COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***"The Owners", Strata Plan NW 499 v. Louis,***
2009 BCCA 54

Date: 20090212

Docket: CA036276

Between:

"The Owners", Strata Plan NW 499

Respondent

(Plaintiff)

And

Nancy Jamieson Kirk, Executrix of the Will of Patricia Vernon Louis, Deceased, and Reginald Timothy Vernon Louis and Roderick Valentine Louis

Appellants

(Defendants)

Before: The Honourable Mr. Justice Low
The Honourable Mr. Justice Frankel
The Honourable Madam Justice Neilson

Roderick Valentine Louis	Appellant, in person
S.M. Smith	Counsel for the Respondent
Place and Date of Hearing:	Vancouver, British Columbia 17 November 2008
Place and Date of Judgment:	Vancouver, British Columbia 12 February 2009

Written Reasons by:
The Honourable Mr. Justice Low

Concurred in by:
The Honourable Mr. Justice Frankel
The Honourable Madam Justice Neilson

Reasons for Judgment of the Honourable Mr. Justice Low:

[1] Roderick Valentine Louis resides in a strata title unit previously owned by his mother who died in 1999. The respondent strata corporation brought a petition seeking a declaration that Mr. Louis is not entitled to live in the unit because of an age-restriction bylaw passed by the corporation in 2002. Mr. Louis appeals an order made by a chambers judge that declares him to be in breach of the age-restriction bylaw and orders that he vacate the premises within sixty days. There has been a stay of the order pending determination of this appeal. The reasons of the chambers judge are indexed as: 2008 BCSC 759.

[2] The other two respondents named in the petition are Mr. Louis' brother and the executrix of their mother's estate. Neither of them appeared at the hearing of the petition and neither took any part in this appeal. It appears that the executrix has fully administered the estate and has no interest in the matter. The brother has shown no objection to Mr. Louis living in the unit.

[3] Mr. Louis says the chambers judge erred in two respects: (1) in finding that the age-restriction bylaw was validly passed by the respondent; and (2) in finding that he was not residing in the unit when the bylaw was passed and therefore was not protected by a statutory exemption to it.

[4] In my opinion, Mr. Louis should succeed on the second point.

[5] The strata complex was built in White Rock, B. C., in 1976 and the respondent strata corporation came into being. The complex consists of 17 units. It was subject to the ***Condominium Act***, R.S.B.C. 1996, c. 64 (repealed) until the ***Strata Property Act***, S.B.C. 1998, c. 43 ("the ***Act***") came into effect. The ***Act*** provided a set of standard bylaws which, unless amended prior to 1 January 2002, applied to all strata corporations as of that date. Of course, a strata corporation could amend the standard bylaws after that date.

[6] By a notice dated 20 December 2001 and signed by Nova Seaby, the chair of the strata council, a special general meeting was called for 7 January 2002 "in order to finalize the revised by-laws, a copy of which are attached". By this date, the standard bylaws had become the bylaws of the respondent. They do not include an age-restriction provision.

[7] The bylaws attached to the notice of the special general meeting were stated to be for Strata Plan N. W. 499. Bylaw 2 is headed "AGE RESTRICTION" and reads: "N. W. 499 is an age dedicated building. All residents must be the age of 55+ over, except as a casual visitor." The building residents are retired people who meet the age restriction.

[8] There is affidavit evidence about the special general meeting that was held on 7 January 2002. Mr. Louis attended. His affidavits give little evidence about what transpired at the meeting but he did swear that, as suggested by the minutes reproduced below, the owners at the meeting were not asked to vote for or against the bylaw package. On the whole of the evidence, it is difficult to dispute this assertion of fact. However, as the minutes also show, there was a vote on the age-restriction bylaw.

[9] One owner, Fred Frost, a member of the strata council at the time, simply swears that "the owners within the strata corporation passed a new set of bylaws" at the meeting. Another owner and council member, Lillian Gogel, described the meeting in her affidavit as follows:

4. I was in attendance at the Special General Meeting held January 7, 2002. As I recall, the purpose of that meeting was to give final approval to a new bylaw package. The package had been discussed

amongst the owners (both formally and informally) and as such the special general meeting was more of a formality than anything else. There was discussion amongst the owners in attendance about some of the bylaws, but most were not contentious thus they were not discussed. It was clear to me that the vote was for approval of the whole bylaw package. It was also evident from the discussion that the owners present were in agreement with the package.

[10] In their entirety, the minutes of the special meeting read:

Meeting was called to order at 7: P. M. by Nova Seaby, chair of the Strata Council.

From a total of 17 votes, one was by proxy, suite 201, Rita Hunt absentee owner. Three owners absent without proxies, Suite 102, Wendy Campbell, Suite 104, Arleen Sarsons, Suite 302, Gloria Livingston. One owner Suite 206, Rodrick Louis arrived after meeting was called to order.

Lillian Gogel made the motion to discuss the by laws that were

changed, after going to the Condominium Home Owners Association

office for their perusal and approval. Al Zufelt seconded the motion.

Discussed # 3 - Occupancy Restriction - The Strata lot shall be occupied as a single family residence, by no more than two (2) adults per lot, except with special permission of Strata Council. Carried by 13 votes.

Discussed # 2 - Age Restriction - N. W. 499 is an age dedicated building. All residents must be the age of 55+ over, except as a casual visitor. Carried by 13 votes.

Discussed # 5 (2) - Where an owner leases a strata lot in contra- vention of by-law 5 (1) the owner shall be subject to a fine of $500.00. Carried 11 for, 2 against.

Discussed # 8 (7) - No flammable materials are to be stored in lockers and/or enclosed common areas, or as restricted by the Fire Marshall of White Rock. Carried by 13 votes.

Nova Seaby stressed that the by-laws were to be registered at the Land Titles office in New Westminster, Cost $20.00 to make changes, do you have any further questions.

Discussed # 30 (5) - Voting - Motion made by June June Ellis that item 5 be changed to original wording, Seconded by Bernice Renaud. Wording to read: Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter. Carried by 13 votes.

Further items discussed: Change the number of members on council, This to be further discussed at annual general meeting in March.

Thank you by Lindsay Matthews, to Nova Seaby and Lil Gogel for work done in preparing the By-Laws.

Thank you by Lil Gogel, to Wendy Campbell for the work she did in making the changes, printing and photocopies.

Motion by Lil Gogel to adjourn meeting, Seconded by Audrey Stech.

[11] It appears from the minutes that Mr. Louis was treated as an owner but it is not clear whether he was given a vote. At the time, his mother's estate had been probated and her executor had provided Mr. Louis with a land property transfer as to a half interest but it appears that Mr. Louis has never registered it. The other owner is his brother. The property continues to be registered in the name of the brother as to a half interest and in the name of the executor as to the other half interest. Section 1 of the ***Act*** defines "owner" as including "a person shown in the register of a land title office as the owner of a freehold estate in a strata lot". Technically, therefore, although he is a legal owner, Mr. Louis is not an owner under the ***Act***. He is an unregistered legal owner. However, it has not been suggested that he thereby lacks status to challenge the bylaws. He is a person affected by the age-restriction bylaw.

[12] As can be seen from the minutes, five of the bylaws, including the age-restriction bylaw, went to a vote. However, there is no record of the bylaws as a whole (33 in number) being put to a formal vote. It is difficult to say, therefore, that the owners passed the bylaw package at the meeting or otherwise.

[13] A week after the special meeting, Nova Seaby deposited the bylaws with the Registrar of Land Titles as required by the ***Act***.

[14] Section 35(1)(a) of the ***Act*** reads (with emphasis added): "The strata corporation must prepare all of the following records: (a) minutes of annual and special general meetings and council meetings, including the results of any votes". It seems to be clear from the whole of the evidence that this meeting was not conducted in a businesslike manner. It cannot be assumed that there was a formal vote on the bylaws that was not recorded in the minutes.

[15] The affidavit evidence is sketchy and suggests that there was, at most, some sort of consensus among the owners approving the bylaw package, not necessarily at the meeting but during informal discussions prior to the meeting.

[16] The chambers judge found that the respondent validly passed the proposed new bylaws. He said this:

[27] A final issue with respect to whether the bylaws were properly passed is that the minutes of the meeting refer to the votes taken with respect to five specific bylaws but do not record a vote with respect to the bylaws as a whole. I conclude, from the evidence, that the owners who were present discussed and voted on five specific bylaws that were somewhat contentious but clearly understood that the whole bylaw package was being presented for approval. In my view, the minutes of the meeting, when read as a whole together with the notice of the meeting, reflect that the required majority of 3/4 or more of the owners intended to and did adopt the new bylaws as a whole even though no formal vote was apparently taken on the package. I think it is important to recognize that the owners are not lawyers and did not have the benefit of legal advice at the meeting with respect to the formalities.

[17] I disagree with this conclusion. It seems to me that there has to be a minimum compliance with the requirements of the ***Act*** before it can be said that a bylaw of a strata corporation is valid and is binding on those affected by it. There is really no evidence here that the owners voted on the bylaw package and passed it in its entirety.

[18] The above conclusion, however, does not get Mr. Louis very far because, as the chambers judge also found, the age-restriction bylaw was voted on and passed at the meeting. There is no basis for

interfering with this finding. The owners at the meeting voted on the specific bylaw and passed it by the required majority as duly noted in the minutes.

[19] Mr. Louis raised other issues with respect to the form and timing of the notice of the special meeting. There is no merit to the submissions he made in this regard.

[20] I turn now to the residency issue.

[21] Section 123(2) of the ***Act*** reads:

A bylaw that restricts the age of persons who may reside in a strata lot does not apply to a person who resides in the strata lot at the time the bylaw is passed and who continues to reside there after the bylaw is passed.

[22] Mr. Louis admits that he is not yet fifty years of age. But he contends that he was residing in the unit as of January 2002 when the bylaw was passed.

[23] The chambers judge found that Mr. Louis was not a resident of the building as of January 2002. He said this:

[37] The *Strata Property Act* does not provide a definition for the word "reside". The 2007 *Shorter Oxford Dictionary of English* defines "resides" as: "dwell permanently or for a considerable time; have one's regular home *in* or *at* a particular place." In my view, that definition accords with the intention of s. 123(2). A person who has established a permanent home in a strata lot that is not subject to an age restriction ought not to be dispossessed of that residence because a bylaw containing an age restriction is subsequently passed by the strata corporation.

[38] I am satisfied that Unit #206 was not Mr. Louis' permanent home when the bylaw in question was passed. He did not reside there within the meaning that I would give to s. 123(1). It was, at best, a place that he occasionally occupied. Accordingly, I conclude that the bylaw is enforceable against him and that he is in breach of that bylaw.

[24] In my opinion, this reasoning puts too narrow an interpretation on the word "reside" and on the word "resident".

[25] In *Stroud's Judicial Dictionary of Words and Phrases*, 5th ed., Vol. 4, commencing at p. 2259, there are references to a large number of cases that attempt to define these terms in the context of statutes, contracts, wills and other documents. The first three references demonstrate both the difficulty in defining the terms and the need to examine the context in which they are used:

RESIDE; RESIDENCE; RESIDENT. (1) "Residence," "signifies a man's abode or continuance in a place" (Cowel, *Resiance*).

(2) "What is the meaning of the word 'resides'? I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats drinks and sleeps, or where his family or his servants eat drink and sleep" (*per* Bayley J., *R. v. North Curry*, 4 B. & C. 959). "A man's residence is where he habitually sleeps" (*per* Blackburn J., *Oldham*, 1 O'M. & H. 158, citing *R. v. Norwood*, L.R. 2 Q.B. 457; but see *Walcot v. Botfield*, 2 Eq. Rep. 758, *infra*).

(3) "'Residence' has a variety of meanings according to the statute (or document) in which it is used" (*per* Erle C.J., *Naef v. Mutter*, 31 L.J.C.P. 359). It is an "ambiguous word" and may receive a different meaning according to the position in which it is found (*per* Cotton L.J., *Re Bowie, ex p. Breull*, 16 Ch. D. 484).

[26] In modern times it is not uncommon for people to have more than one residence. They may have a house that is their primary residence plus a waterside summer place or a condo in a warmer climate, the latter being places to which they retreat for rest or recreation for one or more periods of time per year, however lengthy or brief. I do not think it would be disputed that each such place is a residence of the owner or that the owner is resident in each place. In the context of the ***Act***, it cannot have been the intention of the Legislature that a person who owns one condominium unit in Vancouver and another in Kelowna and who spends six months of the year in each is resident in neither.

[27] This is not necessarily a modern concept. In *Words and Phrases Legally Defined*, 3rd Ed., Vol. 4, the discussion of "reside-residence" at p. 75 makes reference to ***Attorney-General v. Coote*** (1817) 4 Price 183 at 188, in which Wood B. said this: "It is no uncommon thing for a gentleman to have two permanent residences at the same time, in either of which he may establish his abode at any period, and for any length of time".

[28] The scope of these terms is further illustrated by the following passage from the judgment of Newbury J.A. in ***Kamloops (City) v. Northland Properties Ltd.***, 2000 BCCA 344, 76 B.C.L.R. (3d) 63:

[17] In my view, no hard and fast line in terms only of length of stay can be drawn as a matter of law. A traveller or tourist may stay in a hotel for a few weeks without being said to "reside" there, just as a person may "reside" in his or her own house for a short period and then find it necessary for some reason to stay elsewhere for an extended period. As the cases decided under the *Income Tax Act* concerning the phrase "ordinarily resident in Canada" make clear, many factors, in addition to the length of stay, are involved in determining "residence" — whether one lives out of a suitcase or brings all one's possessions to the unit; whether one establishes roots and connections in the local community or remains only a sojourner; whether one is accompanied by family and is employed permanently or semi-permanently in the area; location of bank accounts and other records; etc.: see *Thomson v. Canada (M.N.R.)* [1946] S.C.R. 209.

[29] I agree with the chambers judge that there is an element of permanency to the meaning of the words under consideration. But for a person to reside at a place does not require the place to be that person's exclusive or even primary abode. Simply because Mr. Louis only "occasionally occupied" the unit of which he was a part owner does not mean that he was not a resident of that unit under the bylaw or did not reside there under s. 123(2) of the ***Act***. It is necessary to consider the whole of the evidence to determine the issue.

[30] In an attempt to prove that, prior to the special general meeting in January 2002, Mr. Louis was not resident in the unit, some of the other owners swore affidavits about their understanding of the frequency with which Mr. Louis had stayed in the unit.

[31] Fred Rost swore that over the seven-year period from the death of Mr. Louis' mother to the fall of 2006, unit 206 "was largely unoccupied". He said that Mr. Louis "would come and stay ... for a couple of days at a time". He was aware of this because he would see Mr. Louis in the building or would receive reports from other residents. He said that in the fall of 2006, Mr. Louis began to occupy the unit "on a permanent basis".

[32] Another owner and strata council member, Roy Catton, gave the following affidavit evidence:

Being that our building is relatively small it did not take me too long to learn who people were. I learned that Roderick Louis was one of two sons of Patricia Louis who used to live in Unit #206. Roderick would come to the building on occasion and check on Unit #206. He would also attend the general meetings of the owners (which were once or twice per year). When I moved into the building he was not residing in Unit #206. He did not begin to reside in Unit #206 until November or December of 2006. I am certain of this date because there has been a dramatic increase in the number of incidents of bothersome behaviour on the part of Roderick Louis. Mr. Louis has always been confrontational with other residents. He frequently sleeps in the common room and the hallways despite my repeated requests that he not do so. As such, I now check the common room on a nightly basis. This is something that I never did before the end of 2006 because there was no need to do so.

[33] Mr. Catton also exhibited to his affidavit a letter written by Mr. Louis to the council, dated 23 June 2003, in which Mr. Louis expressed concern about the need for some fence painting on the property and offered to do the painting himself for free. The letter contains the bare statement: "I am not at the apartment much". There is no explanation of the meaning of that sentence as to the frequency of his use of the unit or the period of time to which he was referring.

[34] The chambers judge mentioned the affidavit of another owner, Ms. Campbell, who stated that, prior to 2007, she saw Mr. Louis around the building only once or twice a month. This evidence does not go very far to determine how frequently Mr. Louis was actually at the suite, how long he stayed each time, or what use he was making of the premises.

[35] Mr. Louis' mother died in December 1999. The critical time span is the 25-month period from then to the date of the passage of the age-restriction bylaw by the strata owners.

[36] Mr. Louis' evidence is that he had two residences after his mother died. He is a person with personal mental health difficulties and also is an activist in the community with respect to mental health issues, hence his connection to the Riverview facility. In one of his affidavits, in response to the evidence of complaints about his misuse of the recreation room, he said this:

Since about the year 2000, I've used the recreation room frequently whenever I've been residing in the building (I did not live at 1390 Martin Street as my primary residence until about April-2006. Previous to that date I was dividing my time between Riverview hospital and 1390 Martin Street, White Rock.)

He added that he "always attempted to keep a low profile when moving about the building".

[37] Mr. Louis also swore that from 2000 he paid the monthly strata fees and other expenses related to the unit. He went on at some length to describe the administration of his mother's estate and how some expenses were paid out of the estate bank account after he had put funds into the account to cover them. These assertions are backed up by banking documents and there is no evidence to refute them. Although it might be said that the payment of these expenses is also an incident of ownership, it is Mr. Louis who has been paying them, not his brother who is the other legal owner. They are expenses that one would expect to be made by the owner who is enjoying the use of the suite as an abode.

[38] In his second affidavit (sworn on 17 April 2008), in describing his relationship with his brother concerning their mother's estate, Mr. Louis stated that he subsists on $900 per month and that "for most of the last 9 years" he has paid "for two residences ... one at Riverview where I had to pay monthly rent

and one at #206 ...". Riverview is a mental health facility and, although Mr. Louis apparently paid rent for some sort of accommodation there, the nature of the facility suggests that the primary purpose of residency there would be treatment. Such residency does not appear to have the permanence of residency in a self-owned strata unit.

[39] Although Mr. Louis might have presented his evidence about residency in a clearer and more detailed manner, it is apparent from the evidence as a whole that since the death of his mother he has assumed responsibility for her strata unit and has treated it as a secondary abode. More recently it became his primary abode.

[40] The evidence of the owners does not refute this conclusion. They are unable to accurately quantify the attendances of Mr. Louis at the unit and are unable to give evidence as to his purpose in being there. It is apparent from all the evidence that Mr. Louis, during the critical period, was not just a casual visitor or a sojourner. He resided there on a regular and not infrequent basis up to January 2002. The suite was a permanent second residence and therefore he has to be considered a resident when the bylaw was passed and under s. 123(2) of the ***Act***. He is entitled to the benefit of the exemption to the bylaw granted by that section.

[41] I would allow the appeal, set aside the order and dismiss the petition.

"The Honourable Mr. Justice Low"

I agree:

"The Honourable Mr. Justice Frankel"

I agree:

"The Honourable Madam Justice Neilson"