

*Case Name:*  
**Condominium Corp. No. 8110264 v. Farkas**

**IN THE MATTER OF the  
Condominium Property Act  
R.S.A. 2000, c. C-22  
Between  
Condominium Corporation No. 8110264, Applicant, and  
Julie Ann Farkas, Respondent**

[2009] A.J. No. 911

2009 ABQB 488

Docket: 0901 05166

Registry: Calgary

Alberta Court of Queen's Bench  
Judicial District of Calgary

**B.R. Burrows J.**

Heard: August 13, 2009.  
Judgment: August 18, 2009.  
Released: August 20, 2009.

(8 paras.)

**Counsel:**

Donna Spaner, for the Applicant.

Cass Lintott, for the Respondent.

---

**Reasons for Judgment**

**1 B.R. BURROWS J.:**-- Condominium Corporation No. 8110264, by Originating Notice, seeks an order declaring that Julie Ann Farkas, an owner of a unit in the condominium, has

flagrantly breached the bylaws and has conducted herself improperly, and evicting her from her unit.

2 The evidence filed by the **Condominium Corporation** is to the effect that the Board of Directors has received from other unit owners, or at least one other unit owner, numerous complaints that Ms. Farkas creates unreasonable noise in her unit. The bylaws of the **Condominium Corporation** prohibit an owner from making noise which in the opinion of the Board constitutes a nuisance or unreasonably interferes with the use or enjoyment of the unit by another owner. On two occasions the Board has fined Ms. Farkas for violation of the bylaw. The fines have remained unpaid and the complaints have continued.

3 The affidavit of the Board Members filed in this application indicates that the Board has resolved to evict Ms. Farkas from her unit, though the resolution itself is not exhibited.

4 The **Condominium Corporation** relies on a decision of Lee J.: *Condominium Plan No. 022 1347 v. N.Y.* (2003) 22 Alta. L.R. (4th) 166, 351 A.R. 76. There a condominium board served notice of eviction on a tenant in a unit for breaches of the bylaws. The tenant ignored the notice. By the time the board sought an order to enforce the eviction, the tenant had become the owner. Lee J. upheld an order of the Master directing that the respondent vacate the premises, on the basis that the bylaws of the condominium in question stated "that the Corporation can take any action, without restriction, with respect to an infraction, violation or default of the Bylaws by an owner, his invitees or tenants". (para. 58) He found that the general authority to respond to "improper conduct" granted the court in *Condominium Property Act*, s. 67(2)(f) was broad enough to include the order the Master had made requiring the owner to give up vacant possession.

5 This case can be distinguished from *N.Y.* on at least two bases. First, Ms. Farkas is not and never was a tenant. She is an owner. Second, the bylaws of the applicant **Condominium Corporation** are not as broad as those considered in *N.Y.*

6 Section 43 of the bylaws in question here deals with violations of the bylaws. The section authorizes the Board to impose a reasonable non-monetary or monetary sanction. It provides that if a person fails to abide by a non-monetary sanction or fails to pay a monetary sanction, the Corporation may proceed under the *Condominium Property Act* s. 36 to enforce the sanction. The remedies contemplated for the enforcement of sanctions under s. 36 do not include eviction of an owner from her unit. The remedies are exclusively monetary. Further, even those remedies can be granted only where the court itself is satisfied that the bylaw has been contravened. Evidence to the effect that the Board was satisfied in that regard, which is all that has been put before me, would not suffice.

7 Even if the remedy of eviction is available under s. 67, in my view it would be wrong to grant that remedy where the bylaws expressly require the Board to proceed under s. 36.

8 The application is dismissed. Ms. Farkas is entitled to costs.

B.R. BURROWS J.

cp/e/qlcct/qlpwb