Court of Queen's Bench of Alberta

Citation: Condominium Corporation No 0312235 v Scott, 2015 ABQB 171

Date:
Docket: 1401 00013
Registry: Calgary

Between:

Condominium Corporation No. 0312235

Applicant/Respondent

- and -

Geoffrey Scott and Donna Scott

Respondents/Applicants

Memorandum of Decision
of the
Honourable Mr. Justice L.R.A. Ackerl

Introduction

[1] The Applicant Condominium Corporation No 0312235 (the "Corporation") seeks an order *inter alia* declaring that the Respondents Geoffrey Scott ("Mr. Scott") and Donna Scott ("Ms. Scott") (collectively, the "Scotts") have breached the Corporation's bylaws ("Bylaws") and to compel the Scotts to abide by the Bylaws. The Scotts in turn, seek an order *inter alia* declaring certain Bylaws contravene s 32(5) of the *Condominium Property Act* (the "*Act*") and are therefore invalid. They further seek an order that the Corporation has acted oppressively in breaking the bylaws failing to provide Board of Directors participation and denying requested disclosure of financial records.

Background

[2] The Scotts own two units in the condominium property located in the Town of Canmore (the "Property"). The Property is subject to the Town of Canmore Land Use Bylaw restricting use of the Property to "Visitor Accommodation" only. This term is defined in part as "a building or group of buildings not intended for residential use where sleeping facilities are provided for persons for periods of up to 30 days and which may also contain recreational facilities, commercial uses and additional facilities..." (Exhibit "C" to the Affidavit of Dean Jarvey, sworn January 8, 2014).

[3] The Bylaws were registered on October 10, 2003. In November 2003, the Scotts purchased their units. At the time, the Corporation had a contract with a third party company to manage the Property (the "Management Agreement"). The Management Agreement provided for the pooling of rental income and expenses. However, participation in the rental pool was voluntary.

[4] The various unit owners of the Property (the "Owners") amended the Bylaws by special resolution effective January 1, 2010 (the "Amendments"). The Amendments were registered on January 13, 2010. The Scotts signed the written special resolution for each of their units. The Amendments mandated participation in the rental pool.

[5] Ms. Scott was a member of the Corporation's Board of Directors for various periods including November 27, 2010 to April 27, 2013.

[6] On or about January 1, 2013, the Scotts withdrew their units from the rental pool. Since then, they have independently been renting out their units. They have not received any portion of the income from the rental pool nor paid any of its expenses. This has led to acrimony between the Scotts and other unit owners, including members of the Board of Directors.

[7] In April 2013, the Corporation held its Annual General Meeting at which time a motion was made to remove Article 14 of the Amendments from the Bylaws. The motion did not pass.

Positions of the Parties

[8] The Corporation takes the position that, it has always been the Owners' intention that all Owners would participate in a rental pool. The Owners would therefore share equally in the costs associated with management of rentals of their various units but would equally share in the benefits provided by a management company including guest reception, housekeeping, maintenance, marketing and management duties. Although not participating in the rental pool, the Corporation alleges the Scotts received certain benefits such as the management company's efforts to promote the Property. Furthermore, other Owners have suffered a detriment because the management company is unable to deal with unruly guests renting the Scotts' units.

[9] The Corporation states that it has acted only in accordance with the lawful Bylaws. As such, the Scotts' failure to abide by the Bylaws amounts to improper conduct under s 67(1)(a)(i) of the *Act*. The Corporation further posits the Amendments are not offside s 32(5) of the *Act* as they govern merely the mechanism for rentals. They do not prevent a unit owner from renting the unit.

[10] The Scotts argue the Amendments contravene s 32(5) of the *Act* as a restriction on their right to lease or otherwise deal with their units. They do not dispute they signed the written special resolution. However, they state that approximately a year and a half after the Amendments were registered, they became aware that it was not legally possible for the Bylaws to restrict the rental of their units. They state the Bylaws, as amended, overly restrict, prohibit and interfere with their rights as unit owners.

[11] In addition, after ceasing to be part of the rental pool, the Scotts became concerned that some of the rental pool expenses were being accounted towards the Corporation's common expenses were being passed on to the Scotts on the basis of their unit factors. The Scotts asked the Corporation for disclosure of financial records. The Corporation provided some financial information, but they are not satisfied with that disclosure.

[12] The Scotts also allege that during the time that Donna Scott held a position on the Board of Directors, the Board engaged in meetings and/or correspondence from which she was improperly excluded.

[13] Under the circumstances, the Scotts argue the Corporation has acted in a manner that is oppressive or unfairly prejudicial to or unfairly disregards their interests as unit owners contrary to s 67(1)(a) of the *Act*.

The *Condominium Property Act*

[14] The relevant provisions of the *Act* are:

> **32(1)** The bylaws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property.
>
> **(2)** The owners of the units and anyone in possession of a unit are bound by the bylaws.
>
> **(3)** Any bylaw may be amended, repealed or replaced by a special resolution.
>
> ...
>
> **(5)** No bylaw operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any easement implied or created by this *Act*.
>
> ...
>
> **(7)** If there is a conflict between the bylaws and this *Act*, this *Act* prevails.
>
> RSA 1980 c C-22 s 26; 1996 c 12 s 26
>
> ...

Under section 67(1):

(a) "improper conduct" means

(i) non-compliance with this *Act*, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,

(ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

(iii) the exercise of the powers of the board in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

(b) "interested party" means an owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit.

[15] Section 71(2) enumerates certain discretionary remedies a Court may order when satisfied improper conduct occurred.

Condominium Corporations

[16] Condominiums involve a unique form of ownership. The majority of owners control the administration and management of property in a manner that may infringe upon certain property rights enjoyed by a fee simple owner of real property :***Condominium Plan No 7721806 v Gobeil***, 2011 ABQB 318 at para 9. However, that authority is not unfettered.

[17] As creatures of statute, condominium corporations do not have the same powers as business corporations, are not treated as "persons" in the law, and can only undertake actions that the *Act* specifically authorizes: ***Condominium Plan No 8222909 v Francis***, 2003 ABCA 234 at paras 26-27 [***Francis***]. The unit holders decide how they want their condominium run through their bylaws, and courts will not intervene unless such bylaws run contrary to the *Act*: ***Devlin v Condominium Plan No 9612647***, 2002 ABQB 358 at paras 2-3 [***Devlin***]. Condominium corporations cannot create mechanisms or schemes that run contrary to the *Act* and if they do so, such actions will be invalid as they are *ultra vires* to the condominium's authority: ***Francis*** at para 34.

The Amendments

[18] By the Corporation's own admission all of the Amendments were intended to govern the renting of units in the Property (at para 13 of the Affidavit of Dean Jarvey sworn June 16, 2014). I likewise find that the Amendments are, in their entirety, related to and govern the renting of units.

[19] The Amendments to the Corporation's bylaws were effected on January 1, 2010. These amendments, which focus on rental pool issues, state in part:

1. Section 1.1 is hereby amended by adding the following definitions:

> ""**Rental Manager**" means a rental manager approved by the Corporation to manage rental operations for the Project;
>
> "**Rental Management Expenses**" means all costs and expenses incurred by the Rental Manager in carrying out its rental management obligations for the Project as set out in the master rental management agreement for the Project, as amended from time to time;
>
> "**Rental Revenue**" means the rental revenue available for distribution by the Rental Manager to Owners from time to time;
>
> "**Short Term Rentals**" means the rental of a Unit for a period of less than 30 days;"

2. Section 3.3 is hereby amended by adding the following as subsection 3.3(x):

> "(x) the Corporation is authorized and directed to approve a Rental Manager for the Project and is authorized and directed to enter into a master rental agreement for the Project;"

3. Section 7.7 is hereby deleted in its entirety and replaced with the following:

> "No Owner can exempt himself or herself from liability for his contributions towards his or her assessments for contributions to Common Expenses or Rental Management Expenses by waiver of the use and enjoyment of any of the Common Property, by refusing or otherwise failing to participate in any rental pool for the Project or by vacating or abandoning his or her Unit, or in any other manner whatsoever."

4. The following is hereby added as Article 14:

ARTICLE 14

Rental Pool Project

14.1 Where a Rental Manager has been engaged by the Corporation for the Project:

(a) all expenses of the Rental Manager pursuant to the master rental management agreement entered into between the Corporation and the Rental Manager shall be shared by the Owners on the basis of Unit Factors regardless of the level of Owner participation in the rental pool for the project;

(b) Rental Revenue shall be calculated and shared on a per diem basis such that an Owner shall share in the Rental Revenue for a particular day only if the Owner's Unit was available for rental through the Rental Manager on that day;

> **(c) no Owner shall rent his or her Unit for Short Term Rentals other than through the Rental Manager; and**
>
> **(d) no Owner shall frustrate, undermine or otherwise compete with the Rental Manager's operations for the Project.** [emphasis added]
>
> 14.2 In the event an Owner breaches any of the provisions of this Article 14, the Rental Manager shall be entitled to withhold all rental management services to the Owner's Unit during such period as the default is outstanding, including denying access to the Unit, without in any way affecting the Owner's obligation to pay his or her share of Common Expenses and Rental Management Expenses as provided herein.
>
> 14.3 All Short Term Rentals must be handled by a Rental Manager approved by the Corporation....

[20] These amendments did not alter either Article 5.20 or 12.2 of the existing bylaws. These articles state in part:

> 5.20 **Special Resolutions**
>
> ...
>
> **If a number of Owners decide to pool any rental income, they may do so with the approval of the Manager. However, under no circumstances will this action obligate or compel any other Owner to join or participate in this pool. Nor will this pool have an effect financially or otherwise on any other individual Owner.** [emphasis added]
>
> 12.2 **On Modification of By-law**
>
> In the event of any amendment to this By-law, the rights and privileges of any Owner which would have been directly terminated in consequence of such amendment, shall remain intact and in effect until the Owner has abandoned such rights or privileges,...

[21] It is evident that effective January 1, 2010, the bylaws contained two separate clauses addressing rental pool participation.

[22] Article 5.20 (found in the original bylaws) is phrased in permissive language. Owners are permitted, upon management approval, to pool rental income. However, any approved pooling, expressly does not trigger participation of other Owners.

[23] Conversely, Article 14.1(c) (an amendment to the existing bylaws) dictates participation of all Owners in the rental pool project.

[24] I note that Article 5.20 is contained within Article 5 which generally considers "Meetings of the Corporation". Article 5.20 falls under a "Special Resolution" subheading.

[25] While arguably an odd placement, it is irrelevant to interpreting the Bylaw terms. Article 1.4 of these Bylaws reads:

> **Headings**
>
> Headings used in this By-law have been inserted for the purposes of reference only, and are not to be considered or taken into account in construing the terms and provisions of this By-law.

Validity of the Amendments

[26] There are two steps in the analysis of whether the Corporation's actions are *ultra vires*: The first step involves a determination of whether the rental mechanism incorporated by the Corporation complies with s 32(5) or is otherwise authorized by the *Act*. The second step involves an interpretation of s 32(5) of the *Act* read with other provisions of the *Act* and the *Act* as a whole. The words of the *Act* "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act* and the intention of the legislature": ***Francis*** at para 25; ***Re Rizzo & Rizzo Shoes Ltd***, [1987] 1 SCR 27, 36 OR (3d) 418.

[27] In looking at what the legislature intended, it is imperative to remember that "[t]he legislature is presumed not to intend to abolish, limit, or otherwise interfere with the established common law or statutory rights, including property rights, in the absence of explicit statutory language that it intends to do so": ***Hamilton (City) v Equitable Trust Co***, 2013 ONCA 143 at para 34, 114 O.R. (3d) 602. Moreover, in order for a court to conclude that a citizen's rights have been truncated or reduced, the legislature must do so expressly using express language in the statute: ***Morguard Properties Ltd v Winnipeg (City)***, [1983] 2 SCR 493 (SCC), at p 509.

[28] Section 32(5) of the *Act* does not expressly permit bylaws restricting or preventing leasing of condominium units. Nor does it contain a reasonableness standard inviting such restrictions. Its language is clear and absolute. In effect, this provision contains no articulated prohibition curtailing a substantive right to lease a condominium unit.

[29] If any provision of the Bylaws contravenes the *Act* then such provision will be invalid, as the *Act* prevails (see s 32(7)). It does not matter whether unit owners consented to an invalid provision or that it was acted on. As noted by the Court of Appeal in ***Francis*** (at para. 35), "An *ultra vires* act is an illegal act and it remains such even if it is acted on over the course of time or on separate consecutive occasions".

[30] Courts have long recognized that the right of alienation includes the right to lease one's property: ***Devlin*** at paras 15-21.

[31] The Town of Canmore Land Use Bylaw further nuances the unique aspects of condominium property ownership. The result of such Land Use Bylaw is that use of the units is restricted to temporary accommodation not exceeding 30 days. The combined effect of both the

Land Use Bylaw and the Amendments is that the Owners can only rent their respective units in accordance with the rental mechanism set out in the Amendments.

[32] The Corporation asserts that the rental mechanism is only one of process and it does not remove any owner's right of alienation - including the right to rent or lease the unit. The rationale for this position is that an owner continues to have the right to choose not to lease the unit. This is overly simplistic. The right to alienate one's unit includes how one will rent it out.

[33] I find that the rental provisions of the Bylaws, including Amendments, do not comply with s 32(5) of the *Act*.

[34] The second step involves an examination of the context and purpose of the *Act* and legislative intention. As noted above, the *Act* describes the authority of condominium corporations and grants them power necessary to manage the affairs of their collective owners. A reading of the *Act* in its entirety provides an understanding that the *Act* is in place to protect owners and their interests. In addition, the *Act* also ensures the majority of owners have the liberty to decide how their condominium corporation will operate within the ambit of the *Act*.

[35] The substantive wording of section 32(5) is found in the predecessor versions of the *Act* since the first *Condominium Property Act* was enacted in Alberta in 1966 (SA 1966 c 19 s 18(5)). A review of Hansard notes reveals no legislative concern with the wording of this subsection. Condominium property statutes have undergone several revisions in the last five decades however, the only changes to this section have been minor, non-substantive word changes. Such consistency is telling that this subsection expresses the legislature's intent.

[36] In any joint ownership type, some rights of individuals may be tempered by the rights of the collective whole. This is especially true for condominium ownership. However, the collective whole has no authority to prohibit or restrict an individual's ability to devolve, transfer, lease, mortgage or deal with his or her unit.

[37] The rental management mechanism set out in the Amendments unlawfully restricts the Scotts' right to rent/lease or otherwise deal with their units. That they agreed to the Amendments is irrelevant, as the Amendments were unlawful from their inception. Simply put, the Owners can never supersede the authority granted by the *Act*. As stated in s 32(7), the *Act* prevails over enacted bylaws.

[38] For these reasons, the Amendments that purport to compel the Owners to participate in the rental pool and that provide for the rental pool mechanism are contrary to s 32(5) of the *Act* and are therefore *ultra vires* and invalid. The portion of section 5.20 dealing with voluntary participation in a rental pool continues in force.

Interpretation of The Bylaws

[39] In their additional written submissions, the Scotts suggest that condominium bylaws are similar to contracts because of the wording of s 32(6) of the *Act*, which reads:

> (6) The bylaws bind the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner and

> contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the bylaws.

[40] The Scotts further submit that the proper interpretation of the Bylaws is by using the cannons of construction applicable to the interpretation of contracts. The Scotts provide no authority for this proposition. If the Bylaws are not *ultra vires*, they argue, the Court must resolve the contradiction between section 5.20 and the Amendments. Following this line of reasoning, they submit that the contradiction is an ambiguity and that it ought to be resolved against the Corporation through the application of the *contra proferentem* doctrine.

[41] I disagree that contract interpretation rules come into play in this context. Because of my finding that the Bylaws are *ultra vires* and that section 5.20 continues to apply to the Owners, I need not get into the proper method to interpret conflicting bylaws. However, if I did, I would resort to statutory interpretation principles as condominium bylaws are created in the execution of a power conferred by or under the authority of the *Act*. This therefore brings them within the definition of "regulations" in the *Interpretation Act*, RSA 2000, c I-8, s (1)(1)(c).

[42] In light of the foregoing, I make no further comments on the issue of the interpretation of conflicting condominium bylaws.

Potential Tax Impact of Amendments

[43] The Scotts contend that the effect of the Amendments is that the Corporation may lose its not-for-profit status for tax purposes and that, if so, there could be a significant impact on them. The Corporation states that it is not earning any profits and as such its not-for-profit status is not in jeopardy. Very little evidence was led on this issue, with most of the material on point before the court being conjecture. It is not for this court to make rulings on the basis of what Canada Revenue Agency may do.

Conduct of the Parties

[44] In the application and cross-application, the Corporation and the Scotts accuse each other of improper conduct under s 67(1) of the *Act* and each seeks the relief delineated in s 67(2). Subsection 67(1)(a)(i) states that non-compliance with the *Act* is improper conduct. Subsections 67(1)(a)(ii)-(v) refers to conduct that is "oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party".

[45] In considering whether conduct falls within the ambits of subsections 67(1)(a)(ii)-(v), the court can consider corporate oppression principles: ***Laasko v Condominium Corp No 8011365***, 2013 ABQB 153 [***Laasko***]. In ***934859 Alberta Inc v Condominium Corp No 0312180***, 2007 ABQB 640, 434 AR 41, Chrumka J canvassed the meanings of various words and phrases found in subsections 67(1)(a)(ii)-(v):

> 93 Oppression or oppressive conduct... has been defined to be conduct that is burdensome, harsh or wrongful or which lacks probity or fair dealing.
>
> 94 The term "unfairly prejudicial" has been defined to mean acts that are unjustly or inequitably detrimental.

> 95 The term "unfairly disregards" may be defined as unjust and inequitable. Unfairly itself has been defined as "in an unfair manner, inequitably, unjustly." Fair has been defined as "just, equitable, free of bias or prejudice, impartial." Prejudice means "injury, detriment or damage caused to a person by judgment or action in which the person's rights are disregarded: hence injury, detriment or damage to a person or a thing likely to be the consequence of some action". Prejudicial means "causing prejudice; detrimental damaging "to rights, interests, etc."
>
> ...
>
> 97 The term "significantly unfair" encompasses conduct that is oppressive, unfairly prejudicial or which unfairly disregards the interests of an interested party.

[46] As noted by Wilson J in ***Laasko*** at para 26,

> [A] two-pronged approach in analysing the oppression remedy is required. The decision of ***Metropolitan Toronto Condominium Corp No 1272 v Beach Development (Phase II) Corp***, [2010] OJ No 5025 (Ont SCJ) is helpful in this regard. Two paragraphs are reproduced here:
>
> > 13 In ***BCE Inc v 1976 Debentureholders***, 2008 SCC 69, [2008] 3 SCR 560, the Supreme Court held that the best approach to analyzing the oppression remedy is a two-pronged test. At the first stage, the Plaintiffs must establish a breach of reasonable expectations. If successful, the court must go on to consider whether the conduct complained of amounts to oppression, unfair prejudice or unfair disregard.
> >
> > . . .
> >
> > 19 The concept of reasonable expectations is objective and contextual, taking into account the facts of the specific case, the relationships at issue and the entire context. The actual expectation of a particular stakeholder is not conclusive. The Plaintiff must identify the expectations that were allegedly violated and establish that those expectations were reasonably held, based on factors that may include general commercial practice, the nature of the corporation, the relationship between the parties, steps that the claimant could have taken to protect itself, the fair resolution of stakeholders' conflicting interests and, importantly, representations and agreements.

[47] Upon satisfaction of this two-fold obligation, the Court will then determine whether the conduct complained of did, in fact, amount to oppression, unfair prejudice or unfair disregard.

[48] If the court finds improper conduct, whether it be through non-compliance with the *Act* or through conduct that is oppressive, unfairly prejudicial, or unfairly disregards the interests of an interested party, then it may grant the s 67(2) remedies. These remedies are discretionary: ***Leeson v Condominium Plan No 9925923***, 2014 ABQB 20 (Master), at para 19 [***Leeson***].

[49] As each party has accused the other of improper conduct, I will address each party's claims separately.

The Scotts' Conduct

[50] Section 32(2) of the *Act* states that the Scotts, as unit owners, are bound by the Bylaws. The Corporation alleges that the Scotts have not complied with the *Act* in two ways. Firstly, by offering their units for short term rental outside of the rental scheme contemplated in the Amendments. Secondly, by offering their services and acting in the capacity of rental or property managers to other unit owners.

[51] Having found the Amendments invalid, the Scotts' failure to comply with the Bylaws as alleged by the Corporation is inconsequential. They have not failed to comply with the *Act* and therefore they have not acted improperly.

The Corporation's Conduct

[52] The Scotts allege that the Corporation has not complied with the *Act* by attempting to enforce the Bylaws. The Scotts further allege that the Corporation knew that the Amendments contravened the *Act* as Mrs. Scott had emailed portions of legal opinions she had received to the other Owners and the board of directors. This, they say, brings the Corporation's actions within the scope of subsection 67(1)(a)(ii)-(v). In addition, other alleged oppressive conduct includes failing to advise Mrs. Scott of board meetings while she was a director and failing to disclose financial records to the Scotts notwithstanding their request for those records.

[53] As noted, this Court has already found that the Amendments are invalid as they offend s 32(5) of the *Act*. The Corporation's reliance on the Amendments and its attempts to compel the Scotts to comply with the Amendments are therefore contrary to the *Act*. By virtue of the wording of subs 67(1)(a)(i), this is improper conduct.

[54] The first step of the oppression remedy analysis requires the Scotts to establish a breach of reasonable expectations.

[55] In their submissions, the Scotts suggest that the Corporation ignored a legal opinion that the Amendments violated the *Act*. The cryptic responses of two counsel are contained in exhibit C of Donna Scott's June 26, 2014 affidavit. Both counsel caution that bylaws cannot restrict unit rentals. Neither opinion directly addresses the proposed amendments nor concludes they are illegal. Moreover, it appears that the Board believed the amendments were legal.

[56] On the basis of the evidence before me, the Scotts have not satisfied their burden of showing that, by enacting the Amendments, the Corporation breached their reasonable expectations. The Corporation's conduct was not oppressive, unfairly prejudicial or did not unfairly disregard their interests.

[57] Ms. Scott also argued the Corporation acted oppressively by orchestrating her non-attendance at a January 16, 2013 Board meeting. It is clear from the Minutes that this was an emergency meeting called to discuss private unit rentals by owners.

[58] Failure to notify Ms. Scott of this meeting was improper. However, there is no evidence proving such failure was oppressive, unfairly disregarded her interests or was unfairly prejudicial.

[59] Even if Donna Scott had attended the meeting, s. 28(3) of the *Act* prohibited her from voting because of her "material interest" in the rental arrangement. Accordingly, Ms. Scott has not established a reasonable expectation in her ability as a Board member to address the issue. The meeting lasted approximately 12 minutes and, according to the minutes, was confined to the emergency basis upon which it was called.

[60] In any event, the Board meeting result was inconsequential. Indeed, the meeting in her absence generated a vote to seek legal advice. This is the very result sought by Ms. Scott at the immediately preceding board meeting.

[61] Mr. Scott complains that the Corporation has failed to provide financial documents to him sufficient to demonstrate that rental management expenses are not being included in common expenses. He relies on section 4.1(h) of the Bylaws which states:

> The Board shall:...
>
> > (h) on written application of an Owner or Mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times.

[62] The term "books of account" is not defined in the Bylaws. I accept the Corporation's evidence that, through its property manager, it attempted to make available to Mr. Scott its bank statements and paid invoices. Mr. Scott apparently was not satisfied with this disclosure and insisted on seeing the Corporation's general ledger. The Corporation has resisted, citing privacy concerns among other concerns.

[63] I need not determine what is meant by the term "books of account". Since the Bylaws must comply with the *Act*, the matter can be resolved by resorting to s 44 of the *Act* which requires the Corporation to furnish Mr. Scott certain documents upon request. The documents and records that the Corporation has offered to Mr. Scott contain more information than if he were to rely solely on the disclosure requirements of s 44.

[64] It appears to me the Corporation has been more than accommodating in trying to assist Mr. Scott's inquiry. He was granted, at least, the same access as that which all Condominium Owners were entitled under the governing bylaws.

[65] Accordingly, Mr. Scott's expectation that he receive the requested disclosure was not reasonably held. The threshold issue for determining oppressive conduct is not satisfied. Even if reasonably held, the Corporation provided generous opportunities for Mr. Scott to access permissible disclosure.

[66] Section 67(2) if the *Act* grants the Court discretion to award costs where improper conduct occurs. In this case, the Corporation acted improperly in both enacting *ultra vires* bylaws and in failing to notify Ms. Scott of a Board meeting. While improper, such misconduct even considered cumulatively, was not oppressive. Accordingly, costs are not awarded as a discretionary remedy.

Costs

[67] The Scotts, however, successfully obtained a declaration that the Amendments are *ultra vires*. This was the focal issue for the application. Accordingly, the Scotts are awarded costs of this application pursuant to Schedule C of the Alberta Rules of Court.

Heard on the 3rd day of December, 2014.
Dated at the City of Edmonton, Alberta this 12th day of March, 2015.

L.R.A. Ackerl
J.C.Q.B.A.

Appearances:

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