

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners Strata Plan LMS 2768 v. Jordison*,
2013 BCCA 484

Date: 20131112
Docket: CA040812

Between:

The Owners Strata Plan LMS 2768

Respondent
(Petitioner)

And

Rose Jordison and Jordy Jordison

Appellants
(Respondents)

Before: The Honourable Mr. Justice Donald
The Honourable Madam Justice MacKenzie
The Honourable Madam Justice Stromberg-Stein

On appeal from: An order of the Supreme Court of British Columbia,
dated March 20, 2013 (*The Owners Strata Plan LMS 2768 v. Jordison*,
2013 BCSC 487, Vancouver S116672).

Counsel for the Appellant, Rose Jordison: J. Zeljkovich

The Appellant, Jordy Jordison, on his own behalf

Counsel for the Respondent: P. J. Dougan

Place and Date of Hearing: Vancouver, British Columbia
October 17, 2013

Place and Date of Judgment: Vancouver, British Columbia
November 12, 2013

Written Reasons by:

The Honourable Mr. Justice Donald

Concurred in by:

The Honourable Madam Justice MacKenzie

The Honourable Madam Justice Stromberg-Stein

Summary:

The respondent owners obtained an injunction directing the appellants to comply with strata bylaws and rules. The appellants' unacceptable conduct continued and the respondent owners successfully petitioned the court for an order directing the appellants to sell their unit. The appellants argued on appeal that in the absence of express language, s. 173(c) of the Strata Property Act does not permit such an interference with individual property rights.

Held: Appeal dismissed. A fair, large and liberal construction of the statute reveals that the Legislature intended the Supreme Court to have the powers necessary to fashion an effective remedy under subsection(c) in order to achieve the objectives mentioned in subsections (a) and (b). In extreme cases, this can include forced sale.

Reasons for Judgment of the Honourable Mr. Justice Donald:

[1] This appeal questions the power of a court to order the sale of a condominium unit when a prior order directing compliance with the Strata Corporation's bylaws has been breached.

[2] Rose and Jordy Jordison, mother and son, were found by Mr. Justice Blair in contempt of an order he made directing them to cease their outrageous behaviour towards their neighbours. The judge invoked the power found in s. 173(c) of the *Strata Property Act*, S.B.C. 1998, c. 43, to order the immediate sale of the condominium unit registered in Ms. Jordison's name. Section 173 reads as follows:

- 173 On application by the strata corporation, the Supreme Court may do one or more of the following:
- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
 - (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
 - (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[3] The issue is whether s. 173(c) gives the Supreme Court the power to force an owner to sell; not whether a forced sale is an available sanction for contempt.

[4] I have concluded that if exercised reasonably, s. 173(c) can provide such a remedy, and that this is such a case.

Background

[5] After years of conflict between the parties, the respondent petitioned the Supreme Court for an order to force the sale of the appellants' condominium unit. Previous unsuccessful efforts by the respondent to secure the appellants' compliance with the behavioural standards set out in the strata bylaws included meetings, warnings and fines. Mr. Justice Blair, who heard the petition, made the following findings of fact, which are cited at 2012 BCSC 31:

[57] The Act, the Bylaws and rules [adopted by the The Owners, Strata Plan LMS 2768] can be enforced by the Strata to ensure that breaches by the Jordisons, such as those described in the affidavits referred to above, can lead to a remedy enabling strata members to live in peace in their respective units and the common property absent harassment and abuse. I conclude on the affidavit material that the Jordisons' conduct breached the Bylaws, particularly the following:

- 4.1 A resident or visitor must not use a strata lot, the common property or common assets in a way that
 - (a) causes a nuisance or hazard to another person,
 - (b) causes unreasonable noise,
 - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

[58] I specifically conclude from the evidence that the Jordisons' conduct including their obscene language and gestures, their interference with the activities of others, their spitting at other residents, the unacceptable loud and unnecessary noise they in their unit created have unreasonably interfered with the rights of others who are entitled to enjoy in peace the common property, the common assets and their own strata lots.

[59] I conclude that the Strata has established on a balance of probabilities that the Jordisons' actions are contrary to Bylaw 4.1(a)(b) and (c) and that they have caused a nuisance or hazard to other persons in the Strata, that they have caused unreasonable noise, and that they have unreasonably interfered with the rights of other persons to use and enjoy the Strata's common property and common assets and their strata lots. The Jordisons' actions amount to an assault upon those residents of the Strata who have been for some years subjected to the Jordisons' misbehaviour in all its varied forms. The Strata's affidavits are detailed and compelling, corroborating each

other in many instances and supported by contemporaneous documentation included in the affidavits.

[60] I find Ms. Jordison responsible not just for her own actions and breaches of the Bylaws, but also for her condoning of the breaches of the Bylaws by her son, Jordy, contrary to Bylaws 45.2 and 45.3. The affidavits filed by the Strata confirm that Ms. Jordison was present and appeared to condone her son's behaviour. Further, the letters to her from the Strata informed her of the complaints from Strata residents about the actions of both she and her son.

[6] On those findings, the judge ordered a sale pursuant to s. 173(c) and, at para. 83, enjoined the appellants from further misconduct pending sale, in these terms:

- 6) While in possession of the unit, Ms. Jordison and her son, Jordy Jordison, shall abide by the *Strata Property Act*, its regulations and the Bylaws and rules of Strata Plan LMS 2768, and they are specifically restrained from making loud noises such as has been described in the affidavits supporting the petition filed herein, making obscene gestures or uttering any abusive or obscene comments directed at any member of Strata Plan LMS 2768 or their families;

[7] The appellants took an appeal against the order. Mr. Justice Hall gave the reasons for the Court in *The Owners Strata Plan LMS 2768 v. Jordison*, 2012 BCCA 303. He sustained the injunction but set aside the order of sale. He left open the case where the sale is used as an ancillary, rather than a freestanding, remedy. He said:

[15] I consider that ss. 173(a) and (b) authorize a court to make mandatory or prohibitory orders against a party concerning obligations imposed by the *Act* or bylaws of a strata corporation. A failure to abide by any such order could found, *inter alia*, contempt proceedings. It could be a nice question as to whether the sort of order made by the judge here could be available as a remedy "to give effect to" an order made under (a) or (b) in circumstances where a failure to adhere to such order has been demonstrated. We need not decide that interesting issue here as it does not directly arise at this time and it would be preferable for any such issue to be fully argued and decided at first instance when it squarely arises for decision.

* * *

[19] As I observed above, whether any failure to observe such order could provide the basis for a future application seeking an order for the sale of the property is best left for future argument and consideration.

[8] The matter went before Mr. Justice Blair again on an application by the respondent to declare the appellants in contempt of the injunction and seeking an order of sale as the appropriate remedy: 2013 BCSC 487. The judge found they were in contempt:

[32] I further conclude that the respondents' continuing behaviour which followed the making of the mandatory injunction found in the reasons for judgment and February 9, 2012 order was behaviour in breach of that injunction. The injunction required them to comply with the *Act* and its regulations, the bylaws, and rules of Strata Plan LMS 2768, and further the respondents were specifically restrained from making loud noises such as has been described in the affidavits supporting the application, the making of obscene gestures or the uttering of any abusive or obscene comments directed at any member of Strata Plan LMS 2768 or their families.

* * *

[34] I have concluded that the petitioner has proven beyond a reasonable doubt that the respondents' actions have put them in breach of the injunction granted in 2012.... The language is clear and precise. I conclude further that the respondents have intentionally, wilfully, and in a blameworthy fashion disobeyed the order of this court. Such behaviour on the part of the respondents constitutes contempt of this court by the respondents.

[9] The judge decided that the usual penalties for contempt – a fine or imprisonment – would be inappropriate and that an order of sale coupled with an order that the appellants give up vacant possession were ancillary powers open to him:

[40] Although the Court of Appeal concluded in its July 19, 2012 judgment that this court lacked the jurisdiction to impose an order for sale of the condominium unit solely under s. 173 s-s (c) of the *Act*, I conclude that such an order for sale can be made under s-s (c) provided that the order is ancillary to the court's findings related to s. 173 s-s(a) or (b). My conclusion is dependent on the finding in *Jiwan [Jiwan Dhillon & Co. Inc. v. Strata Plan LMS4385, 2010 BCCA 324]* which relied on the language found in s. 165 s-s (a), (b) and (c) of the *Act*, that language being similar to s. 173 s-s(a), (b) and (c) of the *Act*.

[41] I conclude that an order of sale be made pursuant to s. 173 s-s(c) of the *Act*, an order which is consistent with the breaches by the respondents of the mandatory injunction under s. 173 s-s(a) and the simple injunction under s. 173 s-s(b), thereby requiring the court to act under s. 173 s-s(c) to enforce the injunctions made in January 12, 2012.

[10] More about *Jiwan* later.

Issue

[11] The appellant framed the issue in these terms:

The chambers judge erred in finding that s.173(c) of the Act provided the jurisdiction to make an order for vacant possession and for sale in the absence of clear legislative language permitting such an interference with the appellant's property rights.

Relevant Enactments

[12] The appellants submit that the *Strata Property Act* provides remedies for default which do not include an order of sale:

Certificate of Lien

116 (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

- (a) strata fees;
- (b) a special levy;
- (c) a reimbursement of the cost of work referred to in section 85;
- (d) the strata lot's share of a judgment against the strata corporation;
- (e) [Repealed 1999-21-25.]

(2) The strata corporation may register a lien against any strata lot, but only one strata lot, owned by an owner as owner developer, by registering in the land title office a Certificate of Lien in the prescribed form if the owner developer fails to pay an amount payable to the strata corporation under section 14 (4) or (5), 17 (b) or 20 (3).

(3) Subsections (1) and (2) do not apply if

- (a) the amount owing has, under section 114, been paid into court or to the strata corporation in trust,
- (b) arrangements satisfactory to the strata corporation have been made to pay the money owing, or
- (c) the amount owing is in respect of a fine or the costs of remedying a contravention.

(4) On registration the certificate creates a lien against the owner's strata lot in favour of the strata corporation for the amount owing.

(5) The strata corporation's lien ranks in priority to every other lien or registered charge except

- (a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation,
- (b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or

- (c) if the other lien or charge is made under the *Builders Lien Act*.
- (6) On receiving the amount owing, the strata corporation must within one week remove the lien by registering in the land title office an Acknowledgment of Payment in the prescribed form.

* * *

Fines

- 130 (1) The strata corporation may fine an owner if a bylaw or rule is contravened by
 - (a) the owner,
 - (b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or
 - (c) an occupant, if the strata lot is not rented by the owner to a tenant.
- (2) The strata corporation may fine a tenant if a bylaw or rule is contravened by
 - (a) the tenant,
 - (b) a person who is visiting the tenant or was admitted to the premises by the tenant for social, business or family reasons or any other reason, or
 - (c) an occupant, if the strata lot is not sublet by the tenant to a subtenant.

[13] The appellants further submit that where the Legislature intended to give a power of sale it has expressly done so:

- 117 (1) After the strata corporation has registered a Certificate of Lien against a strata lot, the strata corporation may apply to the Supreme Court for an order for the sale of the strata lot.
- (2) If the strata corporation has obtained a judgment for the amount owing, the court may, after considering all the circumstances, make an order for the sale of the strata lot.
- (3) If the strata corporation has not obtained a judgment for the amount owing, the court may try the issue and may
 - (a) order that judgment be entered against the owner in favour of the strata corporation for the amount of the lien or for an amount that the court, as a result of the trial, finds owing, and
 - (b) if judgment is entered against the owner, make an order for the sale of the strata lot after considering all the circumstances.
- (4) An order for the sale of a strata lot must provide that, if the amount owing is not paid within the time period required by the order, the strata corporation may sell the strata lot at a price and on terms to be approved by the court.

[14] The respondent relies on the reasoning in *Jivan Dhillon & Co. Inc. v. Strata Plan LMS4385*, 2010 BCCA 324, which construes provisions dealing with court remedies against strata corporations, rather than owners or tenants as in the present case:

- 165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:
- (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
 - (b) order the strata corporation to stop contravening this Act, the regulations, the bylaws or the rules;
 - (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[15] Section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, reads:

- 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Discussion

[16] This is a case of statutory interpretation where two principles are opposed: the individual right of property and the right of quiet enjoyment in collective living arrangements. The case for the appellants is that their right to hold title to and occupy the strata unit cannot be taken away except by clear and express language in a statute. The respondent says that the general words of s. 173(c) should be given a remedial construction enabling a court to order a sale to bring an end to disruptive and uncivil behaviour when all else fails.

[17] The strict construction approach advanced by the appellants can be seen in a passage from *Morguard Properties Ltd. v. City of Winnipeg*, [1983] 2 S.C.R. 493, cited in *Hamilton (City) v. Equitable Trust Co.*, 2013 ONCA 143, where the city asserted the right to collect rent from a tenant whose landlord was in default of local charges. In *Hamilton*, Blair J.A. wrote for the court:

[34] In addition to the foregoing considerations, it would be contrary to another well-entrenched principle of statutory interpretation to give effect to the City's submissions. The legislature is presumed not to intend to abolish,

limit, or otherwise interfere with the established common law or statutory rights, including property rights, in the absence of explicit statutory language that it intends to do so: see *Parry Sound (District) Social Services Administration Board v. Ontario Public Services Employees Union*, [2003] 2 S.C.R. 157, at para. 39; *Morguard Properties Ltd. et. al. v. City of Winnipeg*, [1983] 2 S.C.R. 493, at pp. 508-511; *Crystalline Investments Ltd. v. Domgroup Ltd.*, 2004 SCC 3, [2004] 1 S.C.R. 60, at para. 43; and *80 Mornelle Properties Inc. v. Mala Properties Ltd.*, 2010 ONCA 850, 99 R.P.R. (4th) 21, at para. 42. Estey J. expressed the principle in this fashion, in *Morguard* at p. 509:

In more modern terminology the courts require that, in order to adversely affect a citizen's right, whether as a taxpayer or otherwise, the Legislature must do so expressly. Truncation of such rights may be legislatively unintended or even accidental, but the courts must look for express language in the statute before concluding that these rights have been reduced. This principle of construction becomes even more important and more generally operative in modern times because the Legislature is guided and assisted by a well-staffed and ordinarily very articulate Executive. The resources at hand in the preparation and enactment of legislation are such that a court must be slow to presume oversight or inarticulate intentions when the rights of the citizen are involved. The Legislature has complete control of the process of legislation, and when it has not for any reason clearly expressed itself, it has all the resources available to correct that inadequacy of expression. This is more true today than ever before in our history of parliamentary rule.

[18] In a recent case, *Cuthbertson v. Rasouli*, 2013 SCC 53, Chief Justice McLachlin, for the majority, crisply set out the cardinal rule of statutory interpretation:

[32] The basic rule of statutory interpretation is that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 1. Every statute "shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects": *Legislation Act, 2006*, S.O. 2006, C. 21, Sch. F, s. 64(1).

[19] The equivalent section in the British Columbia *Interpretation Act* is s. 8, which is quoted above.

[20] To understand s. 173(c)'s remedial power, it is helpful to consider this Court's interpretation of the identical language found in s. 165(c): *Jiwan*, *supra* at para. 20. The decision of the Court was given by Madam Justice Saunders who wrote:

[20] Subsection (c) is the provision in issue. I repeat its language: the court may “make any other orders it considers necessary to give effect to an order under paragraph (a) or (b)”. Looking at the grammatical and ordinary meaning of those words, two conclusions may be drawn. First, an order under s-s. (c) may not be freestanding, but rather must be tied to an order directed to the strata corporation’s actions or inactions, that is, an order under s-s. (c) may only be made when its purpose is to give effect to either a mandatory injunction under s-s. (a) or a simple injunction under s-s. (b) made against the strata corporation. Second, the court must consider that the order is necessary to give effect to the order under s-s. (a) or (b), that is, the court must consider that without the order under s-s. (c), the orders against the strata corporation under s-s. (a) or (b) will not be effective.

[21] From this analysis I derive two points: that an order under subsection (c) must be in aid of the subjects mentioned in (a) and (b) and it is appropriate for the court to exercise its injunction power to achieve that purpose.

[22] What if an injunction is ignored, as in the present case? I think it must follow that the court can take the next step and enforce compliance with the order. If the objects of the injunction, having regard to the subject matter of s. 173(a) and (b) cannot be realized other than by a forced sale, then a court must be empowered by subsection (c) to take this final step. Otherwise, the enforcement process would be stymied.

[23] The scheme of the *Strata Property Act* includes the property rights of other owners of the strata. They have been given resort to the Supreme Court to enforce those rights.

[24] Ms. Jordison’s counsel argued that the standard penalties for contempt – fines and imprisonment – may very well have brought about compliance with the relevant enactment. Respectfully, this is a highly speculative submission given the record of the appellants’ behaviour.

[25] A large and liberal interpretation of s. 173(c) should empower the court to provide an effective remedy. The competing private property interest which supports strict interpretation must, in my opinion, yield to the rights and duties of the collective as embodied in the bylaws and enforceable by court order. The old adage “a man’s home is his castle” is subordinated by the exigencies of modern living in a

condominium setting. In *Principles of Property Law*, 5th ed. (Toronto: Carswell, 2010) at 366, the learned author, Bruce Ziff, writes:

Participation in condominium projects necessarily involves a surrender of some degree of proprietary independence. An owner is at the mercy of the rules enacted through the internal decision-making process. That is only logical. ... Likewise, uses that directly and adversely affect the physical enjoyment of neighbouring properties need to be regulated. These are problems that occur in all communities, and one of the attractions of the condominium lifestyle is that there can be a measure of control over the petty annoyances that often occur in urban habitats.

[26] The appellants also argue that where the Legislature intended to make forced sale available, it provided the remedy in suitably clear language: see s. 117(4) where the strata can enforce a lien for money owing under s. 116 (strata fees and other like charges) on court approval. If this is an invocation of the *expressio unius* maxim (*expressio unius est exclusio alterius*), an implied exclusion, I do not find it persuasive. As an aid to interpretation, the utility of the maxim has been much criticized: see the discussion in Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont.: LexisNexis, 2008) at 251-252. As the respondent submits in its factum, the law provides many avenues for a court ordered sale of property – foreclosure, bankruptcy, execution proceedings and others. If a sale is the only practical relief from a badly behaving owner, I am unwilling to imply an exclusion from an express power in the *Strata Property Act* to sell in a different context.

Summary

[27] It is apparent from the language of s. 173 that the Legislature intended by subsection (c) to empower the Supreme Court to make such orders as will be effective in accomplishing the objects mentioned in subsections (b) and (c). According to *Jivan*, this includes injunctive orders. In an extreme case, which this is, where the subjects of the order have demonstrated an unwillingness to comply with an injunction, the court must have the ability to go to the terminal remedy of sale in order to fashion an effective remedy for the other strata owners. The appellants have repudiated the cooperative foundation of strata living and their intolerable

behaviour has brought about the forced sale. There was ample evidence before the judge that only a sale would resolve the problem. In my opinion, he was correct in interpreting subsection (c) as authorizing such an order.

Conclusion

[28] I would dismiss the appeal.

“The Honourable Mr. Justice Donald”

I agree:

“The Honourable Madam Justice MacKenzie”

I agree:

“The Honourable Madam Justice Stromberg-Stein”