IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967

Date: 20060621
Docket: 15002
Registry: Terrace

Between:

Anna Irene Dimitrov

Appellant

And

Summit Square Strata Corporation

Respondent

Before: The Honourable Mr. Justice Halfyard

Reasons for Judgment

Counsel for Appellant	S. Merrick
Counsel for Respondent	M. Shaw
Date and Place of Trial/Hearing:	May 23 and June 12, 2006 Prince Rupert, B.C.

[1] Anna Irene Dimitrov appeals from the judgment given against her by a provincial court judge in small claims court at Terrace on August 30, 2005. The judgment required the appellant to pay $725 to the respondent, Summit Square Strata Corporation. That amount included $350 for fines imposed on her by the respondent, $175 for time spent on the litigation by the respondent, and $200 in court costs. Post-judgment interest was also awarded from August 30, 2005. The trial judge ordered the judgment to be paid at $50 per month, commencing September 1, 2005.

[2] The fines were imposed on the appellant for breaches of a bylaw passed by the respondent, which effectively prohibited strata owners from keeping a cat as a pet in their residences. The appellant was the owner of a unit in a residential complex which was subject to the management and control of the respondent, and she was a member of the respondent.

[3] The essential facts of the case are not seriously in dispute. On January 28, 2004, the respondent's building manager notified the appellant that a complaint had been made against her for having a cat as a pet, and presented the appellant with written notice of the complaint. The notice also informed the appellant that a fine of $50 had been imposed against her as a penalty, and stated: "Animal must be

removed A.S.A.P." It was admitted that the appellant did have a cat as a pet, at the relevant time.

[4] On February 4, 2004, the manager delivered a second notice to the appellant, the essential part of which reads as follows:

> "Your fine for having a cat in your apt. has now doubled to $100. I have received no payment from fine dated Jan.28/04. Cat has to be removed immediately and fine to be paid in 7 consecutive days for this date, or further fines will be issued."

[5] The respondent sent a letter to the appellant and her husband dated February 11, 2004, the text of which stated:

> "Enclosed are copies of fines given to Anna Wilson in apartment #1307 for having a cat. The fines that have been incurred by this owner total $100. We ask that you please clear this matter up by March 1, 2004.
>
> If you have any questions or concerns please contact our building managers Maria or Pat at 615-0059 and they will set up an appointment for you to meet with the Strata Board."

[6] The manager gave the appellant another notice dated February 18, 2004 which stated in relevant part:

> "This is your 5th notice regarding your cat. This is now an additional $200.00. Please contact me as soon as possible to verify the permanent removal of your cat to avoid further fines. Total fines now equal $300.00."

[7] The appellant's father wrote a letter to the respondent dated February 18, 2004. In substance, he states that he has discovered that no amended by laws were registered in the land title office, that therefore the Standard Bylaws under the ***Strata Property Act*** remain in effect, and that the Standard Bylaws permit an owner to have one cat. In his letter, Mr. Dimitrov also complains about the way his daughter has been treated by the manager, and says their request for the bylaws, and for a council meeting, has been refused.

[8] The respondent sent a letter to the appellant and her husband dated February 23, 2004. The letter reminds the appellant of the notice given to her of the additional $200 fine, asks her to "please clear up this 5th notice by March 1, 2004", and to "verify the permanent removal of your cat to avoid further fines." The letter also states that the appellant can "set up an appointment to meet with the Strata Board if you have any questions or concerns."

[9] The manager gave the appellant another notice dated February 25, 2004, informing her that a further $100 fine had been imposed against her (making a total of $400), and repeating that she should remove the cat to avoid further fines. The respondent sent the appellant a letter dated February 26, 2004, confirming the additional $100 fine, asking

her to "please clear up this 6th notice by March 31, 2004," and saying she may wish to set up a meeting with "the Strata Board".

[10] The manager gave a notice to the appellant dated March 4, 2004, which stated that the appellant now had fines totalling %500 (which meant that another $100 find had been imposed).

[11] The trial judge disallowed the first two fines, on the ground that s. 23 of the respondent's by-laws permitted only warning letters to be given for the first two contraventions. On appeal, the respondent acknowledged that this decision of the trial judge was correct.

[12] The evidence at trial established that the rules governing the strata property were posted in the lobby of the building in which the appellant lived, and that the appellant knew those rules were posted there. One of those rules stated: "No pets allowed, except as permitted by the bylaws." The trial judge further found that the respondent had passed amended bylaws on November 4, 2002, and had registered them in the land title office thereafter, in accordance with the ***Strata Property Act***. Section 120 of the ***Act*** states in part as follows:

"120 (1) The bylaws of the strata corporation are the

> Standard Bylaws except to the extent that different bylaws are filed in the land title office."

[13] The standard bylaws (which are a schedule to the ***Act***) in s. 3(4)(d) did permit an owner to have one cat as a pet. However, the amended bylaws approved by the respondent changed that section of the standard bylaws so as to effectively prohibit an owner from keeping a cat as a pet. Section 123(1) of the ***Act*** makes an exception for "... a pet living with an owner ... at the time the bylaw is passed", but that exception does not apply here.

[14] Against that skeletal outline of the facts, I will set out the grounds of appeal. From the statements of argument, counsels' review of the evidence and the reasons for judgment, and the submissions on appeal, I would paraphrase the grounds of appeal in this way:

(a) The learned trial judge erred in deciding that the appellant should be imputed with constructive knowledge of the respondent's amended bylaws at the times when the fines were imposed on her.

(b) The learned trial judge erred in deciding that the council of the respondent did not delegate its enforcement powers to its building manager.

(c) The learned trial judge erred in deciding that the respondent had lawful authority to impose the last three fines.

THE FIRST GROUND OF APPEAL: DID THE LEARNED TRIAL JUDGE ERR IN DECIDING THAT THE APPELLANT SHOULD BE IMPUTED WITH CONSTRUCTIVE KNOWLEDGE OF THE RESPONDENT'S AMENDED BYLAWS AT THE TIMES WHEN THE FINES WERE IMPOSED ON HER?

[15] At trial, much of the evidence was directed to the question of whether the appellant had knowledge of the amended pet bylaw. Her father had conducted a search of the land title office, and was unable to locate any amended bylaws of the respondent. One or more of the notices given to the appellant stated that the bylaw allegedly contravened was attached to the notice, but such was not the case. At no time during the period when the fines were being imposed, did the respondent provide a copy of the amended bylaw to the appellant or her father. However, the evidence established that the appellant's husband had been at the meeting when the amended bylaws were approved, and that a copy of the amended bylaws had been sent to her husband, at their address in the residential complex.

[16] The appellant and her husband separated in March 2003, and he moved out of their jointly-owned residence. He testified for the respondent at the trial, and said, in

effect, that the appellant knew that the bylaws prohibited owners from having a cat as a pet. The appellant did not distinctly admit, in her testimony, that she had such knowledge, but the trial judge accepted Mr. Wilson's testimony, and found against the appellant on this issue (see pars. 13 and 28 of the reasons for judgment).

[17] There was argument at trial and on appeal concerning the obligation of the respondent to inform owners of any amendment to the bylaws. The sections of the ***Act*** dealing with matters of notice are s. 128(4), s. 61(1)(b) and s. 65. I find it unnecessary to further review the evidence in light of those statutory provisions, because of the trial judge's findings.

[18] The trial judge found that the appellant had been wilfully blind to the content of the amended bylaw relating to pets, and fixed her with constructive knowledge of that bylaw.

[19] The appellant asserts that the trial judge erred in finding as a fact that she had constructive knowledge of the amended pet bylaw. In order to succeed on this ground, the appellant must show that the trial judge committed a palpable and overriding error in making this finding, which led him to a wrong result. See ***Housen v. Nikolaisen*** [2002] 2 S.C.R. 235, at paras. 1 and 4; ***H.L. v. Canada*** [2005] 1 S.C.R. 401, at para. 4.

[20] There was evidence which could reasonably support the trial judge's conclusion. I am not persuaded that the trial judge made the error alleged, and I would not interfere with the finding that has been challenged. Nor am I satisfied that the trial judge erred in ruling that further evidence of requests made by or on behalf of the appellant for a copy of the amended bylaws, would not be admitted.

SECOND GROUND OF APPEAL: DID THE LEARNED TRIAL JUDGE ERR IN DECIDING THAT THE COUNCIL OF THE RESPONDENT DID NOT DELEGATE ITS ENFORCEMENT POWERS TO ITS BUILDING MANAGER?

[21] The trial judge was well aware that the bylaws of the respondent prohibited the council from delegating the powers in question in this case. That bylaw reads as follows:

> "20(4) The council may not delegate its powers to determine, based on the facts of the particular case,
>
> (a) Whether a person has contravened a bylaw or rule,
> (b) Whether a person should be fined,"

[22] Sections 4 and 26 of the ***Act*** make it clear that the powers of the strata corporation are delegated to its council, and that a strata corporation must act through its council.

[23] The power to impose fines on owners for contravention of a bylaw is given to strata corporations by s. 129(1) and 130(1) of the ***Act***. Section 23 of the amended bylaws of the

respondent states as follows:

> "23.(1) Any violation of the bylaws by the owner, the owner's tenants or a visitor of the owner or of a tenant will result in the following steps being taken:
>
> (a) for a first violation, a warning letter will be given to the owner setting out the particulars of the violation and that a failure to respond within 7 days, without reasonable excuse, will be taken as an admission that the violation occurred as indicated.
>
> (b) for a second violation, a warning letter will be given to the owner setting out the particulars of the violation and that a failure to respond within 7 days, without reasonable excuse, will be taken as an admission that the violation occurred as indicated.
>
> (c) For a third violation, the owner will be fined $60.00.
>
> (d) For a fourth violation, the owner will be fined $100.00.
>
> (e) For a fifth violation and subsequent violation, the owner will be fined 200.00.
>
> (2) For any violation of the rules by the owner, the owners tenants or a visitor of the owner or of a tenant, the owner will be fined $50.00.
>
> (3) Fines may be waived in the discretion of the Strata Council for fourth and subsequent violations, if they are satisfied that the owner is making a reasonable effort to prevent further violations."

[24] There was evidence accepted by the trial judge, which could establish that the building manager was acting on the instruction of the council, and that a council meeting had been held, before the manager prepared and served the notice of contravention and fine on the appellant on January 28, 2004. Although there was no direct or documentary evidence

given to show that a meeting of the council was conducted, or that the council made the decisions stated in the notice presented to the appellant, the trial judge inferred that the council had made the required decisions, and had simply acted thereafter through the building manager as its "arm" (see paras. 16, 17 and 18 of the reasons for judgment).

[25] The appellant complains, in essence, that the evidence is insufficient to show that it was the council, as opposed to the building manager, who made the essential decisions relating to the original complaint. While I might have taken a different view of the evidence, I think there was evidence which could support the decision of the trial judge. Accordingly, I would not accede to this ground of appeal.

THE THIRD GROUND OF APPEAL: DID THE LEARNED TRIAL JUDGE ERR IN DECIDING THAT THE RESPONDENT HAD LAWFUL AUTHORITY TO IMPOSE THE LAST THREE FINES?

[26] The appellant's contention is that (even assuming that it was the council and not the building manager who made the essential decisions) the council had no power to impose fines on the appellant, because it failed to comply with the mandatory provisions of s. 135 of the ***Act***. The relevant parts of s. 135 are these:

"**135** (1) The strata corporation must not

> (a) impose a fine against a person,
>
> ...
>
> for a contravention of a bylaw or rule unless the strata corporation has
>
> (d) received a complaint about the contravention,
>
> (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested.....
>
> (2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e)....
>
> (3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section."

[27] The appellant submits that the council failed to give the appellant any opportunity to answer the complaint, before it decided that the appellant had contravened the bylaw, and that a fine should be imposed as a penalty. It is argued, in effect, that council's conduct was not only a failure to comply with the governing statute, but was also a violation of the fundamental principle that a person accused of wrongdoing should not be found guilty without first having the opportunity to be heard.

[28] The respondent has argued that the appellant was given an opportunity to answer the complaint, in that the council, in

several letters, invited the appellant to contact the council if she wished to discuss the actions it had taken against her. It was submitted that this was substantial compliance with s. 135(1).

[29] The weakness in the respondent's position is that the invitations to the appellant were given after the decisions had already been made that she had contravened (and continued to contravene) the pet bylaw, and after fines had been imposed on the appellant. The respondent's conduct in this regard might satisfy s. 135(2). However, in my opinion, s. 135(1) of the ***Act*** clearly contemplates that the opportunity to answer the complaint must be given before any decision is made on the issues of guilt or penalty. Moreover, s. 14(4) of the ***Act*** requires the council to "inform owners" before any meeting is held, which I think provides support for this interpretation.

[30] Counsel for the appellant referred me to the case of ***Re Scoffield and Strata Corporation N.W. 73 et al*** (1983) 145 D.L.R. 3d 574. In that case, our Court of Appeal decided that a strata corporation could not enforce payment of a fine imposed on an owner for having a cat on her premises. The proceedings were under the ***Condominium Act***, which was the predecessor of the ***Strata Property Act***. The court's conclusion was based on the facts that the council had held a

meeting and decided that the owner should be fined, without having given her notice of the complaint, or the meeting. It appears that the trial judge was not referred to this authority, and I assume that neither party was aware of it.

[31] I do not accede to the argument of the respondent that s. 135 was complied with. If that is right, then it follows that the council had no lawful authority to decide that she had contravened the pet bylaw, or that a fine should be imposed as a penalty.

[32] In my opinion, none of the subsequent procedures cured the initial defect. The trial judge decided that the last three fines had been properly imposed, and should be recovered in the action. It is implicit in this conclusion that the trial judge relied on s. 135(3) and also on bylaw s. 24(1), which in relevant part says:

> "24(1) If an activity ... that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than seven days, a fine may be imposed every seven days."

[33] I am unable to find any evidence in the record to indicate that any meeting of the council was held where it was decided, on the basis of some evidence, that the appellant was continuing to contravene the pet bylaw. In my opinion, these steps would be the minimum required by s. 135(3) to justify a

fine under bylaw s. 24(1). But the fundamental non-compliance with s. 135(1) of the ***Act*** was never remedied by the respondent, and therefore s. 135(3) could not apply in any event.

[34] The appellant was represented at trial by her father, a lay person, and I sense that the potential arguments based on s. 135 were not effectively put to the trial judge. If they had been, I am confident that he would have reached a different conclusion.

[35] It is apparent to me that the trial judge gave thoughtful and compassionate consideration to the appellant's case. But the evidence was lengthy for a one-day trial, and the numerous relevant provisions of the ***Strata Property Act***, the Standard Bylaws and the amended bylaws added significant complexity to the case. The trial judge did not have the benefit of counsel with respect to the appellant's defence to the claims, and did not have the luxury of time to fully consider the effects of the many rules of law having a bearing on the issues, or to research the case law.

DISPOSITION

[36] The appeal is allowed, the trial judgment is set aside, and the respondent's claim is dismissed.

[37] The money ($200) deposited by the appellant to perfect her appeal shall be refunded to her.

[38] Under s. 13(1)(d) of the ***Small Claims Act***, I have a discretion as to costs. In all of the circumstances of this case, I have decided that the respondent should pay to the appellant disbursements of $500 (which will cover part of the cost for preparation of a transcript), and I so order. I accept the trial judge's finding (apparent from paras. 25, 26 and 29 of his reasons) that, to a significant degree, the appellant was the cause of the simple problem escalating as it did.

"D.A. Halfyard, J."
The Honourable Mr. Justice D.A. Halfyard