IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Corporation LMS3442 v. Storozuk,* 2014 BCSC 1507

Date: 20140811
Docket: S027063
Registry: Chilliwack

Between:

The Owners, Strata Corporation LMS3442, also known as Country Grove

Petitioner

And

Todd Storozuk

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Petitioner:	D. Stander
Counsel for the Respondent	J.R. Parkinson
Place and Date of Hearing:	Chilliwack, B.C. April 1, 2014
Place and Date of Judgment:	Chilliwack, B.C. August 11, 2014

I. OVERVIEW

[1] The petitioner is a strata corporation charged with maintenance of the strata development known as "Country Grove". In this application Country Grove seeks an order directing the respondent, formerly the owner of unit #130 in Country Grove, to pay "all outstanding fines charged against his unit by Country Grove... arising from the illegal rental of his unit #130 in Country Grove".

[2] The relief sought in the petition had included an order for a mandatory injunction that the respondent immediately terminate the tenancy in unit #130 and that the respondent cease any further rental of his unit. By the time this matter was heard in chambers, the respondent had sold unit #130 rendering the application for an injunction unnecessary.

II. FACTUAL SUMMARY

[3] Country Grove is an eighty-two unit strata development located in Chilliwack. Country Grove's by-laws prohibit any owner of an individual unit from renting their unit. Specifically, by-law 10 (1), which has been in force since 2002, states:

> 10(1) An owner of a residential strata lot shall not rent his or her strata lot."

[4] Mr. Storozuk purchased unit #130 of Country Grove in 1999, at a time when there was no rental restriction in the strata corporation by-laws. For several years, Mr. Storozuk lived in unit #130.

[5] In 2012, Mr. Storozuk and his partner purchased a lot with the intention of building a home on the lot. In order to finance the purchase of the lot and the cost of constructing a home, he took out a mortgage, the security for which was unit #130 of Country Grove. In July of 2012 Mr. Storozuk listed unit #130 for sale.

[6] By February of 2013, Mr. Storozuk had not succeeded in selling unit #130 and deposed that he was encountering significant financial stress. I accept that Mr. Storozuk was having difficulty meeting his financial obligations in 2012 and 2013, primarily because of the costs of purchasing the lot on which he was to build a new home and of borrowing for the purchase and construction of the new home. He

had taken a risk in purchasing the new lot and borrowing for the new property before selling unit #130. Unable to sell unit #130 and under financial pressure, he decided to rent unit #130.

[7] On February 22, 2013 Mr. Storozuk wrote to the Country Grove strata council. In that correspondence he referred to having attempted to sell unit #130 without success and that he had bought land and was building a home. The note concluded as follows:

> I bought land last year and started to build a house. This is now very near to completion. I need to rent out unit 130 until the real estate market improves.
>
> I have taken my unit off the market and am in the process of looking for suitable tenants. If you need to contact me, my cell is…

[8] Mr. Storozuk then rented unit #130 and his tenants moved in on March 1, 2013. As of March 1, 2013, neither the strata corporation or strata counsel had granted any permission or exception to Mr. Storozuk to rent the unit. Mr. Storozuk also deposed that without the rental income from tenants, he would have been "ruined financially".

[9] Shortly after the tenants took possession, complaints arose from the owners of other units regarding noise emanating from unit #130 and breach of the parking by-law of the strata corporation by the occupants of unit #130. Strata Council members then discussed how they intended to deal with the apparent breach of their by-laws. They determined that the breach would be dealt with by, among other things, imposing fines on the Mr. Storozuk. One email between council members included the following:

> …The best approach to this is to hit the owner with significant fines.
>
> Once he realizes the financial impact as well as not having the ability to sell his unit, I'm certain Todd will handle the situation.
>
> I am sorry about the noise, but we can take the same approach. There are fines for noise and for parking incorrectly. We can just keep imposing fines.

[10] Section 144 of the *Strata Property Act,* S.B.C. 1998, c. 43, allows for an exemption from rental restriction by-laws on the grounds of hardship to the owner. It is worth reproducing s. 144 in full:

> **144. Exemption from rental restriction bylaw**
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> 144(1) An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.
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> (2) The application must be in writing and must state
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> a) the reason the owner thinks an exemption should be made, and
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> b) whether the owner wishes a hearing.
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> (3) If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 4 weeks after the date the application is given to the strata corporation.
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> (4) An exemption is allowed if
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> a) a) the strata corporation does not give its decision in writing to the owner,
>
> i. if a hearing is held, within one week after the hearing, or
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> ii. if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or
>
> b) the owner requests a hearing under subsection (2)(b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation.
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> (5) An exemption granted by a strata corporation may be for a limited time.
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> (6) The strata corporation must not unreasonably refuse to grant an exemption.

[11] Upon receiving the complaints, a notice of violation of bylaw 10 (1) was sent to Mr. Storozuk on March 7, 2013 regarding the rental of the unit and allowed Mr. Storozuk the opportunity to respond to the complaint in writing or by requesting a hearing of the strata council. The response also included the following words:

> It is the owners [*sic*] responsibility to prove hardship. In addition to proof you will be required to provide council with a written application requesting hardship be taken into account in your case.
>
> In order to prove hardship, it is suggested to back up your request with documentation. This documentation can include proof of income, expenses, and any statements that would support your request and demonstrate hardship.

[12] A response was requested within 14 days. The March 7 response also advised of a council meeting scheduled for March 11, 2013, which would be well before expiry of the 14 day period.

[13] Also on March 7, 2013, Mr. Storozuk responded to the notice of violation asking that his email of February 22, 2013 be considered as his hardship application and advising he would be attending the strata council meeting of March 11, 2013.

[14] Mr. Storozuk attended the meeting of March 11, 2013 and his application for a hardship exemption was rejected. In his affidavit #1 dated November 30, 2013 Mr. Storozuk deposed that in order to purchase the land for his new house he took out a mortgage against unit #130 amounting to $187,500. Also in the summer of 2012 he granted another mortgage registered against the new property in an amount of $490,000. Copies of the mortgages were attached to the affidavit referred to above.

[15] At the strata council meeting of March 11, 2013 Mr. Storozuk deposed that he provided copies of the two mortgages to the strata council. He also stated, at para. 19 of his affidavit #1:

> 19. I explained to the Strata Council at the meeting that I was more than willing to provide them with whatever documents they required. Owing to the nature of my work, I did not want to leave copies with them.

[16] Attached to affidavit #1 of Keith Gregory, the president of the Strata Corporation, were notes taken by the treasurer of the Strata Corporation of the meeting of March 11, 2011 and provided to council members. The notes included confirmation that Mr. Storozuk provided mortgage information but also stated:

> ...He didn't want to hand over personal banking information, but he was more than willing to have us look at it. He provided mostly mortgage information from both homes. When I asked if he had additional documents to provide, he asked what we needed and I told him that it was up to him to decide what he felt was relevant to prove his hardship case.

[17] Mr. Storozuk is an RCMP officer which may explain his reluctance to hand over personal financial information. The deposition by Mr. Storozuk and the notes of the council treasurer are consistent in that they both confirm that Mr. Storozuk was prepared to let the strata council view the further financial information. From my review of the affidavits, the only reasonable assumption as to what then occurred is

that the strata council members declined to look at the personal financial information which had been offered to them.

[18] It was also clear from the affidavit of Mr. Storozuk that the real estate market for strata condominiums in the Chilliwack area as of 2012 to 2013 was poor. He had listed his unit for sale for several months without receiving any offers to purchase. Mr. Storozuk had advised the strata council in his earlier correspondence of the difficulties he was encountering in obtaining offers to purchase unit #130.

[19] On March 19, 2013, the strata council advised Mr. Storozuk by email that "the information provided does not support a case for hardship". I note at this juncture that the email advising of the rejection of Mr. Storozuk's application was sent to him eight days after the strata council meeting when the council decided to reject the application. Counsel for Mr. Storozuk emphasized that the notice was sent more than one week after the meeting, contrary to s. 144(4)(a)(i) of the *Strata Property Act.*

[20] Mr. Storozuk responded with an email of March 19, 2013 that:

> I spoke with my tenants. They are now renting to own.

Proof of the alleged arrangement that the tenants were "renting to own" was not provided by Mr. Storozuk.

[21] The strata council proceeded to impose fines against Mr. Storozuk between March 2013 through to November 1, 2013 at which time the tenants vacated the premises and Mr. Storozuk succeeded in selling unit #130. Regulations issued under the *Strata Property Act* permitted maximum fines as follows:

> 7.1 (1) For the purposes of section 132 of the Act, the maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a bylaw or rule is
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> a) $200 for each contravention of a bylaw, and
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> b) $50 for each contravention of a rule.
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> (2) Despite subsection (1), the maximum amount that a strata corporation may set out in its bylaws as a fine for the rental of a residential strata lot in

> contravention of a bylaw that prohibits or limits rentals is $500 for each contravention of the bylaw.
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> (3) For the purposes of section 132 of the Act, the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is every 7 days.

[22] The strata council imposed an initial $200 fine and then weekly fines of $500. By November 1, 2013, the total amount of fines was $16,450.

[23] In September 2013, the owners passed a special resolution at an Annual General Meeting authorizing this proceeding against Mr. Storozuk to obtain payment of the fines which have been assessed by the strata council.

[24] Mr. Storozuk has refused to pay the fines and has stated he will only do so if ordered to pay "by a court".

III. POSITIONS OF THE PARTIES

[25] Mr. Storozuk has taken the position that since the strata council did not inform him of its decision to dismiss his hardship application until eight days after the meeting at which the hardship application was heard, the strata council has deemed to have accepted his application under s. 144(4)(a)(i). In other words, because the strata council was one day late in advising Mr. Storozuk of its decision, he was free to rent unit #130.

[26] The applicant responds by saying that Mr. Storozuk cannot rely on such a technical exemption as Mr. Storozuk had not complied with s. 144 of the *Act.* It is alleged that Mr. Storozuk was in breach of the *Act* as a result of the following:

> a) Mr. Storozuk rented unit #130 before seeking a financial hardship declaration from the strata council. The rental restriction had been in place since 2002 and it is submitted that Mr. Storozuk knew it was necessary to obtain permission to rent from the strata council before allowing tenants into possession.
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> b) The note of February 22, 2013 from Mr. Storozuk to the strata council makes no reference to "hardship" and does not request a hearing as contemplated by s. 144 of the *Act.*

c) The applicant clearly doubts the *bona fides* of Mr. Storozuk's statement that the tenants were "renting to own".

[27] Setting aside these more technical issues, the strata council submits that in giving notice to Mr. Storozuk of his breach of the bylaw, and in permitting a "hearing" giving him an opportunity to submit evidence of "financial hardship", upon the strata council reviewing the evidence provided by Mr. Storozuk and exercising its discretion reasonably to deny the request, the strata council was entitled to assess the fines authorized by regulation.

IV. DISCUSSION

[28] Counsel for the strata corporation submits that Mr. Storozuk cannot rely on the automatic and technical exemption that would be triggered by the delay of one day in providing him with a written decision regarding his hardship application. They make this submission, that the respondent cannot avail himself of the one-day delay in receiving a written decision, because the respondent did not himself comply with s. 144. Specifically, the petitioner states that after he rented out his unit, the respondent did not make an application for a hardship exemption, but instead just attended the council meeting, which was not a hardship hearing.

[29] Section 144(1)-(2) requires that an owner who wants an exception from a rental prohibition bylaw on the basis of hardship must apply in writing, and must state the reason he thinks the exemption should be made and whether he wishes a hearing. Mr. Storozuk's February 22 email set out the reason for the desired exemption. On March 7, he asked in an email that his February 22 email be considered his "hardship application". Despite the unfortunate circumstance of the request being split between two emails, I am satisfied that the strata council had access to the older email and that there is no requirement in the *Strata Property Act* that would bar the application from being submitted in this way. Mr. Storozuk therefore provided a written application for a hardship exemption and stated the reason for it. While the March 7 email did not expressly request a hearing, he advised that he would be attending the council meeting. At that council meeting, the strata council heard his hardship application. In doing so, I find that they acquiesced

to the imperfect form of the hardship application and treated the email and subsequent correspondence as the hardship application despite the lack of express written request for a hearing. Having treated it thus, they cannot now treat it differently. Furthermore, there does not appear to be a statutory requirement for the hearing to be separate from a council meeting as the petitioner suggests. Regardless, it is clear from the evidence that all parties treated Mr. Storozuk's application before the strata council on March 11 as a hearing on the hardship application.

[30] Turning now to the respondent's reliance on s. 144(4)(a)(i), there is no dispute that the strata council did not comply with the requirement that the decision must be given in writing to the owner within one week after the hearing. The petitioner gave Mr. Storozuk an oral decision at the council meeting but did not give him a decision in writing until eight days after the hearing.

[31] While the strict interpretation of the statute seems unjust given that Mr. Storozuk knew the result from the oral decision, received the written decision only one day late, rented his condo without following the proper procedure himself, and likely acted in bad faith by attempting to mislead the petitioner by stating that the tenants were "renting to own", I find that I am bound to apply the statute. The statute specifically states that an exemption is allowed if the strata corporation does not give its decision in writing within one week after a hearing is held. Nothing in the statute indicates that this is a flexible requirement or gives the court discretion to interfere with the one-week limit imposed by the statute for the strata corporation to give its written decision. The remedy for the failure to adhere to the one-week limit is also expressly set out in the statute: the exemption is allowed automatically by operation of the statute.

[32] In other cases involving strata corporations, s. 24 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. gives this court the power to relieve against penalties and forfeitures: *Lau v. Strata Corp. No. LMS 63,* [1996] B.C.J. No. 1728 (B.C.S.C.) at para. 64. However, that principle only applies when there is no statutory rule.

Section 24 of the *Law and Equity Act* cannot be used by the court to relieve against penalties or forfeitures which are statutory in origin: *Martin Mine Ltd. v. British Columbia* (1985), 62 B.C.L.R. 107; *Ganitano v. Metro Vancouver Housing Corp.*, 2014 BCCA 10.

[33] The situation in *Ganitano* is analogous. In that case, a tenant was seeking relief from forfeiture. The tenant had failed to respond within the statutory time limits to a notice given in accordance with the *Residential Tenancy Act*, S.B.C. 2002 c. 78. Her failure to respond within the statutory limits meant that, by operation of law, the tenancy came to an end and the landlord could regain possession. The Court held that this was a statutory forfeiture (i.e. a taking back of the remainder of the term of the tenancy), and thus is beyond the reach of s.24 of the *Law and Equity Act.* Similarly, in the case at bar, the strata council cannot get relief from forfeiture using the *Law and Equity Act* because the strata council forfeited its right to deny Mr. Storozuk the ability to rent. That forfeiture is set out by statute; by operation of law i.e. the *Strata Property Act* s. 144(4)(a), Mr. Storozuk's application is approved if the strata council does not render a written decision within the statutory time limit. As it is a statutory forfeiture, it is beyond the reach of an equitable remedy under s. 24 of the *Law and Equity Act*.

[34] Mr. Storozuk's exemption from the rental restriction bylaw was thus allowed. The rental of his unit after March 18, 2013 was legal. No fines were imposed before the exemption was permitted by operation of s. 144(4)(a) of the *Strata Property Act* on March 18, 2013 and the strata could not impose fines on him after that date as the rental was legal. The relief sought by the petitioner is thus denied.

[35] Unless there are any matters of which I am unaware, the respondent shall have his costs.

"Jenkins J."