

Case Name:

Strata Plan LMS 307 v. Krusoczki

Between

Strata Plan LMS 307, respondent, and
Ethel and Julius Krusoczki, appellants

[2006] B.C.J. No. 726

2006 BCCA 154

Vancouver Registry No. CA032233

**British Columbia Court of Appeal
Vancouver, British Columbia
Newbury, Hall and Kirkpatrick JJ.A.**

Heard: March 16, 2006.

Oral judgment: March 23, 2006.

Released: April 6, 2006.

(18 paras.)

Real property law — Title — Liens — Appeal from an order dismissing the appellants' appeal from a decision ordering the sale of the appellant's strata lot pursuant to s. 117 of the Strata Property Act dismissed — Court did not err in conclusion that the effect of s. 17.11(4) of the Strata Property Regulation was that Bylaw 125(2) of the respondent's bylaws superceded s. 27(2) of the "Standard" Bylaws — Under the bylaws, the chair of a general meeting could direct that the vote be taken in "whatever manner he thinks fit" — In this case, the voting was by show of cards — Resolution approving special levy was validly passed — Appellants' failure to pay the levy resulted in valid certificate of lien.

Real property law — Condominiums — Bylaws — Unit holders — Voting rights — Appeal from an order dismissing the appellants' appeal from a decision ordering the sale of the appellant's strata lot pursuant to s. 117 of the Strata Property Act dismissed — Court did not err in concluding that the effect of s. 17.11(4) of the Strata Property Regulation was that Bylaw 125(2) of the respondent's bylaws superceded s. 27(2) of the "Standard" Bylaws — Under the bylaws, the chair of a general meeting could direct that the vote be taken in "whatever manner he thinks fit" — In this case, the voting was by show of cards — Resolution approving special levy was validly passed — Appellants' failure to pay the levy resulted in valid certificate of lien.

Appeal by the Krusoczkis from an order dismissing their appeal from a decision ordering the sale of the appellant's strata lot pursuant to s. 117 of the Strata Property Act. The appellants were represented by their son, York. The certificate of lien arose from a special levy imposed by the strata corporation pursuant to s. 108 of the Act. A levy was necessary to fund the cost of repairs to the envelope of the owners' building, which

amounted to \$998,000. The appellants' share of the levy was based on a unit entitlement calculation and amounted in excess of \$22,000. The levy had been approved unanimously by those voting at a special general meeting of the strata corporation. The vote was by show of "cards". The owners defeated a motion to sue any owner who failed to pay the levy. The levy was due and payable on June 1, 2003. The appellants failed to pay their share of the levy and the respondents filed the certificate of lien in the Land Titles Office against their unit. In September 2003, the respondents applied for an order for the sale of the appellants' strata lot. The appellants argued that proper service had not been effected, that voting at the original meeting should have been secret, and that the process was inappropriate. The appellants adduced no evidence and the respondent's application for sale of the unit was allowed. On appeal, the court noted that since York was a lay litigant, it had permitted him to file affidavit material that had not been before the Master. The various grounds of appeal were dismissed as lacking merit.

HELD: Appeal dismissed. The court did not err in its conclusion that the effect of s. 17.11(4) of the Strata Property Regulation was that Bylaw 125(2) of the respondent's bylaws superceded s. 27(2) of the "Standard" Bylaws. Under the bylaws, the chair of a general meeting could direct that the vote be taken in "whatever manner he thinks fit". In this case, the voting was by show of cards. No conflict was shown between the respondent's filed bylaw and anything in Part 1-17 of the Act or the Regulation. Therefore, the resolution approving the special levy was validly passed. Further, the court did not err in finding that the right of a strata corporation under s. 171 of the Act to sue on behalf of all owners created a regime separate from s. 117 of the Act dealing with the registration of a certificate of lien and an application to the Supreme Court for the sale of the strata lot belonging to a non-compliant owner. Once the resolution to impose the levy had passed, it was not necessary for another vote to be taken to authorize registration of the lien or the filing of a petition in Supreme Court pursuant to s. 177(1).

Statutes, Regulations and Rules Cited:

Strata Property Act, R.S.B.C. 1998, c. 43, ss. 108, 117, 171(2)

Strata Property Regulation BC Reg. 43/2000, s. 17.11

Condominium Act, R.S.B.C. 1996, c. 64, s. 26(2)

Counsel:

J. York: Appearing as agent for the Appellants

G.S. Hamilton: Counsel for the Respondent

The judgment of the Court was delivered by

¶ 1 **NEWBURY J.A.** (orally):— Mr. and Mrs. Krusoczki, represented by their son Mr. York, appeal an order of Madam Justice Bennett dismissing the Krusoczkis' appeal from an order of Master Brine entered on October 31, 2003 in favour of the respondents. The Master ordered the sale of the Krusoczkis' strata lot pursuant to s. 117 of the *Strata Property Act*, R.S.B.C. 1998, c. 43 (the "Act"). It states:

- 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.

¶ 2 In this case, the certificate of lien arose from a special levy imposed by the strata corporation pursuant to s. 108 of the *Act*. The levy was necessary to fund the cost of repairs to the envelope of the Owners' building and was in the total amount of \$998,000. The appellants' share of the levy, based on a unit entitlement calculation, was in excess of \$22,000. According to the facts found in the court below, the levy was approved unanimously by those voting at a special general meeting of the strata corporation in April 2003, in accordance with s. 108. The vote was by show of "cards". The owners defeated, however, a motion to sue any owner who failed to pay the levy. The levy was due and payable on June 1, 2003.

¶ 3 When the appellants failed to pay their share of the levy, the respondents filed the certificate of lien in the Land Titles Office against their unit. In September 2003, the respondents applied in the Supreme Court of British Columbia for an order for the sale of the appellants' strata lot pursuant to s. 117(3). No additional vote of the owners was taken at this time.

¶ 4 On October 31, 2003, the petition was heard by Master Brine, with Mr. York appearing for the appellants. Mr. York made various complaints, arguing *inter alia* that proper service of his parents had not been effected, that voting at the original meeting

should have been secret, and that the process was "inappropriate"; but he adduced no evidence, and ultimately, the Master granted the order for the sale of the unit.

¶ 5 In April 2004, the Krusoczki's appeal came on before Madam Justice Bennett, who issued her first reasons on April 22, [2004] B.C.J. No. 798, 2004 BCSC 534. At para. 14 of her reasons she set forth ten grounds which she had "distilled" from Mr. York's material and oral argument in support of the appeal. She noted that since Mr. York was a lay litigant, she had permitted him to file affidavit material that had not been before the Master, and that the rehearing was "in the form of review". Various grounds of appeal were dismissed as lacking merit and in my opinion no error has been shown on those points.

¶ 6 With respect to Mr. York's argument that the respondents had "no authority to sue", Bennett J. noted that Mr. York's argument was based on the requirement at s. 171(2) of the *Act* for a three-quarters vote at a special or annual general meeting "before the strata corporation sues under this section". Subsection 1 refers to suits brought by the strata corporation as representative of the owners (except those being sued) about any matter affecting the strata corporation, including the interpretation or application of the *Act*, regulations, bylaws, or rules, common property or common assets, the use or enjoyment of a strata lot, and "money owing, including money owing as a fine under the [*Act*] the regulations, the bylaws, or the rules".

¶ 7 The judge noted that in *Strata Plan VR1008 v. Oldaker* [2004] B.C.J. No. 74, 2004 BCSC 63, Mr. Justice Crawford held that s. 171(2) did not apply to proceedings taken by a strata corporation under s. 117, i.e., the registration of a certificate of lien against a strata lot and the petitioning of the Court for an order for sale. (Of course, the imposition of a special levy in the first place requires the approval of a three-quarter vote at an annual or special general meeting, pursuant to s. 108(2) and that approval was given in this case.) Relying on *Oldaker*, Bennett J. ruled that Mr. York's argument regarding "no authority to sue" failed. Implicitly, this also meant that the fact the owners had defeated a motion to sue any non-compliant owner was irrelevant to the validity of the petition and the order for sale under s. 117.

¶ 8 Mr. York also complained that there had been no secret ballot, presumably at the meeting held on or about March 31, 2003, pursuant to s. 108(2). At para. 29 of her reasons, Bennett J. stated that "there does not appear to be anything in the bylaws which requires a secret ballot, indeed the opposite is reflected. There is no merit to this ground of appeal." The appeal was dismissed.

¶ 9 On July 27, 2004, however, Bennett J. issued supplementary reasons for judgment after permitting Mr. York to make further submissions which he contended required further consideration by the Court. (He sought this privilege because he said he had not previously had copies of certain documents, including the bylaws and the *Oldaker* decision.) Mr. York's first substantive point related to the strata corporation's bylaws, in particular the voting procedures at general meetings. The bylaws of the subject strata corporation were "filed" in the Land Titles Office, at least by reference, as Doc. No. RF

92420. Bylaw 125(4) of the filed bylaws states that "if demanded, a poll must be taken in whatever manner the chair thinks proper." The bylaws are subject to the transitional provisions of the *Strata Property Act*, which came into effect on July 1, 2000, replacing the *Condominium Act*, R.S.B.C. 1996, c. 64. The *Strata Property Act* has scheduled to it a set of "Standard By-Laws", s. 27(7) of which requires that a secret ballot be held if requested by a voter. However, these bylaws are subject to a "transitional" provision, s. 17.11 of the *Strata Property Regulation* (BC Reg 43/2000). It states:

17.11(1) Except as provided in section 17.9 of this regulation, the Standard Bylaws do not apply to a strata corporation created under the *Condominium Act* until January 1, 2002, and on that date apply only to the extent set out in this section.

- (2) Subject to subsections (3) to (5), a strata corporation bylaw existing under the *Condominium Act* immediately before the coming into force of this section, including a bylaw under Part 5 of the *Condominium Act* or under a former Act which was deemed, by section 26 (2) of the *Condominium Act* or a similar section of a former Act, to be a bylaw of the strata corporation, continues to have effect despite any provision of the Act or this regulation.
- (3) On January 1, 2002,
 - (a) the Standard Bylaws are deemed to be the bylaws for all strata corporations created under the *Condominium Act*, except to the extent that conflicting bylaws are filed in the land title office, and
 - (b) any bylaws under Part 5 of the *Condominium Act* or under a former Act which were deemed, by section 26(2) of the *Condominium Act* or a similar section of a former Act, to be bylaws of the strata corporation cease to have effect.
- (4) Subject to subsection (5), if a strata corporation bylaw filed in the land title office conflicts with a Standard Bylaw, the filed bylaw prevails.
- (5) On January 1, 2002, a strata corporation bylaw filed in the land title office ceases to have effect to the extent that it conflicts with a provision in Parts 1 to 17 of the Act or this regulation.

[emphasis added.]

¶ 10 Paragraph 9 of Bennett J.'s supplementary reasons (indexed as [2004] B.C.J. No. 1605, 2004 BCSC 1045) seems to have been transcribed incompletely, but she concluded that the bylaws of the strata corporation were those created pursuant to the *Condominium Act*, that they were still in full force and effect except to the extent stated at s. 17.11(3)(a) of the Regulation quoted above, and that since they contained no requirement for a secret ballot, the special levy had been properly adopted.

¶ 11 In connection with Mr. York's argument based on s. 171 of the *Act*, Bennett J. set out ss. 171 and 172 and 112-117, and quoted briefly from *Oldaker, supra*, and from the decision of Cohen J. in *The Owners, Strata Plan LMS888 v. The City of Coquitlam* [2003] B.C.J. No. 1422, 2003 BCSC 941. At para. 27, she concluded there was no reason to depart from *Oldaker* and that therefore her original conclusion remained unchanged.

¶ 12 After dealing with other collateral complaints made by Mr. York, including one concerning Mr. Hamilton's providing a copy of the bylaws to the Court at its request, Bennett J. found Mr. York's remaining submissions not to be meritorious and again dismissed the appeal.

¶ 13 In this court, Mr. York not only filed a factum but handed to us his speaking notes for the hearing, which we took time to read before hearing submissions. Much of what appears in Mr. York's material is completely unwarranted and vexatious and does not warrant a response. Thus I will respond only to the arguments of law raised by the appeal, to which Mr. Hamilton correctly confined his submissions. I do not find it necessary to review these in any great detail. In my view, Madam Justice Bennett has not been shown to have erred in her conclusion that the effect of s. 17.11(4) of the *Strata Property Regulation* is that Bylaw 125(4) of the respondent's (filed) bylaws supersedes s. 27(7) of the "Standard" Bylaws. Under the bylaws, the chair of a general meeting may direct that the vote be taken in "whatever manner he thinks fit". In this case, the voting was by show of cards. No conflict has been shown between the filed bylaw and anything in Part 1-17 of the *Act* or the Regulation in my view. Thus the resolution approving the special levy was validly passed 31 March, 2003.

¶ 14 I also agree with Bennett J. (and Crawford J. in *Oldaker*) that the right of a strata corporation under s. 171 of the *Strata Property Act* to sue on behalf of the owners creates a separate regime from s. 117 of the *Act* dealing with the registration of a certificate of lien and an application to Supreme Court for the sale of the strata lot belonging to a non-compliant owner. Once the owners had passed, by a three-quarters majority of those present, the resolution to impose a levy on all strata lot owners, it was not necessary for another vote to be taken to authorize registration of the lien or the filing of a petition in Supreme Court pursuant to s. 177(1).

¶ 15 For the sake of completeness, I also note that I agree with Madam Justice Bennett on the various other points sought to be made by Mr. York regarding the general conduct of the strata corporation's board, of Master Brine, and of Mr. Hamilton.

¶ 16 I would dismiss the appeal, with costs to the respondents.

¶ 17 HALL J.A.:— I agree.

¶ 18 KIRKPATRICK J.A.:— I agree.

NEWBURY J.A.

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