

Case Name:

**Condominium Plan No. 8022962 (c.o.b. Willow Ridge)  
v. Malinowski**

Between

The Owners: Condominium Plan No. 8022962 operating  
As Willow Ridge, applicant, and  
Eric Malinowski, respondent

[2004] A.J. No. 974  
2004 ABQB 633  
Docket No. 0403 13228

**Alberta Court of Queen's Bench  
Judicial District of Edmonton  
Veit J.**

Heard: August 24, 2004.  
Judgment: August 31, 2004.  
Filed: September 1, 2004.  
(35 paras.)

*Real property law — Condominiums — Bylaws — Common elements.*

Application by Willow Ridge to order Malinowski to remove a satellite dish in his exclusive use area of the condominium property and to order Malinowski to remove inappropriate items stored in his exclusive use area. Malinowski was the owner of a condominium in Willow Ridge's condominium complex. The condominium corporation's bylaws contained two articles, 54 and 78, relating to antennae, aerials and television antennae. Malinowski argued that satellite dishes were not prohibited by these bylaws, or they were not prohibited if installed within an owner's exclusive use area.

**HELD:** Application allowed in part. Malinowski was ordered to immediately remove all items stored in his exclusive use area except patio furniture, but he could keep his satellite dish. Malinowski's satellite dish was an antenna, an aerial and a television antenna. Article 54 of the bylaws prohibited satellite dishes from being attached to corporate structures. Malinowski's satellite dish did not infringe that prohibition. Article 78 was broader, but according to principles of interpretation the specific overrode the general. Malinowski was storing inappropriate chattels in his privacy area, and given the length of notice to him to remove these objects, the request for immediate removal was reasonable.

**Counsel:**

Christopher M. Veale, Ogilvie LLP, for the Applicant

Eric Malinowski, on his own behalf

---

MEMORANDUM OF DECISION

VEIT J.:—

Summary

QUICKLAW

¶ 1 The owners of the Willow Ridge Condo ask the court to order Mr. Malinowski to remove a satellite dish which the condo association asserts was wrongfully erected by Mr. Malinowski in his exclusive use area of the condo property. The applicants also ask the court to order Mr. Malinowski to remove inappropriate items, such as bed-boards, stored in his exclusive use area.

¶ 2 Mr. Malinowski responds that:

- satellite dishes are not prohibited by the condo by-laws;
- satellite dishes are not prohibited if installed within an owner's exclusive use area;
- the condo Corporation manager told him that he could have a satellite dish in his exclusive use area so long as it was not affixed to condo Corporation structures such as the building or fences;
- the condo Corporation promised that it would take a survey of condo owners to determine their wishes in the matter of satellite reception, and that the Corporation has not acted in good faith on that promise;
- he has made arrangements to remove the chattels from his exclusive use area.

¶ 3 The application is allowed, in part: Mr. Malinowski must immediately remove all items stored in his exclusive use area except patio furniture.

¶ 4 The application to order the removal of the satellite dish is denied: the only restrictions against satellite dishes that were argued in this hearing are those contained in articles 54 and 78 of the Bylaws. The issue of what limitations, if any, prohibit Mr. Malinowski from having a satellite dish within his exclusive use area was not dealt with in this hearing.

¶ 5 In the context of these proceedings, the court accepts that a "satellite dish" is an aerial, an antenna and a television antenna.

#### Cases and authority cited

¶ 6 By the applicants: Condominium Plan No. 8111679 v Elekes 2003 CarswellAlta 362 (Q.B.); Star Choice Television Network Inc. v Canada (Commissioner of Customs & Revenue 2004 CarswellNat 1004 (C.A.); Syndicat des copropriétaires de l'Aristocrate c Morgan [2002] J.Q. no 4923 (C.A.), [2000] J.Q. no 1405 (C. Sup.); The Canadian Oxford Dictionary, OUP, Don Mills, 2001

¶ 7 **By the court:** 9086-5825 Québec inc. c. Pelletier [2003] J.Q. no 2796 (C. Sup.); R. v Richards [1992] B.C.J. No. 186 (S.C.); Shorter Oxford English Dictionary, OUP, Oxford, 2002

#### 1. Background

¶ 8 On July 24, 2002, Mr. Malinowski became the owner of unit #10 in the Willow Ridge Condo complex.

¶ 9 The By-laws of the Condo Corporation include the following:

#### Article 54 Television

No television antenna, aerial, tower or similar structure and appurtenances thereto shall be erected on or fastened to any unit, except by the Corporation for or in connection with a common television cable or other distribution or reception system.

Article 78 Antennas

No antenna, aerial, tower or appurtenances thereto shall be erected on any part of the Common property except only by the Corporation.

¶ 10 Although there is no evidence before the court about the date on which these bylaws were passed, it appears likely that the bylaws are at least 20 years old.

¶ 11 At the request of Mr. Malinowski, and perhaps of other Condo Corporation owners, the Corporation has, from time to time, circulated a Satellite Dish Survey to obtain information about the wishes of the Condo owners to express their opinion about the existing bylaw. One of the surveys used contained the following question:

Do you want the Willow Ridge Condominium Corporation 802-2962 bylaws changed to allow satellite television dish installation on the complex buildings?

The evidence tendered by the Corporation on this application is that each time a survey of this type has been circulated, there has not been a response from the required 75% of owners in favour of permitting personal satellite dishes. The Corporation also asserts that if Mr. Malinowski continues to advocate a change to the bylaws, he should attempt to convince his co-owners to agree to the change that he proposes.

¶ 12 The By-laws of the Condo Corporation include the following which relates to the Privacy Area:

Article 66 Personal Belongings

All owners will cause all articles belonging to their household, other than patio furniture and other articles appropriately kept on the Privacy Area adjacent to their respective units, to be kept in their respective units when not in actual use, and each owner will comply with all reasonable requests of the Board or its representative, that bicycles, toys and like articles belonging to the owner's household be put away inside owner's unit when not in actual use.

¶ 13 The Condo Corporation asserts that it has, on numerous occasions warned Mr. Malinowski about the storage issue. Unfortunately, the first example tendered is a letter, dated July 5, 2002, to Mr. & Mrs. C. Malinowski, presumably the previous owners of the unit.

¶ 14 However, in a communication to Mr. Eric Malinowski dated November 14, 2002, the managing agent of the Condo Corporation made the following comments:

Please remove the dish immediately and do not install it anywhere else on the building, fence or any place on the common property. The Board will allow for it to be installed in your exclusive use area if you can find room. The articles stored in the exclusive use area are also to be removed as the Bylaws prohibit the use of this area for storage.

¶ 15 By letter dated November 26, 2002, the Condo Corporation directed Mr. Malinowski to remove a

satellite dish which Mr. Malinowski had apparently affixed to the exterior of the building owned by the Condo Corporation.

¶ 16 In a letter to Mr. Malinowski dated January 24, 2003, the Corporation included the following:

The bylaw (78) - Page 35 states that owners cannot attach a TV antenna to common property. The Board must support and enforce the Bylaw as it exists.

The Board has enforced this particular section of the Bylaws in the past and required that other owners not erect a satellite antenna and have required any who do so in contravention of the Bylaws to remove the antenna.

Therefore, there is clearly no option, you are required to remove the Satellite Antenna. You may put it inside your unit or you may put it inside your exclusive use space if it is not attached to a building or fence and does not protrude above the fence line. For example, it could be on a table or a post inside your fence or on the patio.

2. Is a satellite dish an "aerial" or an "antenna" or a "television antenna"

¶ 17 A satellite dish is an "antenna", and a "television antenna", and an "aerial".

¶ 18 In coming to that conclusion, I have considered the reasons of my colleague Clark J. in Elekes for concluding that a satellite dish did not come within the meaning of the phrase "television antenna" as used in the bylaws of the Elekes condominium corporation:

[para12] It is clear that by-law 55 does not specifically prohibit the use of satellite dishes. In effect, The Owners are asking the Court to make a determination that the phrase "similar structure", contained in by-law 55 applies to satellite dishes. I am unable to make this conclusion. By-law 55 prohibits the erection of antennae used to receive various forms of media. I do not think that a satellite dish is a structure similar to an 'antenna' as the word would have been used in 1982.

¶ 19 A similar decision was reached in Quebec at the trial level in the Morgan case, where the trial judge held that a satellite dish was neither a radio antenna nor a television antenna, in the strict sense of the word as used in 1981:

5. Une antenne parabolique n'est ni une antenne de radio ni une antenne de télévision au sens strict du mot tel qu'utilisé en 1981. Une telle antenne est autre chose.

¶ 20 The trial court went on to conclude that it would be contrary to normal rules of interpretation of property rights to interpret the word "antenna" in a 1981 bylaw restrictively so as to prohibit a technology that was unknown at the time:

6. On ne voit pas comment on aurait voulu en 1981 ou en 1982 prohiber une technologie qui, selon tout vraisemblance, n'était pas encore commercialisée ou si elle l'était, n'était qu'à ses débuts. Quant aux expressions "ou autre installation du genre" dans R-2 et "d'un système de distribution de signal quel qu'il soit" dans R-8, le moins que l'on puisse dire est qu'il présente un doute d'interprétation.

¶ 21 However, the Quebec Court of Appeal was of a different view. It considered that satellite dishes were ejusdem generis with the radio and television antennae explicitly described.

¶ 22 The Court of Appeal's decision has, of course, been followed in Quebec, for example, in Pelletier where the court makes the following comment (unfortunately the case citation in the text is to the trial level decision rather than to the Court of Appeal's decision):

[para25] L'interdiction d'installer des antennes sur le balcon des 180 condos de l'immeuble ne fait que consacrer le droit absolu qu'ont les copropriétaires de conserver et protéger l'unité architecturale de l'immeuble.

[para26] Quant à la validité d'un règlement de copropriété interdisant l'installation d'antennes paraboliques, la Cour d'appel s'est prononcée affirmativement sur ce point

[Voir Note 4 ci-dessous].

-----  
Note 4 : Syndicat des copropriétaires de l'Aristocrate c. Michael Morgan et MGM Shipping Inc., [2000] J.Q. no 1405 , AZ-02019157.

¶ 23 I agree with the conclusion of the Quebec Court of Appeal. Even the Shorter Oxford English Dictionary, (and in this context "even" means a non-technical, non-comprehensive, dictionary) contains the following definition of "satellite dish" a concave dish-shaped aerial for receiving broadcasting signals transmitted by satellite

¶ 24 That dictionary also defines the word "antenna" as including "4. Aerial, noun, chiefly US and tech."

¶ 25 I also accept the Canadian Oxford's Dictionary definition of the word "aerial". That dictionary states that the word "aerial" is used both as an adjective (happening in the air, etc.) and as a noun. The first definition of the noun "aerial" is "antenna".

¶ 26 The Star Choice decision, [2004] F.C.J. No. 674, is not helpful on this issue. In its decision, the Federal Court of Appeal makes the following statement concerning the Facts before it:

The appellant markets satellite television reception systems (STRS) which consist of a satellite dish, a low-noise block converter (LNBF) connected to an IRD by coaxial cable, and a remote control. By this means television signals transmitted from earth to a satellite in orbit are re-transmitted to earth and received by the dish antenna which focusses the television signals into a central spot at the LNBF

That case involved judicial review of a decision interpreting the word "reception". A decision which makes a comment about a fact that is not in dispute in that case is not helpful when the issue in dispute is different.

¶ 27 Similarly, the Richards decision does not deal specifically with the issue that is raised in this application. The appeal court there noted that a satellite dish installer had given evidence at trial that satellite dishes are not strictly antennae but are "parabolic reflecters". The appeal court went on to hold, however, that the trial judge was wrong in stating that a municipal by-law which stated, "Except as exempted by the provisions of section 5.16, no

person shall erect an antenna, including a satellite dish, without first obtaining a development permit from the Director of Planning" was too vague to cover satellite dishes.

¶ 28 In summary on this point, a satellite dish is an antenna, an aerial and a television antenna.

3. Do the Bylaws of the Willow Ridge Condo prevent a satellite dish from being erected within an owner's Privacy Area?

¶ 29 As the applicant accepts, Article 54 merely prohibits a satellite dish from being attached to condo structures. Article 78, being more general in nature, is over-ridden by the more specific prohibition contained in Article 54. The issue of whether the Condo Corporation could prevent satellite dishes from being placed within Privacy Areas, and if it could what authority it had to limit the height of such satellites, was not argued on this hearing. Therefore, the court cannot answer this question.

¶ 30 Article 54 of the Condo Corporation Bylaws prevents satellite dishes from being attached to corporate structures. Mr. Malinowski's satellite dish does not infringe that prohibition.

¶ 31 Article 78 of the Bylaws is broader. However, having in mind the principle of interpretation approved by Clark J. in Elekes to the effect that "restrictions being in derogation of the common law right to use land for all lawful purposes will not be extended by implication", I conclude that, according to normal statutory interpretation, since the specific over-rides the general, the provisions of Article 78 of the Bylaws are over-ridden insofar as satellite dishes are concerned by Article 54.

¶ 32 The issue of whether the Condo Corporation could prevent satellite dishes from being placed within Privacy Areas, and if it could what authority it had to limit the height of such satellites, was not argued on this hearing. Therefore, the court cannot answer the question it has posed, and cannot definitively determine whether Mr. Malinowski has engaged in improper conduct by erecting a satellite dish on his exclusive use area.

4. Removal of chattels stored within Mr. Malinowski's Privacy Area

¶ 33 The applicants have established that Mr. Malinowski is storing inappropriate chattels in his Privacy Area. Given the length of notice given to Mr. Malinowski to remove those objects, the applicant's request for immediate removal of the chattels is reasonable.

¶ 34 I am satisfied from the material provided by the applicant, and indeed by the admission - with explanation - by Mr. Malinowski that he has been storing materials improperly in his exclusive use area, that the applicant is entitled to an order requiring Mr. Malinowski to immediately cease his improper conduct relative to the storage of such materials and to immediately remove such items from the exclusive use area.

5. Costs

¶ 35 If the parties are not agreed on costs, I may be spoken to within 30 days of the release of this decision.

VEIT J.

QL UPDATE: 20040917  
cp/e/nc/qw/qlmmm/qltl