

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***The Owners, Strata Plan NW 499 v. Kirk,***
2008 BCSC 759

Date: 20080613
Docket: S108583
Registry: New Westminster

Between:

The Owners, Strata Plan NW 499

Petitioner

And

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

Respondents

Before: The Honourable Mr. Justice Joyce

Reasons for Judgment

Counsel for the petitioner

S.M. Smith

The Respondent Roderick Valentine Louis appearing
in person
No one appearing for the other respondents

Date and Place of Trial/Hearing:

April 30, 2008
New Westminster, B.C.

INTRODUCTION

[1] The issue in this proceeding is whether an age restriction bylaw of the petitioner that is registered in the Land Title Office is valid and enforceable against the respondent, Roderick Valentine Louis ("Mr. Louis").

[2] Mr. Louis takes the position that the bylaw was not validly passed at a duly constituted meeting of the Strata Corporation and is therefore of no force or effect. Alternatively, he says that if the bylaw was validly passed it is not enforceable against him because he resided in the strata lot in question at the time it was passed and therefore he is statutorily exempted from the effect of the bylaw.

BACKGROUND

[3] The petitioner is a strata corporation ("NW 499"), existing under the provisions of the **Strata Property Act**, S.B.C. 1998, c. 43. The strata complex is a 17 unit building located in White Rock, British Columbia, that was built in 1976.

[4] The respondents, Nancy Jamieson Kirk, Executrix of the Will of Patricia Vernon Louis, Deceased; and Reginald Timothy Vernon Louis, are the registered owners, as tenants in common, in fee simple of Unit #206 in the strata complex.

[5] Patricia Vernon Louis, the mother of Reginald and Roderick Louis, resided in Unit #206 prior to her death on December 11, 1999.

[6] In 1998 the **Strata Property Act** was enacted and it came into force on July 30, 1998, replacing the **Condominium Act**, R.S.B.C. 1996, c. 64 (repealed). One of the effects of the new legislation was to provide for a new set of Standard Bylaws for strata corporations, which, pursuant to regulation 17.11(1) of the **Strata Property Regulation**, B.C. Reg. 43/2000, applied to strata corporations that were created under the **Condominium Act** effective January 1, 2002 unless the strata corporation in the meantime passed new bylaws.

[7] Regulation 17.11(3)(a) reads as follows:

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,

[8] The intent of this transition provision was to give time for strata corporations to review their existing bylaws and to pass new bylaws that would conform to the requirements of the new Act.

[9] The owners comprising NW 499 had various discussions concerning adopting a new set of bylaws as a result of the enactment of the **Strata Property Act** and a draft set of bylaws had been prepared and discussed amongst the owners but was not voted on prior to January 1, 2002.

[10] On December 20, 2001 the owners received notice of a special general meeting to be held on January 7, 2003 to deal with the proposed new bylaws. The notice, which was delivered to each unit in the complex, read as follows:

A SPECIAL General Meeting has been scheduled for 7:00 p.m. Monday January 7th, 2002 in the Common Room, in order to finalize the revised by-law, a copy of which is attached.

[11] I am satisfied that the draft proposed bylaws were in fact attached to the notice of meeting that was delivered to the owners. Bylaw 2 of the proposed new bylaws read as follows:

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.

[12] The meeting of January 7, 2002 was chaired by Nova Seaby, the chair of the Strata Council. The minutes of the meeting read as follows:

The meeting was called to order at 7:00 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, Roderick Louis arrived after meeting was called to order.

Lillian Gogel made the motion to discuss the bylaws 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 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 contravention of bylaw 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 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.

[13] On January 14, 2002, Nova Seaby, on behalf of the Strata Corporation, deposited the new bylaws with the Registrar of Land Titles and they were filed that date under number BT012261.

[14] Mr. Louis is under the age of 55 years.

[15] On March 9, 2007 the solicitors for NW 499 wrote Mr. Louis, who was then residing in Unit #206 advising him that NW 499 considered him to be in violation of Bylaw 2.

[16] The petitioner has brought this application seeking the following relief:

- (a) A declaration that Mr. Louis is in breach of Bylaw 2;
- (b) An order that Mr. Louis be prohibited from occupying Unit #206; and that he vacate that unit within 7 days;
- (c) An order that a peace officer, at the request of the petitioner, be able to enforce the terms of any order made by this Court; and
- (d) costs.

[17] The respondents, Nancy Jamieson Kirk, Executrix of the Will of Patricia Vernon Louis, Deceased, and Reginald Timothy Vernon Louis, take no position on this application.

DISCUSSION

Validity of age restriction bylaws in general

[18] Bylaws that restrict the age of an occupant of a strata lot are valid and binding (*Marshall v. Strata Plan No. NW 2584* (1996), 27 B.C.L.R. (3d) 70 (S.C.) and *Drummond v. Strata Plan NW 2654*, 2004 BCSC 1405, 34 B.C.L.R. (4th) 359 (S.C.)).

[19] The enforceability of an age restriction bylaw is subject to s. 123(2) of the *Strata Property Act*, which reads as follows:

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

[20] Thus, provided it was validly passed, the bylaw is enforceable against Mr. Louis unless he comes within s. 123(2).

Was the bylaw properly passed?

[21] Mr. Louis submits, first of all, that any resolutions passed at the meeting of January 7, 2002 were not effective to replace the Standard Bylaws under the *Strata Property Act* that had by that time come into effect by operation of law. His argument, as I understand it, is that the resolutions as put at the meeting were intended to replace the bylaws that had been in place under the *Condominium Act* (the "old bylaws"). By the time the resolutions were put to the owners at the meeting, however, the old bylaws had ceased to exist and had been replaced by the Standard Bylaws, which contain no age restriction. He argues, therefore, that the resolution was meaningless in law and of no effect.

[22] I cannot accept that submission. It is conceded by NW 499 that by January 7, 2002, the new Standard Bylaws under the *Strata Property Act* were in effect by operation of law but there was nothing to preclude NW 499 from passing a new set of bylaws, which would then replace whatever bylaws existed immediately before that event. In my view, that was the clear intent in presenting the new bylaws for adoption at the meeting and that was the effect.

[23] Mr. Louis also submitted that the notice was defective in that it did not comply with the requirements of s. 45 of the *Strata Property Act*, and in particular, subsections (1) and (3), which read as follows:

- (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.
- (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.

[24] It is conceded by NW 499 that s. 45(1), when read with the provisions of the *Interpretation Act*, R.S.B.C. 1996, c. 238, effectively required giving notice 20 days before the date of the meeting, whereas only 17 days notice was given. The petitioner submits, however, and I agree, that the curative provision of s. 47 applies in this case and does not invalidate the meeting. Section 47 reads:

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.

[25] In any event, on my reading of s. 45(1), Mr. Louis was not one of those persons entitled to notice.

[26] Mr. Louis submitted that the notice itself was defective in that it did not 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". In my opinion, attaching the draft of the bylaws to be voted upon to the notice was in compliance with the statutory requirement.

[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.

[28] In any event, even if it cannot be said that the bylaw package as a whole was passed by a majority vote, the specific bylaw in issue was passed.

[29] I conclude, therefore, that Bylaw 2 is in force for NW 499.

Does Mr. Louis fall within s. 123(2)?

[30] Mr. Rost, who is the owner of Unit #204 in the strata complex and has lived there since 1989 deposed that from the time of Patricia Louis' death in December 1999 until the fall of 2006, Unit #206 was largely unoccupied and that "on occasion" Mr. Louis would come and stay for a couple of days at a time. He deposed further that Mr. Louis began to occupy Unit #206 on a permanent basis in the fall of 2006. At that time, he began to pay the strata fees but his payments were refused commencing in December 2006 because he was not a registered owner of the unit.

[31] Mr. Catton, who is the owner of Unit #302, deposed that when he moved into his strata lot in February 2002, Mr. Louis was not residing in Unit #206. He deposed that Mr. Louis would come to the building on occasion and check on Unit #206 but did not begin to reside there until November or December of 2006. He places Mr. Louis' beginning to reside in the unit at that time because of the number of incidents of bothersome behaviour of Mr. Louis toward other residents, including sleeping in the common room. Mr. Catton deposed that it was not until the end of 2006 that he began to check the common room on a nightly basis to see if Mr. Louis was sleeping there.

[32] In a subsequent affidavit, Mr. Catton deposed that Mr. Louis paid strata fees from April to November 2006 and that the strata council began to refuse his payment in December 2006.

[33] Another owner, Ms. Campbell, who resides in Unit #102, deposed that prior to 2007 she saw Mr. Louis around the building once or twice per month.

[34] In his first affidavit, Mr. Louis deposed that:

I have lived at [Unit #206] as my primary residence since about July 2006. Previous to this for about 7 years I divided my time between the above residence and a residence at Riverview Hospital in Port Coquitlam. I would spend, usually, no more than 5 or 6 days per week at the White Rock residence and no less than 2 there. On average about 3.5 to 4.5 days per week.

[35] In a letter that Mr. Louis wrote to the Strata Council on June 23, 2003, he stated that "I am not at the apartment much".

[36] Mr. Louis also deposed that for the last eight years he has effectively paid virtually all the bills relating to Unit #206 even though the cheques were not drawn on his account. In my view, however, the issue is not whether Mr. Louis paid the costs associated with Unit #206 or whether he had an equitable interest in that property; it is whether he was residing in Unit #206 as of January 7, 2002.

[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.

[39] In my view, however, given that Unit #206 now appears to be Mr. Louis' permanent residence, he will no doubt need a reasonable amount of time to find another residence. I think that a period of 60 days to vacate the unit from the delivery of this judgment is reasonable.

[40] The petitioner claims costs under s. 133 of the **Strata Property Act**. That section speaks of the costs of remedying a contravention of the bylaws. I do not believe that section is applicable or appropriate in these circumstances.

[41] I therefore make the following declaration and order:

- (a) a declaration that Roderick Valentine Louis is in breach of Bylaw 2 of the petitioner's bylaws registered in the Land Title Office under No. BT012261;
- (b) an order that Roderick Valentine Louis be prohibited from residing at #206 – 1390 Martin Street, White Rock, B.C. and that he cease residing in that property within 60 days of pronouncement of this order;
- (c) that the petitioner may recover costs under Scale B of Appendix B of the **Rules of Court**.

[42] For clarity, this order will not prohibit Mr. Louis making use of Unit #206 in a manner that does not contravene the bylaw, namely as a casual visitor.

B.M. Joyce J.