

Case Name:

**Hatch v. Quadra Plex Development Corp.**

Between

Derek Hocking Hatch and Peggy James Hatch (0214054);  
Harvey Richard Pudwell and Doreen Pudwell (0214056);  
Houshang Saatchi and Azam Saatchi (0214072); George  
Alfred Sharp and Dollie Levina Sharp (0214073); Ales  
Badke and Doreen Badke (0214074); Trudy Ann Adair  
(0214075) and Anna Algard (0214157), claimants, and  
Quadra Plex Development Corporation, A.A.P. Windows  
Ltd. d.b.a. Allied Windows (and the said A.A.P.  
Windows Ltd.) and Municipal District of West  
Vancouver, defendants

[2002] B.C.J. No. 2708  
2002 BCPC 502

North Vancouver Registry Nos. 0214054, 0214056,  
0214072, 0214073, 0214074, 0214075 and 0214157

**British Columbia Provincial Court  
North Vancouver, British Columbia  
Grandison Prov. Ct. J.**

Heard: October 17, 2002.  
Judgment: November 28, 2002.  
(22 paras.)

**Counsel:**

All claimants appeared on their own behalf.  
Lamour L. Krebs, for Municipal District of West Vancouver.  
Other defendants acted on their own behalf.

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¶ 1 **GRANDISON PROV. CT. J.:**— The defendant, the Municipal District of West Vancouver, has filed an application to this Court to dismiss the claimants' actions against it. The grounds submitted are:

- a) There has been an abuse of process.
- b) The individual unit owners cannot bring an action in relation to common property.
  - a. The claims are too complex for Small Claims Court.

¶ 2 The first issue that the claimants are abusing judicial process is without merit. Firstly, there is no prohibition against commencing an action in the Supreme Court, abandoning the claim there before the matter has been heard on its merits, then commencing the matter in Small Claim Court, as long as the claim falls within the jurisdiction of this Court.

¶ 3 Secondly, the claimant in the Supreme Court action was the Strata Corporation LMS 2508 and here the actions are commenced by seven individual owners. The issue is whether individual strata owners have standing to sue on their own behalf a third party for damage to the common property of the strata corporation.

¶ 4 On February 7, 2001 the owners, Strata Plan LMS 2508 filed a claim in the Supreme Court of British Columbia against the defendants for damages caused by deficiencies in work, materials, design and inspection in the construction of their condominium. The subject property is a 21-unit condominium apartment block identified here as "The Tides".

¶ 5 The Writ of Summons was not served on the defendants and the limitation period for service expired. Instructions were given to the claimants' solicitor that the claimants did not wish to proceed. Therefore, there is no claim before the Supreme Court. The action, although initiated, was never before that Court to be heard on its merits. The claim in Supreme Court was abandoned. The defendants were never called upon to answer the claim. They were not put to any prejudice, cost or inconvenience. Thus, there was no abuse of the Court process nor were any of the defendants' rights or interests.

¶ 6 The claimants have a right to revive their claim within the statutory time limitations before either the Provincial Court or the Supreme Court, subject to the monetary jurisdiction of the respective Courts and the issues in dispute are not otherwise reserved to the jurisdiction of the superior court.

¶ 7 In considering this application, albeit, the claim as indicated is the same as that filed in the Supreme Court. It is not filed specifically by the same party. Individuals, it is trite to say, are at liberty to commence an action in this Court on their own behalf, but the question becomes one of whether that individual has a right to be heard as an individual. That issue will be dealt with after addressing the third issue raised by the applicant.

¶ 8 That, "the claims are too complex for Small Claims Court". The submission on this point is that pursuant to the Small Claims Act, R.S.B.C. 1996 c. 430 Section 2(1), this Court is to hear matters in a just, speedy, inexpensive and simple manner. Somehow, counsel equates this with this Court being qualified to only hearing simple matters. That is not the case. There are innumerable cases that are heard in this Court and this division of the Court that are lengthy, have a multitude of witnesses, sundry expert witnesses, copious exhibits, technical and otherwise, as well as hearing questions of law, evidence and procedure, including constitutional questions. My recollection of the history of this Court is that it has yet to be overwhelmed by a case that is more than simple case. The mandate of this Court is to provide for a system of justice that is just, speedy within the circumstances of the case, with Court procedure designed to facilitate lay litigants to resolve disputes without professional help administered and adjudicated in a manner that is understood by litigants without the aid of counsel. That is the goal, that is the object. Sometimes, that of itself is not a simple exercise but it does not exceed the mandate of this Court. The challenge that this claim is too complex to be heard by this Court, to put it very kindly, is without merit.

¶ 9 Back to the issue of the claimants standing before this Court. There is no issue that the property in question is the common property of the strata corporation.

¶ 10 No individual unit holder has an exclusive right to represent the interest of the other unit owners who have a common interest in common property. Sections 3 and 4 of the Strata Property Act provides that is the responsibility of the strata corporation.

#### Responsibilities of strata corporation

3. 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.

#### Strata corporation functions through council

4. 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.

Excising the germane words relevant to the issue here under sec. 164 are:

"The strata corporation is responsible for managing and maintaining the common property."

"And, the powers and duties of the strata corporation must be exercised and performed by a council except as may otherwise be provided for."

¶ 11 The claimants, the respondents in this application, submit that: Section 163 sets out the right of an individual owner to sue with respect to common property. It states:

- (1) The strata corporation may be sued as representative of the owners with respect to any matter relating to the common property, common assets, bylaws or rules,
- (2) An owner may sue the strata corporation.

Section 163(1) and (2) does not refer to the right of an individual to sue a third party. Subsection (1) says that the strata corporation may be sued. Subsection (2) says that an owner may also sue the strata corporation. That section says, yes, the individual owner may sue, but may sue the corporation, it does not speak of any other party.

¶ 12 Section 172(1) reads:

The strata corporation may sue on behalf of one or more owners about matters affecting only their strata lots if, before beginning suit, ...

¶ 13 This does not expand the right of an individual to sue, it does state that it may sue on behalf of an individual about matters affecting only their strata lots, subject to the consent of others. It does not permit an individual owner to sue a third party about matters concerning common property. There is no implication in that section that suggests otherwise.

¶ 14 With respect to Section 177 of Division 4, the Arbitration Division of the act it refers to, which disputes, can be arbitrated. It states as follows:

- (1) The strata corporation may refer a dispute with an owner or tenant to arbitration if the dispute concerns a matter set out in subsection (3). [my emphasis]
- (2) An owner or tenant may refer a dispute with the strata corporation or with another owner or tenant to arbitration if the dispute concerns a matter set out in subsection (3). [my emphasis]

This section refers to a dispute between a strata corporation and an owner or one owner and another owner. It does not confer the independence of an owner to sue anyone else about the matters of common property. And, it is conceded that the property in issue here is in fact common property.

¶ 15 The Act does not contemplate the responsibility of maintaining and managing common property being within the right of an individual owner to independently undertake. See Section 3, above.

¶ 16 The respondent submits that unless there is a statute in force which takes away a right of an individual to sue, then that right is not extinguished. The Strata Act, in fact,

is such a statute that assigns that right to a strata corporation. See Section 2:

- (1) From the time the strata plan is deposited in a land title office,
  - (a) a strata corporation is established, and
  - (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name "The Owners, Strata Plan [the registration number of the strata plan]".
- (2) Subject to any limitation under this Act or the regulations, a strata corporation has the power and capacity of a natural person of full capacity.

¶ 17 The owners are members of the strata corporation and it is the strata corporation that has the power and capacity ... Further, the respondent calls upon Section 44 of the Law & Equity Act. R.S. Chap. 253 ... to confirm their right to

independently sue another on their own behalf and on behalf of others., without their consent or approval. Section 44 reads:

Generally in all matters not particularly mentioned in this Act in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail.

¶ 18 Distilled to its utmost "equity" is the matter of fairness in law. It can hardly be said that acting for another or other common property owners against their wishes is fair, as in the facts of this case indicate. The Strata Act applies equally to all owners. No one owner has any greater right than any other, but fairness does dictate that the majority of a body of persons with a common interest can prevail over an individual or a minority and regard must be had for sec. 2 of the Law and Equity Act which reads:

Subject to section 3, the Civil and Criminal Laws of England, as they existed on November 19, 1858, so far as they are not from local circumstances inapplicable, are in force in British Columbia, but those laws must be held to be modified and altered by all legislation that has the force of law in British Columbia or in any former Colony comprised within its geographical limits.

¶ 19 The Strata Act is in fact legislation that has the force of law in British Columbia.

¶ 20 In the Strata Act a safeguard has been incorporated to implement certain actions, by an owner, a law suit being one. If in all the circumstances the respondent(s) still believes he has been treated unfairly by the strata council by not taking any action on their behalf or permitting the owner(s) to pursue an action, then this remedy is to be found in Sections 163 and 164, as follows:

163(1) The strata corporation may be sued as representative of the owners with respect to any matter relating to the common property, common assets, bylaws or rules, or involving an act or omission of the strata corporation.

(2) An owner may sue the strata corporation.

#### Preventing or remedying unfair acts

164(1) On application of an owner or tenant, the Supreme Court may make an interim or final order it considers necessary to prevent or remedy a significantly unfair

- (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
- (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) For the purposes of subsection (1), the court may

- (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
- (b) vary a transaction or resolution, and
- (c) regulate the conduct of the strata corporation's future affairs.

¶ 21 The respondent owners, urge that the strata corporation has made a significantly unfair decision as it relates to their interests. Therefore, it is for the Supreme Court, by law, to provide any remedy not the Small Claims Court.

¶ 22 The individuals as claimants in the above listed actions have no standing before this Court unless otherwise ordered by the Supreme Court. This Application is therefore granted.

GRANDISON PROV. CT. J.

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