

Citation: ☼ Jones and Letkeman v. Baywest Management Corp. Date: ☼20120906  
2012 BCPC 0309 File No: 20573  
Registry: Abbotsford

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

BETWEEN:

**STEVEN JONES and TONY LETKEMAN**

CLAIMANTS

AND:

**BAYWEST MANAGEMENT CORPORATION**

DEFENDANT

**REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE K. D. SKILNICK**

|                            |                   |
|----------------------------|-------------------|
| Appearing in person:       | S. Jones          |
| Appearing in person:       | T. Letkeman       |
| Counsel for the Defendant: | D. W. P. Moriarty |
| Place of Hearing:          | Abbotsford, B.C.  |
| Date of Hearing:           | May 12, 2012      |
| Date of Judgment:          | September 6, 2012 |

## Introduction

[1] On August 3, 2011 the Claimants filed a Notice of Claim in which they allege that the Defendant wrongly authorized a towing company to tow a vehicle belonging to the Claimant, Mr. Letkeman, which was parked in a parking stall assigned to the other Claimant, Mr. Jones, in a strata building managed by the Defendant. The Claimants allege that this was a trespass and are claiming damages arising out of this allegedly wrongful act.

[2] The Defendant filed a Reply on August 18, 2011, in which they allege that they were acting on instructions from the strata corporation. Their defence essentially is that either the towing was lawful, in accordance with the bylaws, or alternatively they were acting as agents for the strata corporation and that is who the Claimants should be suing.

[3] A settlement conference was held in this matter on May 14, 2012, pursuant to Rule 7 of the *Small Claims Rules*. At that time the Defendant brought an application to dismiss the Claim under Rule 7(14). The parties agreed to provide written argument on this point. The Defendant filed its written argument on June 13, 2012 and the Claimants filed their response on August 10, 2012. Following is the ruling on the Defendant's application and the reasons for that ruling.

## Applications to Dismiss a Claim Prior to Trial

[4] The Defendant has made an application under Rule 7(14) of the *Small Claims Rules* for an order that the Claim in the matter be dismissed because it does not disclose any cause of action against them, or alternatively because, on the facts which

are not in dispute, the Claim has no chance of success. Rule 7(14) reads in part as follows:

What Happens at a Settlement Conference

(14) At a settlement conference, a judge may do one or more of the following:

(b) decide on any issues that do not require evidence;...

(i) dismiss a claim, counterclaim, reply or third party notice if, after discussion with the parties and reviewing the filed documents, a judge determines that it

(i) is without reasonable grounds,

(ii) discloses no triable issue, or

(iii) is frivolous or an abuse of the court's process;...

(l) make any other order for the just, speedy and inexpensive resolution of the claim.

[5] One of the functions of the judge at a Small Claims settlement conference is to serve as a gatekeeper, determining which claims have a triable issue and which can be decided without the expenditure of trial time. Currently, trial time is a precious resource. In criminal courts charges are often stayed because trial time can not be allocated within a reasonable time. In family court, children sometimes remain in foster care longer than they should because early court dates are not available to resolve their status. Accordingly, any measures which can prune trials with no reasonable chance of success before the trial time is spent are beneficial to everyone so that court time can best be utilized optimally. The Defendant alleges that this is such a trial, while the Claimants allege that they have a good cause of action.

[6] In order to give the Claimants their day in court on this issue, I must first be satisfied that (a) there is a claim before the court on which the court has jurisdiction to

make an order and (b) that there is a triable issue, i.e. that there is some evidence on which the trial judge could rest a finding of liability on the Defendant (without any weighing of that evidence). If either of these are lacking, Rule 7(14) gives the court jurisdiction to end the proceedings prior to trial, in effect to close the gate on what can clearly be shown to be a claim that lacks merit and one which should not utilize valuable court time.

### Undisputed Facts

[7] At the settlement conference, the parties agree that on October 14, 2010, the Defendant hired a towing company called Tow Time to remove the Claimant Letkeman's vehicle from parking stall #39 in the secured parking lot at 30515 Cardinal Avenue in Abbotsford, BC. It is agreed that this spot was assigned to the Claimant Jones and that Jones gave Letkeman permission to park the vehicle in that spot. The Claimants allege that this was a trespass, but whether or not this is so is a question of law.

[8] The parties agree that the bylaws of the Strata Corporation contain a provision (Bylaw 9) which prohibits an owner from parking "his or her vehicle on common property or land that is a common asset" except in accordance with the bylaws. Bylaw 9 goes on to prohibit an owner or tenant from renting or assigning a parking stall to someone who is not an owner or tenant of the strata corporation. It also requires residents' vehicles to display an authorized parking decal. The bylaw provides that vehicles which lack the requisite decal may be towed without notice at the owner's expense.

[9] The Claimants are not alleging that Mr. Letkeman was an owner or tenant. They also admit that the towed vehicle did not have the requisite decal. Instead, they argue that this bylaw is an illegal bylaw because it contravenes section 3 of the Schedule of Standard Bylaws contained in the *Strata Property Act*. They also argue that having a vehicle towed is not a remedy available to the strata corporation under the Act and therefore the towing of this vehicle constituted a trespass.

[10] The issue in this case is really the validity of the bylaw under which the vehicle was towed, as well as an interpretation of the *Strata Property Act*.

### Analysis

[11] The *Strata Property Act* obliges every strata corporation to have bylaws. This is mandated in section 119 of the Act, which clearly states that “the strata corporation must have bylaws” and spells out subjects that must be addressed in those bylaws. A set of Standard Bylaws are attached as a schedule to the Act, and section 120(1) provides that those Standard Bylaws apply to each strata corporation “except to the extent that different bylaws are filed” by the strata corporation.

[12] At the outset, one of the problems with the Claimants’ argument is that it assumes that the strata corporation has no option other than to follow the bylaws as set out in the Schedule. But Section 120 of the *Strata Property Act* says that this is not necessarily the case and that a strata corporation can deviate from the standard bylaws, as long as those bylaws are not illegal in any other respect. This is clear not only from a reading of section 120, but also from judicial consideration of section 120. In *The*

*Owners, Strata Plan VR19 v. Collins et. al.* 2004 BCSC1743, the Honourable Mr. Justice Melnick of the British Columbia Supreme Court set out the law as follows:

[9] It is within the rights of the Strata Corporation to pass and enforce any bylaw that it sees fit, as long as that bylaw does not contravene the Act, the *Human Rights Code*, or any other enactment or law (s. 121 of the Act). Although there are some exceptions and limits as to what type of bylaws a Strata Corporation may enact (see ss. 122, 123, and 141 of the Act), the Flooring Bylaw does not fit within any of those exceptions.

[13] The Claimants assert that Bylaw 9 is invalid because it does in fact contravene the *Strata Property Act*. They argue that the bylaw diminishes the property rights that the Claimant Jones has in the parking space assigned to his unit. The Claimants rely on the decision of the Honourable Judge Gove of this court in *Alipour v. Kaulius* 2005 BCPC 461 as authority for the proposition that the strata corporation owns the property, but not the property rights. On my reading of Judge Gove's decision, I do not interpret the case in the same manner as the Claimants. In *Alipour*, the issue was whether or not the defendants were liable to the claimants for two parking spaces purportedly included in the sale of a condominium unit. Judge Gove found that the defendants in that case had misrepresented what it was they were selling. He did not go so far as to make any pronouncement as to what rights a strata corporation may assert over property.

[14] The Claimants argue that the bylaw contravenes the *Strata Property Act* because the Act does not give the strata corporation the power to tow vehicles among the remedies that are available to it. The Defendant argues that in fact the Act does permit that remedy. The answer to this question is found in sections 129 and 133 of the Act. Section 129(1)(b) of the Act reads as follows:

**129** (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

(b) remedy a contravention under section 133;

[15] Section 133 sets out what sorts of bylaw contraventions the strata corporation is permitted to remedy. These include “removing objects from the common property or common assets.” On a reading of section 129 and section 133 of the act, the strata corporation is permitted to remove parked vehicles that contravene bylaw 9 by failing to have the required decal or which do not belong to an owner. I find that, on a reasonable interpretation of the term “objects” in section 133, objects includes illegally parked vehicles.

[16] In summary, I find that those portions of the Standard Bylaws which are in conflict with that portion of Bylaw 9 do not apply so as to override the valid portions of Bylaw 9, and that the strata corporation was entitled at law to pass and enforce those provisions of Bylaw 9 which were not illegal. I find that those portions of Bylaw 9 which the Defendant relies on in defence of its authorizing the removal of the Claimant Letkeman’s vehicle were not illegal. I also find the towing of the vehicle was permissible under the authority of section 129 and section 133 of the *Strata Property Act*.

[17] For the foregoing reasons, I find that the bylaw which the Defendant relied on to tow the vehicle belonging to the Claimant Letkeman is not invalid as alleged by the Claimants and that the Defendant acted under the authority of a valid bylaw when it authorized the towing of the said vehicle. Accordingly this was not a trespass as alleged in the Notice of Claim and I find the Claim to be without reasonable grounds.

Order

[18] For the foregoing reasons, the Claim brought by the Claimants in this action is dismissed pursuant to Rule 7(14)(i) of the *Small Claims Rules*.

Dated at the City of Abbotsford, in the Province of British Columbia, this 6<sup>th</sup> day of September, 2012.

---

The Honourable Judge K. D. Skilnick