

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan VR19 v.
Collins et al,*
2004 BCSC 1743

Date: 20041231
Docket: L041225
Registry: Vancouver

Between:

The Owners, Strata Plan VR19

Petitioner

And

Rebecca Collins and Earl Oldham

Respondents

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Counsel for petitioner

G.S. Hamilton

Counsel for respondents

P.A. Williams

Date and Place of Hearing:

December 2, 2004
Vancouver, B.C.

[1] This petition is brought by The Owners, Strata Plan VR19 ("the Strata Corporation"), pursuant to ss. 171 and 173 of the **Strata Property Act**, S.B.C. 1998, c. 43 ("the Act"), for a declaration that the respondents' installation of laminate flooring in their strata lot ("SL 22") is in contravention of the bylaws of the Strata Corporation, and an order to compel the removal of the laminate flooring.

I. BACKGROUND

[2] The Strata Corporation comprises the owners of 26 residential strata lots at 2710 Lonsdale Avenue, North Vancouver, known as "The Lonsdale". The Lonsdale is a three-storey apartment-style complex.

[3] At a general meeting held on December 13, 2001, the Strata Corporation adopted a bylaw ("the Flooring Bylaw") to control the use of hard flooring materials in strata lots located on the second and third floors of the building. The Flooring Bylaw reads:

5(3) All floors of strata lots on the second and third floors must have wall to wall carpeting, with the exception of kitchens and bathrooms and the first five feet of an entry hallway.

[4] The purpose of the Bylaw was to reduce the noise disturbances caused by hard flooring installations for strata

lots directly below hard flooring. Through consultation with experts and advisors, the petitioner and a three-fourths majority of resident owners concluded that hard flooring created unacceptable noise transference between strata lots and an unfair situation for unit owners on lower levels.

[5] Before purchasing SL 22, the respondents acknowledge receiving the Strata Corporation's bylaws but state that the page referencing the Flooring Bylaw was missing. The listing realtor, Mr. Don Homer, deposed that he provided the respondents' realtor with a "buyer's package" which included a complete set of bylaws for the Lonsdale. At no time during their inspections of SL 22 did the respondents ask the Strata Council whether laminate flooring was permitted at the Lonsdale. The respondents did not search the Land Title Office to obtain the registered bylaws of the Lonsdale before making their offer.

[6] The respondents purchased SL 22 through a court order pronounced September 23, 2003. After the purchase, the respondents installed laminate flooring in SL 22.

[7] Commencement of this petition to enforce the Flooring Bylaw was approved by a resolution of the strata ownership with the required three-fourths majority on January 15, 2004.

However, before doing so, the Strata Council did not provide the respondents with the opportunity of a hearing.

II. DISCUSSION

[8] The Bylaws of the Strata Corporation were enacted pursuant to s. 119 of the Act, which states:

119(1) The strata corporation must have bylaws;

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

[9] It is within the rights of the Strata Corporation to pass and enforce any bylaw that it sees fit, as long as that bylaw does not contravene the Act, the *Human Rights Code*, or any other enactment or law (s. 121 of the Act). Although there are some exceptions and limits as to what type of bylaws a Strata Corporation may enact (see ss. 122, 123, and 141 of the Act), the Flooring Bylaw does not fit within any of those exceptions.

[10] The respondents concede that it is within the power of the Strata Corporation to prohibit installation of wood flooring in individual units. The point of contention between the parties is the enforceability of the Flooring Bylaw.

[11] In order to enforce a bylaw, it must be shown that the bylaw has been contravened. The Flooring Bylaw in the present case simply states that certain flooring is required in the strata lots on the second and third stories. A contravention of the Flooring Bylaw does not *only* result upon noise emanating from a strata lot. Rather, the simple fact that the flooring in SL 22 is not in accordance with the Flooring Bylaw is a plain and obvious contravention of that bylaw. Thus, since the Flooring Bylaw has been contravened, the Strata Corporation is entitled to enforce it.

[12] Under s. 129(1) of the Act, the Strata Corporation is entitled to do certain things in order to enforce a bylaw:

129(1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

- (a) impose a fine under section 130;
- (b) remedy a contravention under section 133;
- (c) deny access to a recreational facility under section 134.

[13] In accordance with s. 129(1)(b), the Strata Corporation is authorized to remedy a contravention under s. 133 of the Act, which provides:

133(1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

(a) doing work on or to a strata lot, the common property or common assets

...

[14] Thus, under s. 133(1)(a), the Strata Corporation is entitled to remove the laminate flooring.

[15] However, the respondents claim that the Flooring Bylaw should not be enforced against them because there have been no complaints from any resident with respect to noise. This is a relevant fact in regards to the application of s. 135 of the Act which states:

135(1) The strata corporation must not

(a) impose a fine against a person,

(b) require a person to pay the costs of remedying a contravention, or

(c) deny a person the use of a recreational facility

for a contravention of a bylaw or rule unless the strata corporation has

(d) received a complaint about the contravention,

(e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

(f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

[16] Whether s. 135(1)(d) refers to a complaint about the contravention itself, i.e. hard flooring installation, or a

complaint about noise emanating from the strata lot, is not clear. If it is a reference to a complaint about the noise level, then the Strata Corporation has to wait for there to be a complaint before they can require the respondents to pay the costs of remedying the contravention. Based on the evidence in the present case, there have been no complaints about the noise level emanating from SL 22. However, if the section refers to a complaint about the contravention itself, then the Strata Council can be taken to have made the complaint themselves, and thus the Strata Corporation's actions would be in accordance with section 135(1)(d).

[17] Nonetheless, the respondents were denied a hearing before the Strata Council, which is a contravention of s. 135(1)(e). This contravention does not prevent the Strata Corporation from remedying the Bylaw contravention, rather, it prevents them from requiring the respondents to pay the costs of remedying the Bylaw contravention. I would take "pay the costs of remedying a contravention" in this context to mean legal costs of bringing this petition. However, since the respondents blatantly contravened the Flooring Bylaw when they either knew of the Flooring Bylaw or should have made an effort to read the Strata Corporation bylaws or made a diligent enquiry as to whether laminate flooring was permitted

in SL 22, they should be required to bear the financial burden of replacing the hard flooring with carpeting.

III. CONCLUSION

[18] Under s. 173 of the Act, I direct that the respondents stop contravening the Flooring Bylaw. They must remove the laminate flooring and replace it with carpet in accordance with the Bylaw. They will have until March 31, 2005, to do so. As the respondents blatantly contravened the Bylaw, they must also bear the financial cost of replacing the laminate flooring, in the prescribed areas, with carpeting; however, in accordance with s. 135 of the Act, the Strata Corporation cannot require that the respondents pay for the costs of this action to enforce the Flooring Bylaw. The Strata Corporation will bear its own costs of this petition, as will the respondents.

"T.J. Melnick, J."
The Honourable Mr. Justice T.J. Melnick