

 **[Mathews v. Strata Plan VR 90, \[2016\] C.C.S. No. 6856](#)**

Canadian Case Summaries (f/k/a Dominion Report Service)

British Columbia Court of Appeal

Vancouver, British Columbia

K.E. Neilson, H. Groberman and G.J. Fitch JJ.A.

Heard: April 8, 2016; written submissions, April 22, 26 and
29, 2016.

Judgment: August 5, 2016.

Docket: CA43195

[2016] C.C.S. No. 6856

Full text: [\[2016\] B.C.J. No. 1651](#) | [2016 BCCA 345](#)

Between John Elden Mathews, Zachary Hanson Mathews, Erika Mathews and Barbara Lynn Mathews, Appellants (Petitioners), and The Owners, Strata Plan VR 90, Respondent (Respondent)

(49 paras.)

Real property law — Condominiums — Bylaws — Types — Regarding occupancy standards — Condominium corporation — Board of directors — Obligations — Passing bylaws — Rights and obligations — Sources of obligation — Provincial condominium legislation — Unit holders — Rights of — Leasing unit to tenant — Appeal by strata unit owners from dismissal of petition challenging validity of bylaw limiting number of units that could be rented at any time dismissed — Section 141(3) of Strata Property Act required only that rental restriction bylaw set out procedure that must be followed in determining application for permission to rent — As bylaw in issue set out necessary procedural steps, it complied with s. 141(3) of Act — Absence of waitlist procedure in a bylaw intended to address only matters of process did not render that bylaw invalid — Strata Property Act, s. 141(3).

Real property law — Proceedings — Practice and procedure — General principles — Legislation — Interpretation — Statutes — Appeal by strata unit owners from dismissal of petition challenging validity of bylaw limiting number of units that could be rented at any time dismissed — Section 141(3) of Strata Property Act required only that rental restriction bylaw set out procedure that must be followed in determining application for permission to rent — As bylaw in issue set out necessary procedural steps, it complied with s. 141(3) of Act — Absence of waitlist procedure in a bylaw intended to address only matters of process did not render that bylaw invalid — Strata Property Act, s. 141(3).

Appeal by strata unit owners from the dismissal of their petition challenging the validity of a bylaw limiting the number of residential strata lots that could be rented at any time. The respondent strata corporation was a residential strata consisting of 158 residential strata lots. The appellants were owners of three units in the strata corporation. The respondent adopted a bylaw limiting to one the number of strata lots that could be leased or rented in the building at any time. The bylaw set out the process governing applications by owners for permission to rent strata lots, but did not specify the criteria the strata council would apply in determining whether to grant an owner permission to rent. Zachary and Erika wanted to rent out their unit. They brought a petition challenging the validity of the rent restriction bylaw, arguing that it did not comply with s. 141(3) of the Strata Property Act as it did not set out the criteria the strata council would apply when deciding whether to grant permission to rent. The chambers judge dismissed the petition and upheld the bylaw. He found that while the bylaws did not provide a means of determining how the strata council would decide applications for permission to rent, it did specify the procedure to be followed.

HELD: Appeal dismissed.

Section 141(3) of the Strata Property Act required only that a rental restriction bylaw set out the procedure that must be followed in determining an application for permission to rent. As the bylaw in issue set out the necessary procedural steps, it complied with s. 141(3) of the Act. Nothing in the language of s. 141(3) suggested that the legislature intended to require a strata corporation that adopted a rent restriction bylaw to do something more than establish a process for the administration of the limit. While the inclusion of a waitlist procedure in bylaws enacted under s. 141(3) would provide helpful clarity, the absence of such a term in a bylaw intended to address only matters of process did not render that bylaw invalid.

Statutes, Regulations and Rules Cited

Interpretation Act, [R.S.B.C. 1996, c. 238, s. 8](#)

Strata Property Act, [S.B.C. 1998, c. 43, s. 31](#), s. 31(a), s. 121, s. 141, s. 141(1), s. 141(2), s. 141(3), s. 144, s. 164