IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Owners of Strata Plan NW 391 v. Forsberg,* 2010 BCSC 1301

Date: 20100916
Docket: S072140
Registry: Vancouver

Between:

The Owners, Strata Plan NW 391

Petitioner

And

Hjalmar and Winnifred Forsberg

Respondents

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Counsel for the Petitioner:	J. Bleay
Counsel for the Respondents:	D. Goodwin
Place and Date of Trial:	Vancouver, B.C. June 22 – 24 and 28, 2010
Place and Date of Judgment:	Vancouver, B.C. September 16, 2010

[1] The petitioner strata corporation (the "Strata Corporation") seeks a declaration that the respondents, Mr. Hjalmar (Eric) Forsberg and Mrs. Winnifred Forsberg (the "Forsbergs"), former owners of one of the Strata Corporation units, violated its bylaws (the "Bylaws") when they rented their unit to a non-relative.

[2] The Strata Corporation also seeks judgment in the amount of $43,500 for fines it levied against the Forsbergs for the alleged violation of the Bylaws, representing $500 per week for the 87-week period between February 23, 2006 and November 1, 2007.

Background

[3] The Strata Corporation is comprised of 36 residential strata lots, or units, located in Coquitlam, British Columbia. It is self-managed by a strata council (the "Council") comprised of volunteers who are elected from among the owners of the strata units.

[4] The Strata Corporation is subject to the *Strata Property Act*, S.B.C. 1998, c. 43 (the "*Act*").

[5] The Strata Corporation and its owners, tenants and occupants are governed by the Bylaws which provide for the control, management, maintenance, use and enjoyment of the strata units, common property and common assets of the Strata Corporation.

[6] The Forsbergs purchased unit 212 in the Strata Corporation ("Unit 212") on July 23, 2003 to assist their daughter, Kim Forsberg, while she was going to school. For the purpose of clarity, I will refer to Kim Forsberg as "Kim" in these reasons.

[7] Kim moved into Unit 212 when her parents purchased it and treated it as her own. Although she was not an owner, the Bylaws permitted Kim to occupy Unit 212 because she was a "member of the "family" of an owner".

[8] Section 3.6 of the Bylaws governs rentals. It provides:

Subject to the provisions of this bylaw strata lots shall be owner-occupied only, with the following considerations and exceptions:

(a) at any given time up to three (3) strata lots may be rented, and the procedure to be followed by the strata corporation in administering this limit will be as follows:

(i) any owner wishing to rent a strata lot must make an application in writing to the executive;

(ii) approvals will be granted by the executive on a first come basis in the order of the date such applications are received by the executive;

(iii) the executive will not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot excepts [*sic*] as set out in this bylaw;

(iv) the executive will consider each application upon receipt and will respond to each application in writing within one week of receipt;

(v) the executive will keep a list of owners who wish to rent their strata lot and the priority of their application, and will advise each owner as soon as their application can be accepted;

(vi) upon acceptance of an application to rent, an owner must rent a strata lot within six (6) months from acceptance by the executive of such owner's application or the acceptance will be automatically revoked and the executive will be entitled to advise the owner next following on the list that its application to rent a strata lot has been approved; and

(vii) an owner may continue to rent his or her strata lot until the earlier of the date such owner moves into the strata lot to take occupancy and the date the strata lot is sold by the owner to a third party.

(b) notwithstanding paragraph (a), where cases of undue physical or financial hardship of a personal nature arise, the owner may make a written request to the executive for permission to rent a strata lot ***for a limited period of time***, and where the executive has been provided with evidence that undue hardship will result if limited rental approval is not given, the executive shall not unreasonably withhold permission for limited rental;

(c) this bylaw does not apply to prevent the rental of a strata lot to a member of the 'family' of an owner, meaning:

(i) the spouse of the owner;

(ii) a parent or child of the owner; or

(iii) a parent or child of the spouse of the owner,

where "spouse of the owner" includes an individual who has lived and cohabitated with the owner, for a period of at least two years at the relevant time, in a marriage-like relationship, including a marriage-like relationship between persons of the same gender;

> (d) where an owner has rented a strata lot to a tenant pursuant to a tenancy agreement entered into before this bylaw was passes [*sic*], this bylaw does not apply to such strata lot until the later of:
>
> (i) one year after the tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy the strata lot as a tenant; and
>
> (ii) one year after the bylaw has been passed; and
>
> (e) the strata corporation is entitled to impose a fine of up to $500. [*sic*] for a contravention of this bylaw, and may impose such fine for a continuing contravention every seven (7) days. [Emphasis in original.]

[9] Therefore, although section 3.6 of the Bylaws limited the allowable number of rental units to three, section 3.6(c)(ii) permitted Kim to occupy Unit 212 because she was the child of the owners.

[10] In or about February 2006, Kim moved out of Unit 212 and shortly thereafter, Unit 212 was rented until it was sold on or about November 2, 2007. By agreement of the Strata Corporation and the Forsbergs, the sum of $43,500 was retained from the sale proceeds as security for fines that had been levied against the Forsbergs for what the Strata Corporation has alleged was an unauthorized rental in contravention of s. 3.6 of the Bylaws.

[11] The Forsbergs have denied breaching section 3.6 of the Bylaws and deny any liability to the Strata Corporation for the fines levied against them. The Forsbergs' position is that they had the Council's permission to rent Unit 212. Alternatively, they say, they were entitled to rent Unit 212 under the Bylaws. This latter position is based on the fact that section 3.6 of the Bylaws permits three units to be rented at any given time and the Forsbergs take the position that only two other units were rented when Kim rented Unit 212 in February 2006.

[12] To be clear, although I refer separately to the Forsbergs and to Kim, Kim was clearly her parents' proxy in their dealings with the Council. The Forsbergs reside in Victoria and had little, if any, involvement with Unit 212 with one notable exception, which I will relate in these reasons.

[13] The Forsbergs were advised of the rental restrictions and provisions of the Bylaws when they purchased Unit 212.

[14] According to Kim, Unit 212 had been a rental unit before her parents purchased it. She agreed in cross-examination that under the Bylaws it ceased qualifying as a rental unit when it was purchased by her parents.

[15] In March 2005, Kim became a member of the Council and its treasurer. She took over the production of the monthly financial statements. Kim testified that when the secretary, Mr. Dar Woon, was absent from meetings, she would take notes of business conducted by the Council and place them under the door of his unit. He prepared the minutes and she said she would then copy them and distribute them to members along with the monthly financial statements. Mr. Dar Woon testified and denied Kim photocopied and distributed the minutes. This was but one of many contradictions between Kim's evidence and the testimony of other members of the Council.

[16] Kim testified that throughout the spring and fall of 2005 she made many complaints to the Council about the noise coming from unit 112, the unit located directly below hers. She testified she told Council members she was going to sell Unit 212 because of the noise.

[17] On August 29, 2005, Kim signed a Form B Information Certificate at the request of the Council acknowledging the "number of strata lots in the strata plan that are rented" was "3". She said she did so because although Unit 212 was not rented at the time, there was an "understanding" between her and the Council that Unit 212 was the next unit on the list of units which could be rented and she wanted to alert any new purchaser that there were no units available in the complex which could be rented.

[18] It was Kim's position that the other two units which were rented were units 205 and 308 and there was room under the Bylaws for a third rental unit - that is, Unit 212.

[19] Ms. Josephine Rowland, the president of the Council, Mr. Ron Dar Woon, the secretary and former treasurer, Ms. Elske Schapp, who had been a Council member since 1999 and Mr. Greg Mulder, the owner of Unit 308 and a Council member each testified there were three rental units in the building at the relevant time: units 308, 211 and 205. They also testified that each of these three units had been designated a rental unit for a considerable period of time and that this fact was well known throughout the complex.

[20] Kim testified that at the September 9, 2005 Council meeting she raised the issue of noise from the unit below hers again. She testified she prepared a letter in advance of the meeting setting out her request to rent Unit 212 because of the noise:

> We hereby request permission to rent our suite until a suitable solution is found regarding the liveability of the suite. Our daughter has not been able to sleep for the past two and a half years because of the disruptive drug dealers and prostitution going on under her head. You discuss the problems with #112 at every Council meeting, but can't seem to do anything. The fines you send #112 are ignored. Kim is going to list the suite and hopefully sell it. As #205 and #308 are also rented, this would be the third rental in our building. If we are unable to sell we will rent until we are able to sell.

She further testified she discussed and reached agreement with the Council members present that she could rent Unit 212. She said that after the meeting she drafted a permission letter, which she said had been agreed to, and slid it under Mr. Dar Woon's door. Mr. Dar Woon was absent from the meeting but it was his responsibility to draft the minutes.

[21] Kim testified the Council provided her with an approval letter dated September 16, 2005 drafted by Mr. Dar Woon which read:

> Council has received your letter regarding the rental of your suite. You are going to sell the suite in October, and as you say, hopefully it will go quickly. We understand the suite has caused you considerable stress, because of the noise from below you, we have sent numerous fines/letters to the occupants and owner of #112 to no avail.
>
> You have requested to rent your suite out if you are unsuccessful in selling, and as we have two rental units at this time, #205, #308, this would be allowed according to our by-laws. Your request to rent will expire in six months time, from this date, at which time if you have been unable to sell or

> rent, the next application in line (if received) will be notified and given the opportunity to rent.
>
> Please be advised council will require a form D, (tenants undertaking) if you decide to rent. You must make all rules and regulations available to your tenant, and will be responsible for any damage caused by them.

[22] Ms. Rowland and Ms. Schapp, who had both been at the September meeting, testified they had not seen either letter until they were produced during this litigation. They testified the Council did not grant permission to Kim to rent out Unit 212 as there were already three units rented and a fourth owner had indicated a desire to rent and was the next in line.

[23] Mr. Dar Woon and Mr. Mulder, who were both absent from the September Council meeting, also testified they had not seen either letter until the letters were produced in these proceedings attached to an affidavit filed by Kim. Mr. Dar Woon testified he did not draft the letter granting permission to rent. Both Mr. Dar Woon and Mr. Mulder testified that permission would not have been granted to Kim to rent Unit 212 as there were already three long standing rentals and an owner waiting to rent.

[24] There are several matters that stand out about the letters. The letter requesting permission to rent is dated September 10, 2005, the day following the Council meeting. The letter is not contained in that portion of the minutes set aside for "Correspondence" and it is not referred to in the minutes. Accordingly, there is a significant issue of credibility to be resolved arising out of what occurred at the September 9 Council meeting.

[25] Kim testified it was her understanding units 308 and 205 were designated rental units but unit 211 was not. She testified that she had a conversation with the occupant of unit 211, Ms. Sandy Collicott, in the hallway of the complex in October, 2004 during which Ms. Collicott told her she was buying the unit from the owner, Mrs. Forsyth. Kim testified she proceeded to rent Unit 212 on the assumption unit 211 was not an authorized rental and that under the Bylaws she was entitled to rent Unit 212 as the third allowable rental in the complex.

[26] Mrs. Forsyth testified she and her husband purchased unit 211 in 1990 for their daughter but that it had been a rental unit for some number of years and was when Ms. Collicott moved in. Mrs. Forsyth had purchased the unit and had rented it before the current Bylaws came into effect. She testified she had discussions prior to Ms. Collicott's occupancy with Ms. Collicott about the possibility of the latter "renting to own" but that this had not occurred and Ms. Collicott was a tenant at all times. Mrs. Forsyth had signed a Form K in the fall of 2006 indicating Ms. Collicott had been a tenant since October/November, 2004.

[27] Ms. Collicott testified that while she had initially considered purchasing unit 211 she did not do so because of the distance from her place of work. She testified she recalled a hallway conversation with Kim and was "quite sure" she told Kim she was renting the unit.

[28] Mr. Dar Woon relinquished his position as secretary in December, 2005. His position was taken by Ms. Lorna Abbott. Ms. Abbott attended her first Council meeting on December 15, 2005. When she prepared draft minutes she noted "Strata owner 108 (an owner who had made previous requests to rent out his unit) has requested permission to rent his unit out" and "there was an error in last month's minutes. Suite 205 has not been sold. Therefore Strata owner #108 is denied permission to rent out his unit". Kim suggested edits to the minutes removing the unit owner's name. Hence, although the published Council minutes do not name the owner, Kim was well aware who had applied to rent.

[29] Ms. Abbott testified there was discussion at the December 2005 meeting in Kim's presence about suites 205, 211 and 308 being the three rental units allowed and this was the reason the application by suite 108 was not allowed.

[30] Kim redecorated Unit 212 in December, 2005 and January, 2006. When she moved out of the complex, she removed the Strata Corporation's financial records including banking and bookkeeping records and the treasurer's files. She stated that she did so for the purpose of preparing the financial statements for the forthcoming Annual General Meeting of the Strata Corporation in early 2006 (the "AGM"). She

also removed the files the Council kept for each of the units which contained the records for that unit.

[31] On January 4, 2006, the Council sent Kim a letter demanding the return of the files and terminating her as bookkeeper/treasurer effective January 31, 2006.

[32] On January 16, 2006, the Council sent the Forsbergs a letter requesting they advise it of the name of the occupant of Unit 212. The Council did so because it suspected Kim had rented Unit 212. Kim attended the next Council meeting on January 19. She advised Council that she would return the files at the AGM. She then left the meeting.

[33] On February 2, 2006, Kim prepared an 8 page "Treasurers [*sic*] Report for January - December 2005" and circulated it to the owners. The report was prepared in contemplation of the forthcoming AGM and election of a new Council. The report detailed Kim's numerous complaints against the existing Council members who she described as being dishonest, acting in their own best interests and not acting in the best interests of the Strata Corporation. For the purposes of the matters at issue in this case, Kim stated "since I am not going to sell my condo as I had thought, I have moved out temporarily while the horrible situation beneath me is dealt with ... my sister will live in my suite for a few months ...".

[34] Kim's sister never did reside in Unit 212.

[35] On February 12 and 13, the Council sent Kim notices requiring her to return all financial and office materials relating to the Strata Corporation's affairs. On the latter date, and again on February 23, the Council sent the Forsbergs letters again requesting they provide the name of the occupant of Unit 212. The letters notified the Forsbergs that failure to abide by the Bylaws concerning the rental of Unit 212 "will result in a fine of $500.00 per week (every 7 days)."

[36] Kim rented out Unit 212 on or about February 15, 2006.

[37] On January 1, 2006 Kim had prepared a letter to the Council which she drafted on behalf of her parents. The letter was delivered to Ms. Abbott on February 25 and read in part:

> As per the by-laws of NW391, stating that 10 percent of the building may be rental units, we hereby advise you we will be renting our suite, effective immediately. This brings the total rentals to three in our building, (205, 308 and now 212), below the ten percent by-law of four allowable rentals. The name of the renter will be given to Strata as the act states, within two weeks of the rental agreement, and a copy of the by-laws will be given to the tenant. If Strata wishes to contact us at any time during the tenancy, they can do so by calling Kim, 604-939-5461, as she will be handling that property. Do not bother the tenant in the suite, for anything other than emergencies. If you have any questions regarding the validity of our tenancy, please direct them to CHOA, as we have been advised by Heidi Marshall, the Strata advisor for B.C. to follow this direction.

[38] The letter is notable in that it does not refer to the consent to rent purportedly issued by the Counsel on September 16, 2005, but, rather, directs the Council to contact CHOA (Condominium Home Owners Association) if it has questions.

[39] The Council commenced imposing fines as discussed above. Many of the notices issued by the Council advised the Forsbergs: "We already have three suites rented, as written in our bylaws, plus written requests to become rentals (sec. 3.6i). Your suite is not one of them".

[40] Kim, in letters signed by her parents, responded to the fines by letters dated March 1, 3, 16, 27 and April 27. In her March 1 letter she wrote:

> Please advise us the reason for the fine sent to us for renting our suite, #212. We are within our rights and have continued to advise you on our situation. The suite did not sell, as hoped. It will now be rented as allowed, until spring when we will hopefully try again to sell it. The suites are not "only owner occupied" as you state. We will rent until we sell, so stop the illegal fines.

[41] In her letter of March 3 she stated, in part:

> ... I am sorry if you can't add up the two rental suites we have and come up with two. I really am sorry for you and the rest of us who will have to pay for the lawyer that you are going to need to try and explain to the judge how you have come up with the idea that two rentals is 10% of a building with 36 suites.

> ... Strata Council is not allowed to discriminate against the owners of this building, no one gets to decide who is and who isn't going to rent, if there is any opening, it may be taken by the next person that asks. We are the third in a building that allows four, so if another suite wanted to become a rental unit at this time, they also could do that.

[42] In her letter of March 27 she requested copies of all Form Ks in the possession of the Council. Section 146 of the *Act* requires tenants to sign a Form K, also called a Notice of Tenant's Responsibilities, to ensure they are notified of their responsibilities under the Strata Corporation's Bylaws.

[43] On April 27, 2006 Kim wrote to Council and requested a hearing; she proposed to attend the May 2006 Council meeting.

[44] Her letter was not delivered to the Council until May 15. The request was too late to be heard at the May meeting, therefore a hearing was set for the next Council meeting on June 12, 2006.

[45] That hearing was cancelled shortly before it was to begin as a result of the illness of several Council members. It was cancelled on short notice to Kim, Mr. and Mrs. Forsberg and the lawyer they had retained, all of whom had planned to attend.

[46] On September 8, 2006 Kim wrote to the Council complaining she had not been provided with the Form Ks she had requested and as required by the *Act*. She also complained about the delay in conducting a hearing and the expense incurred as a result of the cancellation of the June hearing. She maintained the Corporation had only two rental units and that she was entitled to rent Unit 212. She wrote a similar letter September 14, 2006.

[47] In a registered letter dated September 8, 2006 to Mr. and Mrs. Forsberg, the Council requested the Forsbergs contact the Council to make arrangements for a meeting to discuss the illegal rental. The Forsbergs agreed to meet with the Council without Kim or their counsel being present. That meeting occurred September 18, 2006 at the Council offices in Coquitlam.

[48] After listening to the Council members explain their position concerning the rentals, the Council and the Forsbergs agreed to the following: the Forsbergs were to give their tenant immediate notice and were to proceed and sell Unit 212. The Council agreed to stop further fines and, upon receiving a copy of the eviction notice to the tenant and notice Unit 212 had been placed on the market for sale, to reduce the outstanding fine amount to $7,500. Further, the Council agreed to reduce the fine amount to $6,000 if the Forsbergs could "convince Kim to return strata effect" including two file boxes ... and the personal files for each suite...".

[49] The Forsbergs did not tell Kim they were attending the meeting. When they advised her of the outcome, Mr. Forsberg said his daughter was upset. She told him he should not have gone to the meeting without her and that the Forsbergs should not have settled with the Council because the Council had misled them; unit 211 was sold to the occupant and was not rented as maintained by the Council.

[50] The Forsbergs ultimately sold Unit 212 and placed the amount of the accumulated fines in trust pending the outcome of this petition. Mr. Forsberg testified he and his wife would have sold Unit 212 earlier but understood that prior to doing so they would have had to pay the fines to the Council. Had they known they had the option of paying the amount of the fines into trust, they say they would have listed Unit 212 for sale earlier.

Assessment of Evidence and Conclusions

[51] To determine the issues in this case I must assess the credibility of the main protagonists: Kim Forsberg on the one hand and, on the other, the witnesses called on behalf of the Strata Corporation.

[52] I accept the evidence of the Council members and that of Mrs. Forsyth and Ms. Collicott that it was well known not only to members of the Council, but also among owners of the Strata Corporation, that units 211, 205 and 308 were rental units and had been for a number of years.

[53] As a member of Council and as an occupant, I find Kim knew these three units were rental units. Kim was well aware of the provision in the Bylaws restricting rentals to three.

[54] I find Kim embarked on a strategy in 2005 when, perhaps frustrated by a combination of the noise emanating from the unit below her, the Council's inability to deal with the owner of that unit effectively and her own stormy relationship with Council members, she became determined she was going to rent Unit 212 notwithstanding the requirements of the Bylaws.

[55] I accept the Strata Corporation's position that Kim's letter dated September 10, 2005 requesting permission to rent was not delivered to the Council or to any Council member and probably was not prepared on that date. I further find the letter from the Council purporting to grant permission to Kim to rent Unit 212 was not written or authorized by Council. I accept the evidence of Ms. Schapp, Ms. Rowland and Mr. Dar Woon in this regard. I accept the evidence that at no time did Kim discuss with or seek permission from the Council to rent out her parents' unit.

[56] It follows that I do not accept Kim's evidence regarding the two letters dated September 10 and 16, 2005. Had she been granted permission to rent Unit 212, her subsequent letters to the Council in the spring of 2006 would have made reference to such permission. In fact, the permission letter was never referred to in any correspondence between Kim and the Council. Her parents had not seen it. Neither letter surfaced until annexed to an affidavit sworn by Kim in connection with this lawsuit.

[57] Kim did not offer any satisfactory explanation why the letter seeking the Council's permission was dated the day following the Council's September meeting.

[58] I accept Ms. Collicott's testimony she told Kim she was the tenant of unit 211 when the two met in the hallway shortly after Ms. Collicott moved into the building. If there was any issue in Kim's mind whether unit 211 was rented, it was her obligation

to clarify the situation with the Council, rather than to rent Unit 212 on the premise she was entitled to.

[59] In my view, Kim developed a single-mindedness which blinded her to any other view than that unit 211 had been sold and that Mrs. Forsyth, Ms. Collicott and the members of the Council were deceiving her and her parents.

[60] Kim was well aware the owner of unit 108 had sought Council's permission to rent his unit. I do not accept her explanation she was next in line to rent. The specific units which were being rented were reviewed in the December, 2005 Council meeting at which she was present. She knew the request to rent came from Mr. Shen and she knew, from discussions at the Council meeting, that he had made prior requests. The Council reaffirmed the three units which were rented at the time. I find Kim knew this. She also knew Council considered Mr. Shen to be next on the list to rent even though no formal list was kept of owners seeking to rent their units.

[61] I accept that when Kim vacated Unit 212 and left the premises, she took with her not only the financial files she felt were necessary to complete the financial reports for the AGM but also files pertaining to each strata unit. The Council demanded return of the files but Kim refused to return them. Kim still had the files when Mr. and Mrs. Forsberg met with the Council in September, 2006. The files would have in them any relevant forms relating to each of the strata units, including any Form Ks signed by the tenants of the rented units.

[62] Kim has pointed to the "Master List" of owners and occupants prepared by the Council as justification for her position there were only two rental units. She further points to the fact the Council could not produce Form Ks to prove there were such forms on file for each of the tenants in the three units alleged by the Council to be rented.

[63] Clearly the list maintained by the Council did not comply with the requirements of s. 35(1) of the *Act* as it was not an accurate list of owners and

tenants. Nor could Council make the Form Ks available for Kim's inspection as required under s. 36 of the *Act*.

[64] I have considered each of these arguments. The Council acknowledged that the "Master List" of owners and tenants was inaccurate. For example, it lists Ms. Collicott along with Mrs. Forsyth and her husband (deceased) as the "owner" of unit 211. It lists the tenant of units 308 and 205 under an "occupant" column. The "occupant" column is empty adjacent to unit 211. However the list also names Kim as the "owner" of Unit 212 when in fact Unit 212 was owned by her parents. In my view, Kim was aware of the inaccuracies contained on the list and seeks to use the above inaccuracies and lack of conformity with s. 35 of the *Act* opportunistically to support her position.

[65] I also conclude that by taking the Council's files Kim sought to take evidence of existing Form Ks which had been obtained by the Council. Mr. Mulder, the owner of Unit 308 testified, for example, that he had obtained Form Ks from various tenants of his unit in the past and had provided them to the Council and that they would have been in the file for his unit.

[66] Kim attended at Ms. Collicott's place of employment on April 20, 2007 requesting she sign a statement saying that she had not signed a Form K prior to September of 2006 (the date Mrs. Forsyth asked her to sign the form at the request of the Council as they had no files). Ms. Collicott signed the form but struck out the word "never" and inserted "not to the best of my knowledge (can't remember)" in her statement. This evidence and the affidavit she was asked to sign following Kim's visit simply confirms Ms. Collicott was a tenant of 211 from the beginning of her occupancy of that unit.

[67] It follows that I do not accept the Forsbergs' claim they had permission to rent or that they were entitled to rent because there were only two rental units in the complex. I note that even if there had been only two rentals, the Bylaws require a procedure be followed before a unit is rented. I have already said that I do not

accept Kim's evidence that she sought and was granted permission to rent Unit 212. Therefore Kim was not entitled to rent Unit 212.

[68] Counsel for the Forsbergs argues the fines imposed should be struck down as the Strata Corporation had contravened s. 135 of the *Act*. That section reads:

> **Complaint, right to answer and notice of decision**
>
> **135** (1) The strata corporation must not
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> (a) impose a fine against a person, ...
>
> for a contravention of a bylaw or rule unless the strata corporation has
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> (d) received a complaint about the contravention,
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> (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 by the owner or tenant, and
>
> ...
>
> (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) and (f).
>
> (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.

[69] The Forsbergs relied on the decision of Mr. Justice Halfyard in *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967. In that case Halfyard J. stated:

> [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).
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> [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.

[70] The facts of the present case are different from those before Halfyard J. in *Dimitrov*. In this case, the Council wrote to the Forsbergs on January 16 and February 13, 2006 to remind them that Unit 212 was to be owner-occupied and to request the name of any tenant. In the letter of February 13, the Council warned the Forsbergs that a fine of $500 per week would be imposed if the Forsbergs did not comply with the occupancy Bylaws.

[71] Only on February 23, 2006, after Kim and the Forsbergs had been warned and had failed to take action to comply with the Bylaws and when it was clear to Council members that there was a tenant in Unit 212, a fact which was soon after confirmed by a signed Form K from the tenant, did the Strata Corporation impose fines on the Forsbergs.

[72] The Forsbergs were given the opportunity to answer the complaint against them before any decision was made regarding guilt or fines. They chose not to comply with the Bylaws.

[73] The Forsbergs also argue there is an inconsistency between sections 23.1 and 24.1 of the Bylaws and section 3.6(e) of the Bylaws. The section authorizes a maximum fine of $50.00 for each contravention of the Bylaws, increasing by $10.00 every seven days during which the contravention continues. The provisions of s. 3.6(e) which authorize fines for breach of the rental bylaw are set out earlier in this decision.

[74] In my view the right of the Council to fine for breach of the occupancy Bylaws, set out in section 3.6(e), pertains to the specific situation of renting and is valid. The *Act* authorizes Councils to set "different maximum amounts of fines for different bylaws and rules" and to set the frequency for imposition of fines for continuing

violations (see s. 132(2)(a)(b) of the *Act*). It would make little sense to provide a maximum fine of $50 for breach of the rental Bylaw when an owner could reap a rental amount considerably higher.

[75] The Forsbergs further argue they were not provided with a hearing or a reasonable opportunity to answer the Council's complaint that Kim was renting Unit 212 to a tenant in contravention of the Bylaws.

[76] The Forsbergs say the letter of April 27 from Kim was notice requesting a hearing. I accept that position to be so because the Council then scheduled a hearing for its June meeting. That meeting did not proceed. A further meeting was scheduled in September - likely as a result of correspondence sent by Kim to the Council early that month. The Council met with the Forsbergs. As outlined earlier, at that meeting the Forsbergs decided to agree to pay a portion of the fines and to sell Unit 212. When Kim learned of the agreement the Forsbergs changed their minds and agreed to follow their daughter's advice.

[77] In my view, the September meeting with Council did constitute a hearing under the *Act*. However, I am also of the view it should have been held earlier. The requirement under the *Act* is that the Council must hold a hearing when requested to do so. In the present case there was an ongoing obligation on the Council to schedule a hearing following the aborted meeting in June. The Council did not reschedule a hearing until Kim raised the matter with them in September. The delay between June and September constituted an unreasonable delay in proceeding with the hearing and in my view warrants relief under s. 24 of the *Law and Equity Act*.

[78] I further am of the view that had the Council kept an accurate list of owners and tenants as required by s. 35 of the *Act*, it would have been less likely that Kim would have been able to accomplish her goal of renting Unit 212 and more likely that her parents and any lawyer advising them would have had a clearer picture of the rental units.

[79] Given my finding that Kim deliberately breached the Strata Corporation's rental Bylaws and that Kim has received rental income from the Unit 212 during the period which the fines were imposed, I am not inclined to grant other than nominal relief under the *Law and Equity Act*.

[80] The Strata Corporation is entitled to a declaration that the Forsbergs breached the Bylaws by renting Unit 212 and to judgment in the amount of $38,000 representing fines for such breach.

[81] If the parties are unable to agree on the matter of costs they are to make written submissions to me within 30 days of the date of this judgment.

"GREYELL J."