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Case Name:

Bea v. Strata Plan LMS 2138

Between
Cheng-Fu Bea and Huei-Chi Yang Bea, petitioners, and
The Owners, Strata Plan LMS 2138 and Quay Pacific Property Management Ltd., respondents

[2008] B.C.J. No. 1932

2008 BCSC 1331

Docket: S113052

Registry: New Westminster

British Columbia Supreme Court
New Westminster, British Columbia

D.M. Masuhara J.
(In Chambers)

Heard: August 22, 2008.
Oral judgment: August 22, 2008.

(19 paras.)

Counsel:

Appearing on his own behalf: C. Bea (via telephone).

Counsel for the Defendants: P. Dougan (via telephone).

Oral Reasons for Judgment

1 **D.M. MASUHARA J.** (orally):-- The subject of this petition is a bylaw passed on August 21, 2006 by the respondent Owners of Strata Plan LMS2138, a townhouse development called Brittany Park in Port Coquitlam. The bylaw provided for the assignment of specific parking stalls in the Brittany Park parking lot to specific unit owners. The bylaw was passed unanimously except for one vote, being that of Mrs. Bea.

2 The other respondent is Quay Pacific Property Management Ltd., the strata manager for Brittany Park.

3 The petitioners, Mr. and Mrs. Bea, are owners of unit 1 and object to the bylaw. In essence, they seek a return to the original parking state of no parking restrictions in the parking lot.

4 At the outset of this development project years ago, Pyramid Construction held a license for the exclusive use and enjoyment of the parking stalls for 99 years that was called the Parkade Agreement. This agreement entitled the owner-developer to assign this exclusive right to purchasers of units specific parking stalls from the owner-developer. The evidence indicates that only one such purchaser purchased the sub assignment from Pyramid Construction. The petitioners were not that purchaser.

5 More recently, the materials indicate that the strata owners were sufficiently concerned over the number of disputes over parking that greater controls over the usage of the parking area was required and they set out such controls in the form of the impugned bylaw.

6 The bylaw reads as follows:

> All parking areas are common property and may not be altered or defaced in any manner.
>
> Owners and residents may only park in the parking space(s) assigned to their strata lot by the strata council.

7 The petitioner, Mr. Bea, has been fined under the subject bylaw for not parking in accordance with the assignment of the strata council. Fines have totalled some $1,000, however, the strata corporation has reduced the amount to $600.

8 The petitioners argue that the strata corporation did not have authority to assign common property parking stalls and rely upon ss. 71 to 77, 121, 257 and 258 of the ***Strata Property Act***, S.B.C. 1998, c. 43.

9 For the reasons that follow, the petition must be dismissed.

10 Section 3 of the ***Strata Property Act*** states:

> Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

11 Section 4 of the ***Act*** states:

> The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.

12 Section 71 of the ***Act*** states:

> Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless
>
> (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
> (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

13 The parking lot is common property. The strata council has the obligation to manage and maintain common property for the benefit of the owners. The bylaw was duly passed. There is no statutory provision that prohibits the strata corporation from making a decision in the area in which this bylaw addresses.

14 I cannot find any basis in the sections referred to by Mr. Bea supporting his position that the strata corporation exceeded its jurisdiction. Parking rules arising from the subject bylaw is precisely the type of matter which falls into the management responsibility of a strata corporation under the ***Act***.

15 The petitioners' argument that the Parkade Agreement bars the strata corporation from authority over the parking area is not persuasive. The bylaws do not offend the agreement and the actions of the strata corporation have not interfered with the right of the one assignee under the Parkade Agreement. The parking assignment by the strata corporation reflects the one assignee's right to the stalls listed in the sub assignment agreement.

16 I note as well that the preamble to the Parkade Agreement acknowledges that, "The Strata Corporation is responsible for the control, management and administration of the common property." Section 4 of the Parkade Agreement states, "The parties hereto acknowledge and agree this Agreement creates contractual rights only and not an interest in land."

17 A review of the sub assignment agreement recognizes the authority of the strata corporation to make rules over the use of the parking lot. It states, "The Purchaser agrees to use the Parking Stall in accordance with the rules and regulations of the Strata Corporation in effect from time to time." The sub assignment agreement specifically cites that it is subject to the provisions of the ***BC Condominium Act***, which is the predecessor of the ***Strata Property Act***.

18 The actions of the strata corporation cannot be characterized as oppressive or conducted in bad faith. There is nothing in the materials that demonstrate that the actions of the strata corporation were conducted in any manner but in the best interests of all of the owners, i.e., to achieve the greatest good for the greatest number.

19 The actions of the strata corporation accordingly were, in my opinion, properly conducted. In the result, the petition is dismissed and the respondents awarded costs at Scale B. That concludes my ruling on this matter.

D.M. MASUHARA J.

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