

*Case Name:*

**Stettner v. Strata Plan PG 56**

**Between**

**Andrew Stettner, Claimant, and  
The Owners, Strata Plan PG 56, Defendant**

[2011] B.C.J. No. 667

2011 BCPC 82

File No. 1138619

Registry: Prince George

British Columbia Provincial Court  
Prince George, British Columbia

**B.L. Dollis Prov. Ct. J.**

Heard: March 30, 2011.

Judgment: April 7, 2011.

(17 paras.)

**Counsel:**

Appearing on their own behalf: A. Stettner.

Appearing for the Defendant: C. Nicholson, Board Member.

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**REASONS FOR JUDGMENT**

**1 B.L. DOLLIS PROV. CT. J.:**-- The Claimant, Andrew Stettner, sued the Defendant, The Owners, Strata Plan PG 56, for \$400.00 plus costs, for expenses he incurred in responding to an "Exclusive Use Agreement" issued by the Defendant in April 2010. He feels this violated Section 71 of the *Strata Property Act*. The Defendant replied stating that Section 71 did not apply, and that the Defendant was improperly named. At the Settlement Conference I dismissed Mr. Stettner's Claim for lack of jurisdiction, and agreed to give decision in writing.

2 Mr. Stettner is the owner of a unit in a strata corporation located at 4288 - 15th Avenue, Prince George, British Columbia, a building called "Panorama Place".

3 Although not raised by the Defendant in pleadings, the jurisdiction of the Provincial Court was discussed at the Settlement Conference. Rule 7(14) of the Small Claims Rules allows a judge at a trial conference to dismiss a claim on certain grounds. I have reproduced rules 7(14)(i) and (l):

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

(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.

4 The question of properly naming the Defendant was withdrawn by the Defendant's representative at the Settlement Conference. This may have been a mistake, but does not influence my decision on jurisdiction. I note that correspondence from the Management group of Panorama Place, provided by Mr. Stettner, states it is from "The Owners Strata Plan No. P.G. 56". The "Exclusive use Agreement" which led to this lawsuit describes the "Strata Corporation" as "The Owners, Strata Plan PG 56".

5 The Defendant wished the Court to proceed.

## **FACTS**

6 Mr. Stettner had a shed on the property of Panorama Place. In early April 2010, he received a letter from "The Owners Strata Plan No. P.G. 56" enclosing an "Exclusive Use Agreement - shed space". The letter stated:

"We are enclosing an exclusive use agreement for shed space. Please complete the information in the agreement, sign and have your signature witnessed by two people. Return the completed signed agreement to the Panorama office for council's signature.

In order to guarantee your shed space this exclusive use agreement must be signed and returned to the office on or before April 15, 2010."

7 The "Exclusive Use and Alteration of Common Property Agreement" states in the opening paragraphs:

"WHEREAS:

- A. The Strata Corporation is responsible for administering, repairing, and maintaining common property.
- B. The Strata Corporation is authorized to grant to an owner permission for the exclusive use of common property and permission to alter common property.
- C. The Owners are the registered owners of strata lot \_\_\_\_, Unit # \_\_\_\_, in the Strata Corporation ("Strata Lot \_\_\_\_").
- D. The Owners wish to obtain the exclusive use of a portion of the fenced compound at the rear of the building for the purpose of erecting a shed (the "Alteration") on a portion of the Exclusive Use Area."

**8** Mr. Stettner did not sign the Exclusive Use Agreement. In his view it required him to remove the shed which he had on the property for some time, and to replace it with one constructed of poly resin. He received a second letter complaining that he had not signed and returned the agreement. Although he thought his shed should be "grandfathered", he felt compelled to remove it, and sues for \$400.00 plus costs for that removal. He also felt that he had received conflicting information from various board members, and that the board had acted contrary to s. 71 of the *Act*, which states:

***Change in use of common property***

**71** Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

- (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
- (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

**9** The *Strata Property Act* defines "common property" as follows:

... that part of the land and buildings shown on a strata plan that is not part of a strata lot ...

**10** The position of the Defendant, as stated above, is that s. 71 does not apply. There were no cases provided to the Court on that issue or any other and for the purposes of this decision, I have assumed, without deciding, that s. 71 would apply to this situation. I note that the Defendant's own document, the "Exclusive Use Agreement" says that the proposed agreement is planned to grant to an owner permission for the exclusive use of common property and permission to alter common property.

**11** That decision does not in my view confer jurisdiction on this Court in relation to this dispute.

**JURISDICTIONAL ISSUE**

**12** At the Settlement Conference, the Defendant asserted this Court does not have jurisdiction. I agree, for the following reasons.

**13** Mr. Stettner objects to what is in his view a significant change in the use or appearance of common property - a requirement that owners of certain sheds located on the common property have them re-clad or removed. It is clear that there was no resolution passed as required by s 71(a). There is no suggestion by the Defendant that s. 71(b) applied; the Defendant simply says s. 71 is not applicable, without advancing any reasons for that position.

**14** Mr. Stettner's legal problem is that if he is correct, and s. 71 applies, the Provincial Court has no jurisdiction. This is clearly set out in s. 163, 164, and 165 of the *Act*, which gives jurisdiction on these issues only to the Supreme Court. This means that if Mr. Stettner wishes to pursue his claim for \$400.00 plus costs, he is required to proceed in Supreme Court. To him that legal result is at best foolish and unfair. I cannot disagree.

**15** In *Matthews v. The Owners, Strata Plan NW1874*, [2009] B.C.J. No. 418, Skilnick PCJ said on the jurisdictional issue in paragraphs 7 to 14 inclusive:

[7] The Small Claims Court of British Columbia is intended to afford the average citizen of the province access to justice on an affordable basis. The purpose of the *Small Claims Act* and Rules is set out in section 2(1) of the Act as follows:

**2** (1) The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.

[8] Accordingly, a court should be reluctant to decline jurisdiction unless it can be clearly shown why the court lacks that jurisdiction. This principle was perhaps best articulated in *Lou Guidi Construction Ltd. v. Fedick* [1994] B.C.J. No. 2409 (B.C. Prov. Ct.) where Chief Judge Stansfield of this court wrote:

"In short, as a general proposition, I conclude that a judge of this court should assume she or he has jurisdiction to hear every claim for debt or damages (other than defamation and malicious prosecution) where the claim is limited to \$10,000 [now \$25,000] or less, unless a party can demonstrate a statutory bar to that exercise of jurisdiction."

[9] This does not mean that a small claims court can assume jurisdiction on every claim that is brought. The Provincial Court of British Columbia is a creature of statute. In other words, as a general rule, before the court can make orders or render judgements, the court must first be given the authority to do so by the Legislature. If authority for the order can not be found, or if the Legislature expressly takes the authority to make that order away, or requires for the order to be made by another court or tribunal, then this court lacks the jurisdiction to make that order or render that judgement.

[10] The Legislature of British Columbia replaced the *Condominium Act* with the *Strata Property Act*. Under the old legislation, certain remedies under that Act could be given by "a court of competent jurisdiction". Under the new legislation however, the Supreme Court is expressly named as the court having the power to make certain orders and grant certain remedies.

[11] In *Valana v. Law* [2005] B.C.J. No. 2820; 2005 BCPC 587, the Honourable Judge Chen of this court listed all of the sections of the *Strata Property Act* in which the Legislature decided that only the Supreme Court had jurisdiction to make orders for those matters. (I have included an excerpt from that judgement listing those sections at the end of this judgement in an appendix). In all other matters, Judge Chen held that both the Supreme Court and this court have jurisdiction "except where jurisdiction is specifically restricted to one court by the language of the Act or by the monetary limits to the Provincial Court's jurisdiction."

[12] In this case, the Claimant is suing for an order requiring that the Defendant follow its bylaws and repair his windows. The Defendant is saying to this court "you can't make such an order because the Legislature of this province does not permit you to do so. Only the Supreme Court can make such an order." Based on a reading of section 165 of the *Strata Property Act*, the Defendant is correct in its assertion. This is also consistent with this court's decision in *Clappa v. Parker Management Ltd.* [2003] B.C.J. No. 1980; 2003 BCPC 305 and *Frechette v. Crosby Property Management Ltd.* [2007] B.C.J. No. 1162; 2007 BCPC 174.

[13] I therefore conclude that this claim is one which this court lacks the jurisdiction to grant a remedy for, based on section 165 of the *Strata Property Act*. Because this court lacks such jurisdiction, and because the certainty of this can be assessed without the need for a trial, this claim is now dismissed pursuant to Rule 7(14).

[14] In coming to this conclusion I recognize the unfairness to the Claimant. I am unable to rationalize why the Legislature has decided that it is preferable to require someone in the Claimant's position to seek a remedy in the more expensive forum of the superior court, rather than in this court where it is intended that litigants can have more expedient access to justice. However any reservations about the wisdom of this can not override the requirement for this court to follow the law as written.

## **ORDER**

**16** I agree with Judge Skilnick's analysis. I cannot find that this Court has jurisdiction over this dispute.

**17** For the above reasons, Mr. Stettner's Claim is dismissed for lack of jurisdiction. There was no request for costs, and no costs are granted.

B.L. DOLLIS PROV. CT. J.

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