Court of Queen's Bench of Alberta

Citation: Owner: Condominium Plan No. 822 2909 v. Li, 2007 ABQB 693

Date: 20071114
Docket: 0703 02906
Registry: Edmonton

2007 ABQB 693 (CanLII)

Between:

The Owner: Condominium Plan No. 822 2909

Applicant

\- and -

Peter M. P. Li

Respondent

> **Corrected judgment:** A corrigendum was issued on November 20, 2007; the corrections have been made to the text and the corrigendum is appended to this judgment.

Memorandum of Decision
of
W. Breitkreuz, Master in Chambers

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[1] This is an application by the plaintiff for judgment for $5,000.00 being the amount of the deductible in the plaintiff's insurance policy, for loss incurred due to water damage caused by a bullet from an unknown source puncturing a waterline in the unit adjoining Unit 205 (one of the defendant's units) causing water damage throughout the second floor, including the condominium common property. Whether or not the bullet came from Unit 205 or from outdoors, and through the wall of Unit 205 into the adjoining unit is unknown.

[2] When the plaintiff demanded reimbursement of the $5,000.00 deductible, the defendant offered to pay the $5,000.00 less the amount of $2,656.47, the cost incurred by him to replace the carpet in his unit number 205. The offer was declined.

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[3] There are several theories advanced as to the source of the bullet that caused the damage, but in my opinion none is more preferable than the other. In those circumstances the only way in law Mr. Li could be responsible for the damage is under the doctrine of strict liability. I am not satisfied from any of the authorities I was referred to that this case warrants the application of strict liability. There is undoubtedly little doubt that the facts don't fit the rule in *Rylands v. Fletcher*. Failing that, there would have to be either legislation or condominium by-laws that would impose strict liability in circumstances like this.

[4] The case of *Three Sisters Place Corporation v. Dover*, (8901-12889) (Calgary, 1990) was provided to show that the reasoning in that case can be interpreted as requiring unit holders to provide insurance for the deductible. The paragraph relied on is the following:

> In this case, the Board chose to obtain water damage insurance with a deductible of $5,000. It is under that water damage insurance that the insurer paid out. If in fact there was a loss of a different nature that was insured, then the plaintiff as one of the insured under the policy should bring proceedings against the insurer, not against the Board. The Board is not required to insure for anything other than fire and if it chooses to insure for other perils and to obtain coverage subject to deductible for those perils, the Board does not become an insurer to the extent of the deductible if a loss should occur. That is essentially what is being sought in this case, that is to make the Board an insurer for the deductible, for the water damage and that simply does not follow from the bylaws of the corporation.

[5] Presumably the theory is that if the board doesn't become an insurer for the deductible. Then by the process of some logic which I fail to grasp the unit owner becomes an insurer for the deductible. In other words the owner is strictly liable for damage that can be traced to his unit.

[6] I think the reasoning in *Dover* is just as susceptible to the interpretation that usual rules of negligence apply, barring of course the intervention of condominium bylaws.

[7] Another case I was provided that bears comment is *Reilly v. Freedom Gardens Condominium Association*, 2001 ABQB 1002. In that case there was a waterline break caused by the plaintiff Reilly's dog chewing on the waterline and causing water damages to his premises. The plaintiff paid the deductible portion of the cost of repairs and sued the condominium corporation to recover it. Mr. Reilly was unsuccessful in Provincial Court but was successful on Appeal.

[8] It appears that the case was decided mainly on the basis of the doctrine of *scienter*. Mr. Justice Lee concluded that the doctrine of *scienter* is not relevant to the facts of the case and

found that the corporation must reimburse the unit owner for the deductible amount he had paid the repairer. The lower Court had found there was no negligence on the part of the unit owner, and without the assistance of the doctrine of *scienter*, the unit holder could not be responsible for the deductible.

[9] I find it difficult to distinguish the law as it applies to this case from the decision in the *Reilly* case. I conclude that the unit owner is not liable to the condominium board for the deductible portion of the loss.

[10] The other issue is far more controversial. It deals with the acrimonious circumstances that have developed between the condominium board and the defendant. In its originating notice of motion the applicant requested an order requiring the respondent to deliver up vacant possession of all units owned by the respondent and evict the tenants from those units, but has since abandoned that position and now seeks some order requesting the respondent to comply with the board's request in his selection of tenants.

[11] There is Alberta Court of Queen's Bench authority to the effect that a Master in Chambers has the jurisdiction to grant an eviction order against a unit holder; *Condominium Plan No. 022 1347 v. N.Y.* 2003 ABQB 790. Mr. Justice Lee upheld a Master's decision that granted an order of vacant possession against a unit holder who had shown flagrant disregard for the rules of the condominium corporation. It would appear to me to be an *a fortiori* situation to require a unit holder to insure that tenants he leases the property to are of a social character generally that fit within the class of this high-end condominium complex, and that those tenants comply with the rules of the condominium corporation.

[12] I am satisfied from the evidence as a whole that the respondent has not exercised due diligence in his selection of tenants. The incidence of notice violations and smoke violations and police intervention with occupants of the respondent's premises far exceeds the average of such incidents with other unit holders that are tenant-occupied.

[13] I think a compliance order with the following terms would be appropriate in these circumstances:

1. That all tenant applications for the units owned by the respondent be forwarded to the condominium board for approval or rejection, within the board's reasonable discretion;

2. That the respondent provide all tenants who are approved by the board with the condominium bylaws;

3. That the respondent will immediately comply with any written request by the board to evict any of his tenants for any cause deemed by the board to be a violation of the condominium bylaws, at the respondent's expense;

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4. If all the terms of this order have been complied with, and if it was unnecessary to invoke the terms of the immediately proceeding clause, by December 31, 2009, then this compliance order will expire.

5. Either party may apply to vary the terms of this order, including the immediately proceeding expiry term, on 10 clear days notice to the other side.

[14] With regard to costs, the applicant was unsuccessful in the first segment of the application, and the respondent was unsuccessful in the second segment of the application, and in those circumstances I believe it is appropriate that each party should bear its own costs.

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Heard on the 18th day of September, 2007.

Dated at the City of Edmonton, Alberta this 14th day of November, 2007.

W. Breitkreuz
M.C.C.Q.B.A.

Appearances:

Sandeep Dhir
Field LLP
for the Applicant

Donald Savich
Savich Law Office
for the Respondent

Corrigendum of the Memorandum of Decision
of
W. Breitkreuz, Master in Chambers

The citation line is changed to read Owner: Condominium Plan No. 822 2909 v. Li, 2007 ABQB 693 instead of Condominium Plan No. 822 2909 v. Li, 2007 ABQB 693.

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