



IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ranftl v. The Owners, Strata Plan VR 672*,  
2005 BCSC 1760

Date: 20051219  
Docket: L042930  
Registry: Vancouver

Between:

LINDA MARGARET RANFTL

PETITIONER

And:

THE OWNERS, STRATA PLAN VR 672

RESPONDENT

Before: The Honourable Mr. Justice McEwan

**Reasons for Judgment**

Counsel for the Petitioner: M.D. Fischer

Counsel for the Respondent, The Owners,  
Strata Plan VR 672: J.L. Williams

Counsel for the Respondents, Nils and  
Helena Wennerstrom: A.L. Baker

Counsel for the Administrator, Garth Cambrey: G.S. Hamilton

Date and Place of Hearing: December 8, 2005  
Vancouver, B.C.

05 362 021

[1] The issue in this case is the governance of a small six unit, five owner Strata Corporation in the Fairview Area of Vancouver.

[2] The Petitioner is one of the owners. On November 26, 2004 she sought an order pursuant to s. 174 of the **Strata Property Act**, S.B.C. 1998, c. 43 appointing an Administrator to exercise the powers and duties of the Strata Council on behalf of the owners.

[3] The section reads as follows:

**Appointment of administrator**

174 (1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.

(2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.

(3) The court may

(a) appoint the administrator for an indefinite or set period,

(b) set the administrator's remuneration,

(c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and

(d) relieve the strata corporation of some or all of its powers and duties.

(4) The remuneration and expenses of the administrator must be paid by the strata corporation.

(5) The administrator may delegate a power.

(6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.

[4] The Court must be satisfied on such an application that the appointment is in "the best interests" of the Strata Corporation.

[5] On February 22, 2005 the Petitioner came before Mr. Justice Cole. The matter was adjourned on the following basis:

**THIS COURT ORDERS THAT**

1. this matter is adjourned for 60 days to no fixed date;
2. within 30 days, the Respondent is to obtain a building envelope construction report;
3. within 60 days, the Respondent is to have the repairs completed in accordance with the building envelope construction report, weather permitting;
4. the Respondent is to make reasonable efforts to provide bank statements for the last four years, and the Petitioner is to pay 0.25 cents per page to the Respondents for such bank statements;
5. within two weeks from today, the Respondent is to have available all section 35 documents, organized by type and chronological order, to be available for inspection at the offices of Owen Bird Law Corporation;
6. the Strata Council is to put forward a three-quarter vote resolution for the consideration of the Owners for a special assessment to fund the cost of a financial audit at a Special General Meeting within 60 days;
7. all documents upon which the parties intend to rely at a further hearing of this matter should one be necessary are to be exchanged at least two weeks prior to any further hearing.

**THIS COURT DECLARES THAT**

8. an emergency exists [sic], as contemplated under section 98(3) of the *Strata Property Act* and Bylaw 21(2) from the Schedule of Standard Bylaws, and there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

[6] There were a number of continuing problems and many of the terms of this order were not carried out.

[7] On June 2, 2005 this matter came before Madam Justice Brown. The Petition was adjourned by consent, on the following terms:

THIS COURT ORDERS that Mr. Garth Cambrey ("Mr. Cambrey") of Stratawest Management Ltd. be appointed the administrator of The Owners, Strata Plan LMS 672 (the "Strata Corporation"), pursuant to Section 174 of the *Strata Property Act*, S.B.C. 1998, c. 43 as amended (the "Act"), to exercise the powers and duties of the Strata Council and the Strata Corporation, subject always to the requirements of the Act, the Bylaws and the Rules of Strata Corporation and limited to matters related to the repair of the building envelope and retaining a property management company for full management services;

THIS COURT FURTHER ORDERS that Mr. Cambrey, as Administrator shall, inter alia, perform the following:

1. Take such steps as may be necessary to ensure that the Strata Corporation determines the appropriate recommendation for the building envelope repair or remediation, including the following:
  - (a) appoint an independent engineering firm to undertake a building envelope inspection, if Mr. Cambrey deems that necessary;
  - (b) consider the recommendations made in all building envelope investigation studies including the existing studies (collectively the "Existing Studies") of Mr. Henry Touwslager and Mr. William McCreery and the inspection of the independent engineering firm (if retained);
  - (c) ensure that all owners have access to the reports of the independent engineering firm and the Existing Studies at least one month prior to any meeting called for the purpose of presenting recommendations and voting to raise funds to remediate the building envelope;
  - (d) recommend what work, if any, should be done to repair or remediate the building envelope of the Strata Corporation and the estimated cost of any such work;

- (e) present the owners with the findings of the building envelope inspection, the evaluation of the Existing Studies and the suggested remediation program for the building; and
  - (f) draft a resolution incorporating the preferred remediation plan, the estimated cost, the name of the engineering firm to be retained to supervise the work and put that resolution to a 3/4 vote of the Owners for their approval and acceptance, at a meeting called for the purpose;
2. Select a property management company to provide full strata management services to the Respondent Strata Corporation, prepare a revised budget to accommodate the remuneration of the strata management company and Administrator, and call a special general meeting of the owners to approve the revised budget.
  3. Enter into a management contract with the selected property management company if the revised budget is approved and otherwise apply to this Court for direction.
  4. Attend all Strata Council Meetings and General Meetings of the Strata Corporation;

THIS COURT FURTHER ORDERS THAT the Respondent provide access to all information, records and documents requested by the Administrator, and provide such authorizations as are requested by the Administrator to obtain information, records and documents held by third parties which relate to the Strata Corporation;

THIS COURT FURTHER ORDERS that Mr. Cambrey may retain the necessary professionals, including independent legal counsel, for opinion, advice and services in respect of his duties pursuant to this appointment;

THIS COURT FURTHER ORDERS that Mr. Cambrey's fees of \$150.00 per hour plus disbursements shall be rendered monthly, and shall be payable by the Strata Corporation, provided that at the request of any party, Mr. Cambrey shall pass his accounts before the Registrar of the Supreme Court of British Columbia;

THIS COURT FURTHER ORDERS that Mr. Cambrey's appointment shall be reviewed by the Court on or before September 30, 2005, at which time Mr. Cambrey shall report to Court with respect to the steps he has taken, the costs incurred as a consequence of his appointment as Administrator and whether his appointment as Administrator should continue;

THIS COURT FURTHER ORDERS that Mr. Cambrey shall be at liberty to apply to the Court for directions to assist and permit him to discharge his duties as Administrator hereunder;

THIS COURT ORDERS THAT the Administrator and/or any party have liberty to apply to this Court to substitute another Administrator for the one appointed, extend the term of an Administrator for any subsequent term or terms, or to expand or reduce the scope of an Administrator's powers, as this Court deems appropriate;

THIS COURT FURTHER ORDERS THAT, if any 3/4 vote resolution(s) or majority vote resolution(s) of the owners are required to give effect to any of the Orders set out herein, and if such resolution(s) do not pass at a general meeting of the owners, that the Administrator and/or any party have leave to apply to this Court for an Order approving the resolution(s);

THIS COURT FURTHER ORDERS that no person shall issue any process against Mr. Cambrey, Stratawest Management Ltd. or any employee or representative of Stratawest Management Ltd. related to this appointment without leave of the British Columbia Supreme Court.

[8] The Administrator reported to the court on September 30, 2005 as required by this order. His appointment was then extended to June 30, 2006 and a levy was ordered for his remuneration and to fund an engineering report on the Building Envelope. That report was delivered December 7, 2005.

[9] The consent order of June 2, 2005 reflects a recognition that the Strata Corporation had, at least in some respects, become dysfunctional. The test a court would apply in imposing such an order is found in *Lum v. Strata Plan VR519*, 2001 BCSC 493, at paragraphs 11 and 12 per Harvey J.:

In my view after reviewing the authority available, bearing upon this question, factors to be considered in exercising the Court's discretion whether the appointment of an administrator is in the best interests of the strata corporation include:

- (a) whether there has been established a demonstrated inability to manage the strata corporation,
- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,
- (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
- (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

In addition, there is always to be considered the problem presented by the costs of involvement of an administrator.

I also take into consideration the comments of Huddart, J. in **Cook**, *supra*, that the democratic government of the strata community should not be overridden by the Court except where absolutely necessary.

[10] The Petitioner's position before this court is that the limited mandate given to the Administrator under the order of June 2, 2005 should now be expanded. The Notice of Motion seeks that:

1. The authority of the Administrator be expanded to exclusively exercise all of the powers and perform all of the duties of the Strata Corporation;
2. The Strata Council be permitted to act only as directed by the Administrator or as directed by further order of this Court;

[11] The Respondent, The Owners, Strata Plan VR 672 has the support of three owners representing four units. They take the position that the appointment of an administrator was and remains unnecessary and seek an order that the Administrator be removed.

[12] The controversies are, as counsel for the Respondent Owners has submitted, of two kinds. There are disagreements respecting the condition of the building and what to do about that and there are also disagreements over governance.

[13] There are several inches of materials before the court. At the hearing it was not possible to review all of the affidavits and documents submitted. I have now done so, and reviewed the written arguments of both parties. I have also taken account of the position of Nils and Helena Wennerstrom who were joined at the hearing on December 8, 2005. They are owners of a unit and essentially support the Petitioner.

[14] The Administrator does not oppose an expanded role.

[15] There is much back and forth in the affidavits concerning events since the appointment of the Administrator. The affidavit of the Petitioner sworn September 27, 2005 refers to some 38 exhibits illustrating – I say this without making a value judgment – an extraordinary amount of skirmishing over process for such a small entity.

[16] Something of the tenor of the ongoing difficulties with this Strata Council can be discerned in the affidavit of John Morrison sworn September 8, 2005. He complains that even within the limited terms of reference of the order of June 2, 2005, the Administrator has gone too far:

5. Cambrey has exceeded his jurisdiction as Administrator on many occasions since his appointment on June 2, 2005, including:



- a) advising on and objecting to the manner in which notice of council meetings is provided even though the Owners themselves had come to an agreement respecting same. Attached hereto to this my Affidavit as Exhibits "A", "B" and "C" are true copies of a letter and emails from Cambrey to the Owners dated June 29, 2005, August 8, 2005, and August 31, 2005, respectively, wherein Cambrey makes reference to the manner of notice given;
- b) advising the Owners of what Cambrey alleged to be contraventions of the *Strata Property Act* and the Order of Madam Justice Brown, including matters relating to voting requirements and the calling of council meetings. See Exhibit "A" above;
- c) using his authority to control the timing, content and structure of council meetings as opposed to simply attending them as set out in the Order of Madam Justice Brown. See Exhibit "A" above;
- d) forming an unqualified opinion that ongoing repairs to the building envelope should be discontinued and then instructing repairmen to cease all work on the property until further notice by him when his authority was limited to the appointment of a further inspector and the making of recommendations on the basis of information provided to him by qualified professionals. Attached hereto to this my Affidavit as Exhibit "D" is a true copy of a letter from Cambrey to the Owners dated July 14, 2005, wherein Cambrey forms the opinion that it would be prudent for the Strata Corporation not to proceed with current repairs. Attached hereto to this my Affidavit as Exhibit "E" is a true copy of a letter from Cambrey to William McCreery, Architect, ("**McCreery**") dated July 13, 2005, wherein Cambrey instructs McCreery not to proceed with current repairs. Attached hereto to this my Affidavit as Exhibit "F" is a true copy of an email from Cambrey to the Owners dated July 27, 2005, wherein Cambrey advised the Owners that the repairs will not be completed at that time;
- e) instructing repairmen to reinstall certain handrails without having the authority or qualified professional basis for doing so. Attached hereto to this my Affidavit as Exhibit "G" is a true copy of a letter from Cambrey to the Owners dated July 29, 2005, wherein Cambrey refers to his instructions to replace balcony railings until such time as

a decision is made on a building envelope inspection. See also Exhibit "E" above, wherein Cambrey instructs McCreery to arrange for railings to be reinstalled; and

- f) By letter from Cambrey to the Owners dated July 29, 2005, and marked as Exhibit "G", it is clear that Cambrey believes his authority extends to making any decisions in respect of ongoing repairs, including halting them until further notice. See also Exhibit "B" above.

6. Cambrey has acted unreasonably during his appointment as Administrator, including:

- a) Refusing to even consider McCreery's building assessment proposal without any reasonable basis for doing so;
- b) Taking an unreasonable position in respect of the continuation of current repairs, despite the damages accruing to one of the Owners as a result of the poor condition of his rental suite;
- c) Making repeated requests that notices of council meetings be delivered other than by email when for reasons of ease and convenience, all of the Owners had agreed to such means of notice; and
- d) At the Strata Corporation's expense, outlining discrepancies, and inaccuracies in minutes of council meetings, and more particularly, preparing a 6-page letter to me outlining same. Attached hereto to this my Affidavit as Exhibit "H" is a copy of that letter. See also Exhibit "B" above;
- e) Following the Special General Meeting that took place on August 3, 2005, wherein the majority of Owners voted against Cambrey's [sic] proposal to retain a building envelope inspection report through RDH Building Engineering Ltd., Cambrey wrote to the Owners demanding that they reconsider their vote or face repercussions, including having to pay significant legal and administration costs. A true copy of this letter from Cambrey to the Owners dated August 11, 2005 is attached hereto to this my Affidavit as Exhibit "I".

7. Cambrey has exhibited bias in carrying out his appointment as Administrator, including:

- a) Entering into discussions and meetings relating to the building envelope work with certain owners, namely the Plaintiff and the Wennerstroms, and with no other Owners or council members;
- b) Entering into discussions with and appearing to take advice from Mr. Fischer, counsel for the Plaintiff, in particular respecting the legal interpretation of the Order of Madam Justice Brown. See Exhibit "B" above. Upon a review of Cambrey's accounts, it appears that neither the Defendants nor their counsel were privy to all such communications
- c) Forming the opinion that McCreery had a personal relationship with me and thereafter refusing to even consider any proposal put forth by McCreery in respect of further work needing to be done, even though such proposal was the most cost effective and was supported by a majority of the Owners. A discussion of the above is set out in the Minutes of Special General Meeting of the Owners held on August 3, 2005, a true copy of which is attached hereto to this my Affidavit as Exhibit "J"; and
- d) Being overtly confrontational and dismissive with the Defendants and with McCreery and suggesting that McCreery lacked impartiality without having any basis for doing so. Attached hereto to this my Affidavit as Exhibit "K" is a true copy of an email from Cambrey to McCreery dated August 3, 2005, wherein Cambrey implies that McCreery has conducted himself in an unprofessional manner. See also Exhibit "H" above.

8. Prior to his appointment as Administrator, Cambrey was unable to provide the Strata Corporation with an estimated budget in respect of his appointment. However, given Cambrey's limited role as set out in the Order of Madam Justice Brown, one would expect his fees to be modest.

9. Since the appointment of the Administrator on June 2, 2005, the Strata Corporation has incurred total costs of \$3,562.80 in respect of Cambrey's administration. Attached hereto to this my Affidavit as Exhibit "L" is a true copy of Cambrey's accounts. In the Minutes of Special General Meeting of the Owners held on August 3, 2005, attached hereto as Exhibit "H", Cambrey put forth a budget for his administration in the amount of \$10,000. Cambrey estimated that his total fees up to the end of September, 2005 alone could be as high as \$8,000.

[17] The flavour of these controversies from the perspective of the Administrator can be gleaned from this excerpt from his report of September 16, 2005, which he appended to an affidavit of the same date swearing it to be true:

All strata lot owners comprising the strata corporation are strata council members however, the diverse opinions of the owners are such that the governance of the strata corporation has failed in that the strata corporation is unable to meet it's statutory obligation to repair and maintain the common property pursuant to Section 72 of the *Strata Property Act*.

The strata council President has a disregard for requirements of the *Strata Property Act* such as providing notice in accordance with Section 61 of the *Strata Property Act* and recent attempts to reverse the vote taken at the September 7, 2005 Special General Meeting in which the 3/4 Vote Resolution to complete repairs was defeated by suggesting that Mr. & Mrs. Wennerstrom were not entitled to vote at such meeting as they had not paid a Special Levy. This is contrary to the *Strata Property Act* as the strata corporation does not have the requisite bylaw in place pursuant to Section 53(2) of the *Strata Property Act*. Mr. Morrison's email of September 8, 2005, which was not sent to me directly but forwarded to me by an owner, purports to reverse the 3/4 Vote Resolution. I attach a copy of Mr. Morrison's email together with my reply and reply of Mr. Wennerstrom and a copy of correspondence issued by Mr. Patrick Williams, legal counsel for Mr. And Mrs. Wennerstrom as Appendix 'N'.

Additionally, Mr. Morrison has written two letters to me dated July 21, 2005 and August 31, 2005 on behalf of the strata council, which are not supported by all members of the strata council. I attach a copy of the July 21, 2005 letter to which I replied by way of my Notice to Owners dated July 29, 2005 contained in Appendix 'C'. I attach a copy of August 31, 2005 letter together with my reply of September 14, 2005 and email from Mrs. Ranftl and Mr. Wennerstrom as Appendix 'O'.

Mr. Morrison has failed to notify me of council meetings. I attach a copy of Mr. Morrison's email to owners dated September 8, 2005 as contained in Appendix 'N' which was not copied to me by Mr. Morrison and calls for a Strata Council meeting for September 21, 2005.

I believe, with the assistance of R. Jang & Associates, the governance of the strata corporation will be enhanced with respect to adhering to the Court Order and the requirements of the *Strata Property Act* such as General Meeting Notice requirements and unbiased minute taking

at meetings in which a representative of R. Jang & Associates Ltd. is in attendance. I also believe R. Jang & Associates will ensure the Strata Corporation financial records are maintained in a professional and timely manner also in accordance with the *Strata Property Act*.

[18] On November 29, 2005 the Petitioner swore an affidavit deposing to ongoing problems involving the appointed manager:

3. I understand that Raymond Jang started acting as the strata manager for The Owners, VR 672 on September 1, 2005.
4. Now produced and shown to me and marked as **Exhibit "A"** to this my Affidavit is a series of emails sent by Raymond Jang to the Strata Council showing that Mr. Jang has requested the strata corporation's records on at least 6 occasions, and as of November 25, 2005 still does not have all of the records which the Strata Corporation is required to keep pursuant to section 35 of the *Strata Property Act*.
5. I understand that the strata manager is unable to fully perform the duties for which he is being remunerated until he receives all of the Strata Corporation's records.

[19] It would take a very long time and cost a great deal in legal fees to get to the bottom of the charges and counter-charges that have been exchanged or to determine the reasonableness or unreasonableness of the positions taken in this matter. There is no question that this Strata Corporation is dysfunctional within the test set out in *Lum*. The half-way measure of a limited Administration has apparently just moved the controversies within this Strata Corporation to a different plane, that of the jurisdiction of the Administrator. This, in the terms of the test set out in *Lum*, is a "struggle within the Strata Corporation among competing groups such as to impede or prevent proper governance of the Strata Corporation." I say so without suggesting that at least paragraphs 11(a), (c) and (e) have not been more

than made out as well, notwithstanding the restraint respect for self-governance requires.

[20] The Respondent Owners submit that “the Petitioner is effectively seeking to vary the order of Madam Justice Brown”, and that “there must be compelling new evidence to vary that Order.” This overlooks the fact that what the Petitioner seeks is the same relief she sought in the Petition, and that the interlocutory order was not imposed by Madam Justice Brown but went by consent. It is not helpful to confuse orders of that kind with actual adjudications. The order of Madam Justice Brown was not the type of order to which such tests apply.

[21] In the course of the hearing before me the owners of one of the units, Nils and Helena Wennerstrom sought to make submissions. Counsel for the Strata Corporation objected to this. I permitted it, but only on the basis that they be joined as Respondents. That, in my view, is their proper role, notwithstanding that they generally support the Petitioner. The Rule against two counsel appearing for two different petitioners would militate against their addition in that manner.

[22] In the course of submissions, counsel advised that a practice has developed permitting such interested parties to be represented and heard without being joined. I cannot imagine why that would be so, or why it should be a hazard of bringing a Petition that interested persons, who will not assume the risks and responsibilities of getting on the record, be allowed to complicate the proceedings. I think it quite irregular.

[23] I take it to be understood that the appearance of the Administrator, by counsel, was properly a matter within his discretion in connection with the duties the court has entrusted to him, as was his report to the court at the hearing. The Administrator is not made a party in such circumstances.

[24] Having now had an opportunity to review all of the material and to consider the further written submissions of counsel, in addition to what was addressed on December 8, 2005, I am satisfied that the motion should be granted. Accordingly, I order:

1. That the Administrator's authority be expanded to include all of the powers and duties of the Strata Council;
2. That the Strata Corporation be relieved of all its powers and duties;
3. That the remuneration and expenses of the Administrator be paid at the rates established before Madam Justice Brown, and paid by the Strata Corporation following review and approval by the Registrar;
4. That there be a review before this Court of the Administration as soon as one can be scheduled after June 30, 2006, with the Administrator, however, continuing after that date until further order of this Court;
5. That having found the Strata Corporation dysfunctional but not having found fault, at this point, with either faction, the issue of costs be adjourned pending the review;



6. That there be liberty to apply respecting anything arising in connection with the implementation of this order;
  
7. That I am seized of the matter until further notice.



The Honourable Mr. Justice McEwan

16p