

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW971 v.  
Daniels,*  
2009 BCSC 1235

Date: 20090910  
Docket: S092989  
Registry: Vancouver

Between:

**The Owners, Strata Plan NW971**

Petitioner/Applicant

And

**Bella Daniels, HSBC Bank Canada, Home Trust Company,  
Royal Bank of Canada, Coast Capital Savings Credit Union**

Respondents

Before: The Honourable Madam Justice Hyslop

## **Reasons for Judgment**

Counsel for the Petitioner:	V.F. Franco
Counsel for the Respondents:	G.I. Douvelos
Place and Date of Hearing:	Vancouver, B.C. August 20, 2009
Place and Date of Judgment:	Vancouver, B.C. September 10, 2009

[1] The petitioner, The Owners, Strata Plan NW971 ("Strata") seeks the relief as outlined in its motion, including the eventual sale of the respondent's, Bella Daniels, strata lots which are described as follows:

(a) #2 – 319 Highland Way, Port Moody, British Columbia, and legally described as:

PID: 001-607-731  
Strata Lot 103  
District Lot 470  
Group 1  
New Westminster District  
Strata Plan NW971  
("Strata Lot 103")

(b) #4 – 315 Highland Way, Port Moody, British Columbia, and legally described as:

PID: 001-607-871  
Strata Lot 114  
District Lot 470  
Group 1  
New Westminster District  
Strata Plan NW971  
("Strata Lot 114")

(c) #2 – 305 Afton Lane, Port Moody, British Columbia, and legally described as:

PID: 001-608-088  
Strata Lot 133  
District Lot 470  
Group 1  
New Westminster District  
Strata Plan NW971  
("Strata Lot 133")

(d) #1 – 305 Afton Lane, Port Moody, British Columbia, and legally described as:

PID: 001-608-096  
Strata Lot 134  
District Lot 470  
Group 1  
New Westminster District  
Strata Plan NW971  
("Strata Lot 134")

(collectively, the "Strata Lots")

[2] Included in the motion is another strata lot described as Lot 114, which the Strata is no longer seeking any relief or its sale; that strata lot has gone into foreclosure.

[3] In 2007, the Strata passed a special levy to be used for repairs. Ms. Daniels resisted paying the levy as she alleges that the resolution was improperly passed by the Strata.

[4] Should I determine the levy was improperly passed, then the amount charged against each lot shall be reduced by the amount charged by the Strata as it relates to the 2007 levy. There are strata fees and other charges owing for each strata lot; those amounts are not in dispute. The Strata seeks an immediate order for sale of the Strata Lots. Ms. Daniels seeks the sale be postponed for a period of six months.

#### **BACKGROUND**

[5] On April 16, 2007, the Strata held a special general meeting of the owners of the strata corporation ("first meeting"). The purpose of the first meeting was to pass a special resolution to assess each owner a special levy to conduct repairs and maintenance for the strata building or buildings. The total amount sought to be raised was \$390,000.00. In addition, the resolution dealt with other budgetary matters.

[6] The special resolution required three-quarters of those eligible voters present, or present by proxy at the first meeting to pass the resolution. A vote was held. The resolution failed to reach the necessary three-quarter vote threshold. In attendance at the first meeting was Dennis Howarth, a retired lawyer who was retained as a consultant by the Strata. Invoking *Robert's Rules of Order* ("*Robert's Rules*"), Mr. Howarth recommended, after the three-quarter threshold failed, the first meeting be adjourned. The first meeting was adjourned to April 23, 2007, to be held at the same time and place.

[7] The adjourned meeting was held on April 23, 2007 (the "second meeting"), and the special resolution passed by the required three-quarter vote threshold.

[8] Ms. Daniels, who was in attendance at both the first and second meeting, objected to the second meeting being held. The minutes for the second meeting record that after a vote to sustain the chair of the meeting, "The adjourned meeting was declared to be properly held."

[9] The levy was collected from the Strata and the repairs undertaken.

[10] The Strata had not formally adopted *Robert's Rules*. The *Strata Property Act*, S.B.C. 1998, c. 43 (the "SPA") and the bylaws are silent on the issue of adjourned meetings, except with one exception in the SPA. That exception relates to the annual or special general meetings and the obtaining of a quorum.

### ISSUES

[11] These facts raise the following issues:

- (a) whether the procedure taken at the meetings held in April of 2007, and specifically relying on *Robert's Rules*, the motion to reconsider and enter on the minutes (the "Impugned Motion"), invalidates the 2007 special levy; and
- (b) whether a judge of this court has inherent power to remedy the prejudice which the plaintiffs will suffer if the 2007 levy is found invalid.

### POSITIONS

[12] The Strata's position is that the first meeting was properly held. The Strata was entitled to invoke *Robert's Rules*, adjourn the first meeting and pass the resolution at the second meeting, despite its defeat at the first meeting.

[13] The Strata argue that if the special levy is held as invalid, the Strata is prejudiced. The Strata would have to issue refunds to those owners who have paid, which are all but two owners. Refunds would be issued to the current owners on title, some of whom were not the persons that would have paid the special levy

because they purchased their strata lot after the special levy was due. The Strata spent the funds.

[14] Ms. Daniels argues that the special levy of 2007 was improperly passed. She argues that s. 45 of the SPA requires the Strata to give two weeks' written notice of a special general meeting. Failure to give notice under s. 45 of the SPA does not invalidate the vote at the second meeting so long as the Strata made a "reasonable attempt to give the notice" in accordance with s. 47 of the SPA.

[15] Sections 45 and 47 of the SPA read as follows:

**Notice requirements for annual or special general meeting**

45 (1) The strata corporation must give at least 2 weeks' written notice of an annual or special general meeting to all of the following:

- (a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;
- (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification under section 60;
- (c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.

(2) A person who has a right to be notified under this section may, in writing, waive the right and may, in writing, revoke a waiver.

(3) The notice of the annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote or unanimous vote.

(4) If the meeting is an annual general meeting, the notice must include the budget and financial statement referred to in section 103.

(5) A vote at an annual or special general meeting may proceed despite the lack of notice as required by this section, if all persons entitled to receive notice waive, in writing, their right to notice.

(6) If 2 or more persons share one vote with respect to a strata lot, all of them must consent to the waiver of notice under subsection (5).

...

**Failure to give proper notice of meeting**

47 Failure to give proper notice of an annual or special general meeting to a person entitled to receive notice under section 45 does not invalidate a vote taken at the meeting as long as the strata corporation made a reasonable attempt to give the notice in accordance with that section.

[16] Ms. Daniels alleges that she will suffer prejudice as "she will [be] at the peril of a possible Conduct of Sale of her property" (paragraph 13 of Ms. Daniels' outline).

[17] Ms. Daniels requests that should I order the sale of her lots, it should not take place for a period of six months given the present housing market and her desire to sell strata lots herself.

## THE LAW

[18] Ms. Daniels relies on the strict construction of ss. 45 and 47 of the SPA. She does not dispute the resolution was properly placed before the owners at the first meeting. She acknowledges that notice of the first meeting was properly given.

[19] Ms. Daniels is correct that there is no evidence that the Strata made a reasonable attempt to give notice in accordance with s. 45 of the SPA.

[20] Ms. Daniels did, along with another owner, protest at the second meeting that the second meeting was improperly held.

[21] Ms. Daniels relies on the words of Mr. Justice Boyle in *453881 BC Ltd. v. The Owners, Strata Plan LMS508* (1994), 41 R.P.R. (2d) 318, 1994 CanLII 1412 (B.C.S.C.):

There appear to be no cases directly on the question of degree of strictness to be applied in carrying out the notice requirements of the Act. The Petitioners argue the very strict rules applying to municipal cases should be followed. The Respondents argue the less stringent corporate cases should set the precedent.

To accept something other than strict compliance with the requirement under the Act for specifying, with the meeting notice, the "purpose of the special resolution" would be to allow the circumstances of each case to determine its outcome and to set a precedent which would open the way in other instances for argument, dissension and litigation which could be avoided readily by scrupulous attention to the simple requirements of the definition.

[22] In *453881 BC Ltd. v. The Owners, Strata Plan LMS508*, the strata corporation passed a bylaw preventing the rental of units within the strata corporation. This bylaw was challenged by the petitioners. The bylaw required three-quarters of the

vote for the bylaw to be passed. There was dispute as to whether all of the votes had been properly counted in accordance with the then *Condominium Act*, the notice of the meeting did not properly set specifically the content of the special resolution and the wording of the bylaw offended sections of the *Condominium Act*. It is this latter disputed item which Mr. Justice Boyle found the bylaw to be *ultra vires*.

[23] In *453881 BC Ltd. v. The Owners, Strata Plan LMS508*, Mr. Justice Boyle specifically did not make any finding as to whether all of the votes were properly counted. He concluded in striking down the bylaw the respondent strata contravened sections of the *Condominium Act*.

[24] As a starting point, stratas are corporations. Consequently, stratas can go beyond those powers set out in the *SPA*. In particular, they have the power to determine the procedures for meeting to the extent they are not covered by the *SPA* (See: Bonnie S. Elster, ed. *British Columbia Strata Property Practice Manual*, loose-leaf (Vancouver Continuing Legal Education Society of British Columbia, 2008) at §6.38 [*B.C. Strata Property Practice Manual*]).

[25] Since stratas are corporations and there are no rules of order or meeting procedures in its bylaws or a standard text, the “common law applicable to corporate proceedings can be expected to govern”. (See: Bonnie S. Elster, ed. *British Columbia Strata Property Practice Manual*, *supra*).

[26] In *Lumbers v. Fretz*, [1928] 4 D.L.R. 269, Mr. Justice Wright of the Ontario Supreme Court concluded at p. 283:

My view is that meetings of shareholders are to be governed by the same rules as to quorum and procedure as apply to parliamentary and municipal bodies except where the statute or by-laws otherwise provide.

[27] *Robert's Rules* is a guide to parliamentary procedure so it would govern from this perspective.

[28] In *Corporate Meetings: Law and Procedure*, loose-leaf (Scarborough, Ontario: Thompson Reuters Canada Limited, 1995) [Nathan and Voore] suggest as a basic

principle as to shareholders' meetings, "they must be conducted fairly and reasonably."

[29] Parliamentary rules, as a compilation of custom and practise, provide the basis against which a court can judge the fairness and reasonableness of a particular procedure used in a meeting. This is not to say parliamentary rules are always appropriate in all circumstances of a shareholders' meeting. Reliance automatically on parliamentary rules may unfairly give advantage to certain individuals or groups of individuals "familiar with their technical niceties" [Nathan and Voore, 19-4 to 19-4.1] undermining full and fair discussion.

[30] In *Mueller, Re* (1986), 62 C.B.R. (N.S.) 194 (B.C.S.C), Mr. Justice Hinds was faced with an argument that *Robert's Rules* should govern a creditors' meeting to consider a proposal pursuant to the *Bankruptcy Act*, and concluded at p. 198:

*Robert's Rules of Order* is a recognized authority on the conduct of meetings but it is not necessarily determinative of the interpretation of a statute. The interpretation of s. 87(1) advanced by counsel for the trustee involves a narrow construction and meaning to be given to that section.

[31] In *Armstrong v. Clark et al*, 2002 BCSC 730, the issue before the court was whether the special resolution could be amended at the general meeting of the members of the society to provide for the removal of eleven directors of the society, rather than eight directors named in notice of the meeting of the society. Mr. Justice Scarth, in coming to his decision, stated that:

[26] The petitioners rely on an American text: *Robert's Rules of Order* (9th ed.) (1990), published by Scott Foresman, in which, at p. 92, it is stated:

With the possible exception of details of very minor importance, only business mentioned in the call of a special meeting can be transacted at such a meeting.

[27] Here, the "call" was to remove 8 specifically named directors and to elect an interim board.

[32] Mr. Justice Scarth concluded that the special resolution could not be amended as the members were misled by the notice as to the directors who were to



be removed. Mr. Justice Scarth considered *Robert's Rules*, concluding that rule could not be used to fix the flawed notice.

[33] In this case, the notice and the resolution as to the business to be conducted on April 16, 2007 are not at issue. Further, the resolution as to the business to be conducted did not change at the second meeting.

[34] An example of judicial consideration of fairness at a similar meeting as that of the Strata, occurred in *Pelech et al v. Ukrainian Mutual Benefit Ass'n of St. Nicholas of Canada*, [1940] 4 D.L.R. 342. The Ukrainian Mutual Benefit Association was an incorporated society in Manitoba under its *Companies Act*. The society maintained and administered life and disability insurance, old age pensions, illness and funeral benefits.

[35] The federal government notified them that the operation of these various benefits was not on a sound actuarial basis which required the association to either increase its dues or reduce its benefits. A resolution was passed to increase its dues. Mr. Pelech argued that the meeting was not properly called and that notice of the meeting was improper. He sought that the resolution increasing the dues be declared invalid. McPherson C.J.K.B., at p. 346, stated that the notice "did not state clearly enough the proposed business to be transacted" as it related to the increase in dues. Despite this, he found the increase in dues was valid. He addressed the importance of the change in dues to the society as follows:

[11] The change in those rates was not a mere formal or petty matter. The question effected directly the solvency of the society. If the evidence given on that point is to be accepted, and I do accept same, the license to continue in business would be revoked by the Dominion authorities if the dues were not raised or the benefits reduced. On the other hand, members of the society were directly affected by the question of their ability to pay increased dues and protect their previous investment. It was therefore of vital importance both to the society and its members, and the notice under which it was intended to act should have contained such information as would have brought the proposed increase directly to the attention of the members before they were called upon to vote upon same. I am also of the opinion that the officials as represented by the Supreme Council deliberately withheld such information because of the opposition which they feared was likely to develop if the true effect of the proposals became known.

[36] McPherson C.J.K.B. found at para. 14:

[14] The raising or lowering of the dues payable by the members was and is a matter of internal management within the control of the members. ...

[37] McPherson C.J.K.B. appears to be concerned with the fairness, reasonableness and appropriateness of the resolution when he concluded that he was not prepared to invalidate the resolution and stated at para. 16:

[16] Having reached the conclusion that the matter of the dues to be paid by the members was one of internal management; that there was no fraud involved on the part of the officials; that the question of the solvency of the society and its right to retain a license to carry on its business depends entirely upon the dues collected or the benefits paid; then the final decision of what action should be taken is one for the members to decide, and the Court should not interfere. ...

[38] This does not mean that “fairness or reasonableness” criteria are limited in subject matter or party. The procedure chosen should be fair and reasonable to the majority, minority and the strata itself. This allows the court to balance the prejudice suffered and expected by all the parties.

## DISCUSSION

[39] According to *Robert's Rules* at 322, the purpose of the motion to reconsider and enter on the minutes is

... to prevent a temporary majority from taking advantage of an unrepresentative attendance at a meeting to vote an action that is opposed by a majority of [the] membership.

In other words, the Impugned Motion is designed to protect the true majority from actions decided on by a minority who happen to enjoy a temporary majority. It applies, among others, to affirmative and negative votes on substantive motions (See *Robert's Rules* at 323).

[40] In s. 51 of the *SPA*, a strata is permitted to reconsider a resolution passed by a three-quarter vote where that resolution was passed by less than one-half of the strata corporation's votes. The resolution is reconsidered and entered on the

minutes. This section of the SPA addresses the concern raised in *Robert's Rules* albeit in a more limited context.

[41] Section 47 of the SPA illustrates and recognizes that a strata may at times err in procedure so long as the strata "made a reasonable attempt to give notice". I am aware that such attempt was not made by the Strata.

[42] The facts and the outcome in *453881 BC Ltd.* can be distinguished from the matter before me. In *453881 BC Ltd.*, the court found that the council did not have the power under the *Condominium Act* to pass the bylaw. That is not the situation here. Here, it is a matter of procedure. The Strata had the power to pass the 2007 levy.

[43] An analysis of the votes cast at the first and second meetings, resulting in the Impugned Motion, is necessary to consider fairness and reasonableness of the Impugned Motion. To pass the Impugned Motion, a majority of 75% is required. To defeat the motion, the minority must obtain between 25% and 50% of the votes.

[44] The number of votes cast shows that while only a few votes defeated the 2007 special levy, the first time the Strata voted on it at the first meeting, it still barely passed the three-quarter threshold the second time the Strata voted on it.

[45] The minutes of the first meeting states that there were 122 eligible voters to vote at the meeting out of 150 strata lots. Of the eligible voters, 95 were present in person or by proxy. This represents 78% of the eligible voters. To meet the three-quarter threshold, 72 votes had to be cast in favour of the resolution. When the vote was taken, 69 eligible voters cast their vote in favour of the resolution; 25 opposed and one vote was not cast or was not counted.

[46] The secretary of the Strata who voted against the resolution was able to reconsider the 2007 special levy and enter it on the minutes. Had she not taken this strategic step, the Strata would have been two votes short of the three-quarter threshold.

[47] The 24 voters truly in opposition to the 2007 special levy represented 20% of the eligible voters.

[48] At the second meeting of the 124 eligible-voters, 109 attended in person or by proxy, representing 89% of those present in person or by proxy. In order to meet the three-quarter threshold, the 2007 special resolution needed 82 votes cast in favour of the resolution which is précising the number it received. There were 24 votes cast against the resolution, representing 22% of the total number of votes cast. The minutes do not explain two votes that appear not to have voted. However, given the results this makes no difference.

[49] These numbers show, after the vote is taken at the first meeting, the minority was temporarily the majority, who prevented the passing of the 2007 special levy. This position did not change when the vote was taken at the second meeting, however, the majority obtained the bare minimum number of votes required to pass the resolution.

[50] Nonetheless, I find the Impugned Motion overall was fair in that the petitioner has and will suffer greater prejudice than the respondent if the levy is found invalid. The money collected under the 2007 special levy has been collected and spent. If the levy is found invalid, the Strata would have to determine how to raise the money to refund the monies collected under the levy, determine who should receive the refund, and then eventually have another vote for a new special levy. In the end, Ms. Daniels would be required to pay the 2007 special levy, but designated as a different special levy. The Strata would suffer significant prejudice if the 2007 special levy were invalidated.

[51] There is prejudice to the respondent. Permitting the 2007 special levy to stand undermines the requirement of the three-quarter vote threshold and undermines the ability of the respondent as a member of a minority to affect the outcome of the vote. The Strata used *Robert's Rules* in precisely the way that Nathan and Voore warned against; that is technical application of *Robert's Rules* to undermine democratic principles governing strata meetings.

[52] It cannot be overlooked that Ms. Daniels questions the validity of the 2007 special levy when the Strata commenced legal action to enforce and collect, not only the levy, but also to enforce and collect strata fees and other charges that remain unpaid by Ms. Daniels.

[53] The outcome might have been different had Ms. Daniels sought to have the Impugned Motion invalidated prior to the Strata collecting the levy or at the very least before embarking on the repairs and maintenance.

[54] The situation before me is similar to the situation in *Pelech*. Maintaining a sound actuarial basis was fundamental to the insurance association, as is the repairing and maintaining of the building vital to the strata corporation and its owners. The repair and maintenance of its building is within the owner's control.

[55] The court has inherent discretion to consider the prejudice to each party as part of the test of whether the procedure was fair, reasonable and appropriate in all the circumstances. The special 2007 levy stands.

#### **THE SALE OF MS. DANIELS' STRATA LOTS**

[56] Ms. Daniels seeks to postpone the sale of her lots for a period of six months. This is so that she can sell the lots which will assist her in paying the amounts due to the Strata.

[57] The current president of the strata council, Juanita Strasser, in her affidavit #1, analyzes the amounts owing for each strata lot that the Strata seeks to sell. These amounts consist not only of the 2007 special levy, but strata fees, interest on the levy and fees, but also fines and other charges incurred by Ms. Daniels. In the case of Strata Lot 133, there is an outstanding repair levy owing for the year 2003 whose initial payment was due December 1, 2003, and the balance payable over the next five years. Ms. Strasser's affidavit shows that Ms. Daniels has had difficulty in meeting her strata payments, bylaw fines and other charges for a long period of time. Ms. Daniels has been well aware of her position, as a demand letter was sent

to her in February of 2009, by registered mail, and a copy of it by regular pre-paid post.

[58] Ms. Daniels contacted the Strata's solicitors in response to the demand letters to advise she was not in a position to make the lump sum payment, offering to pay \$250.00 per month towards each of the Strata Lots. This proposal was not acceptable to the Strata as payment would take in excess of 27 months.

[59] The amounts owing by Ms. Daniels have been outstanding for quite some time. She has had considerable time to make other arrangements to satisfy the debt outstanding to the Strata. I am aware that these Strata Lots are presently listed with her son to sell.

[60] I order that the Strata Lots be immediately listed for sale. I also order that all of the relief set out in the Strata's motion, except to any relief involving Strata Lot 114.

#### **COSTS**

[61] Costs are awarded to the Strata at Scale B, Appendix B of the *Rules of Court*.

"H.C. Hyslop-J."

HYSLOP J.