over many years. In both cases, the residents in question have abused their position *vis-a-vis* the strata council and owners, and have deliberately disobeyed court orders designed to remedy that problem. In both cases, the usual penalties for contempt — fine or imprisonment — were inapt in the circumstances (see 2013 BCSC 487 at para 37).

[65] As Mr. Justice Donald pointed out in the second *Jordison* appeal, property rights are not lightly to be taken away. Nevertheless, in the circumstances of the case before him, His Lordship concluded that the sanction of a forced sale was appropriate as a remedy under the *Strata Property Act* ("any other orders [the court] considers necessary") for the owners' failure to obey the court orders made under sections 173(a) and (b).

[66] Normally, a person's property rights would be irrelevant to the question of an appropriate sanction for contempt of court. This case is not normal. Here, the property interest in question is precisely what fuels the Beas' contemptuous acts and

gives rise to the injustice that results. I conclude that a forced sale is the only appropriate and meaningful sanction for Mrs. Bea's contempt of court. In the unique circumstances of this case, it is a proportional response to the manner in which Mrs. Bea has used her ownership interest to frustrate and abuse the court's process, and afflict her fellow owners.

[67] As I have noted more than once, this represents a departure from precedent insofar as punishment for contempt of court is concerned. It is, however, as I see it, an appropriate evolution that is in line with sanctions that have been imposed in analogous circumstances for similarly egregious behaviour.

[68] In this case, it appears certain that Mrs. Bea is destined to lose her property in any event through the enforcement of the many judgments for costs registered against it. The question is whether the owners should be put through the additional expense and frustration of proceeding in that way in the face of the Beas' unremitting pattern of abuse of the court process, and the ever mounting costs of dealing with them. I think not. The time to end their abuse of the court's process is now.

[69] Accordingly, having found that Mrs. Bea to be in contempt of court, I order that:

- Mrs. Bea's unit, legally described as Strata Lot One, District Lot 289, Group 1, New Westminster District Strata Plan LMS 2138 (the "unit"), shall be sold as soon as is practicable, with the respondent having sole conduct of sale;
- Mrs. Bea and Mr. Bea shall deliver up vacant possession of the unit to the respondent on or before June 15, 2014;
- if Mr. and Mrs. Bea do not give up vacant possession as ordered, or if they otherwise interfere with the conduct of the sale of the unit, members of the Royal Canadian Mounted Police or any other peace officers may assist in enforcing these orders; and

- the respondent shall deliver to Mrs. Bea the net proceeds from the sale of the unit, after deduction of all proper costs of sale and the satisfaction of any outstanding mortgage debt and all judgments and other charges registered against title, within seven days of the completion of the sale.

[70] The respondent has also asked for special costs and "punitive costs", by which I understand it to mean costs of more than just this proceeding, as a form of punishment. I am satisfied that this is an appropriate case for an award of special costs given the reprehensible conduct of Mrs. Bea throughout, but I do not consider that I have jurisdiction to award costs applicable to other proceedings or to other legal expenses incurred by the respondent. That is more akin to a claim for damages, and in any event, cost awards have already been made in those instances.

[71] Affidavit material filed by the respondent indicates that the total costs incurred by the respondent in relation to the preparation for and conduct of the hearings before me on February 17, March 3 and April 15, 2014, come to $19,383.03, inclusive of disbursements and taxes.

[72] In all of the circumstances, I award special costs of these proceedings to the respondent against Mrs. Bea. In order to minimize any further legal costs to be incurred by the respondent in dealing with this matter, I assess those costs at $17,000, being a little less than 90% of actual costs.

[73] The respondent may enter this order without first obtaining the approval of Mr. Bea or Mrs. Bea.

"GRAUER, J."