IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478,* 2017 BCSC 1039

Date: 20170622
Docket: S156291
Registry: Vancouver

Between:

HighStreet Accommodations Ltd.

Plaintiff

And

The Owners, Strata Plan BCS2478 and Rancho Management Services (B.C.) Ltd.

Defendants

Corrected Judgment: The text of the judgment was corrected at paragraph 35 on July 24, 2017.

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for Plaintiff:	E. Kassaris, T. Posyniak
Counsel for Defendants:	P. Dougan, H. Parandian, Articled Student
Place and Date of Hearing:	Vancouver, B.C. May 12, 2017
Place and Date of Judgment:	Vancouver, B.C. June 22, 2017

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[1] This is the defendants' application for judgment on a point of law pursuant to Rule 9-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. The parties agree that for this application, I am confined to consider the facts as plead, which I must assume are true.

FACTS

[2] The plaintiff, HighStreet Accommodations Ltd. ("HighStreet"), is a hospitality management and corporate housing company. It provides furnished properties for use in corporate housing, relocation, and insurance industries. HighStreet leases property and enters into contracts to provide furnished accommodation to its clients. Those contracts include bi-weekly housekeeping services, access to building amenities, and 24-hour a day on-call services. Currently, HighStreet has about 200 properties in its inventory. The average stay of its clients is between 60 and 80 days. HighStreet shares its profits from these contracts with the owners from whom it leases property. The parties agree that the arrangements between HighStreet and its clients are licenses, not leases.

[3] On November 28, 2012, HighStreet entered into a tenancy agreement with Daniel Christman, who is the registered owner of a strata lot governed by the defendant The Owners, Strata Plan BCS2478 (the "Strata"). Mr. Christman's condominium (the "Lot") is in a building called Spectrum Tower II, which has 26 floors of condominiums and townhouses and common facilities including a swimming pool, a Jacuzzi, a steam room, a sauna, men's and women's change rooms, a media room, and an exercise room with equipment. The defendant Rancho Management Services ("Rancho"), is a property management company that acts as the agent for the Strata. The parties agree HighStreet is a tenant as that term is used in the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*], which is the applicable legislation.

[4] The term of HighStreet's tenancy agreement was November 28, 2012, to December 1, 2013, renewable on a month-to-month basis until termination by either

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party. The agreement specified that HighStreet shall have quiet enjoyment of, reasonable privacy in, and exclusive use, control, and marketing of the Lot.

[5] Mr. Christman gave a "Form K – Notice of Tenant's Responsibilities" signed by HighStreet to the Strata in accordance with the bylaws and the *SPA*. He notified Rancho that he assigned to HighStreet powers and duties arising from the *SPA*, the bylaws, or the rules with regard to three things: (i) the right to inspect and copy strata records; (ii) the right to receive notices of annual or special general meetings; and (iii) the right to receive written particulars and a reasonable opportunity to respond to any complaint.

[6] At an annual general meeting held in December 2012, the Strata voted in favour of adding the follow clause into the rental section of the bylaws:

> 46.5 An owner, tenant or occupant shall not permit a residential lot (as such term is defined in the bylaws) to be occupied under a lease, sublease, contract, license or any other commercial arrangement for periods of less than 180 days.

[7] Two other clauses in that same section of the bylaw are relevant:

> 46.3 No owner shall rent or lease a strata lot for a period shorter than one year.
>
> 46.4 Subletting of the strata lot is not permitted.

Applicable Legislation

[8] The parties agree that the point of law raised before me is largely a question of statutory interpretation. The relevant provisions of the *SPA* are identified below.

[9] Section 1 contains definitions, the following of which are relevant:

> "landlord" means an owner who rents a strata lot to a tenant and a tenant who rents a strata lot to a subtenant, but does not include a leasehold landlord in a leasehold strata plan as defined in section 199;
>
> "occupant" means a person, other than an owner or tenant, who occupies a strata lot;
>
> "residential strata lot" means a strata lot designed or intended to be used primarily as a residence;
>
> "strata lot" means a lot shown on a strata plan;

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> “tenant” means a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate;

[10] Sections 119(1) and 121 were referred to by the parties:

> 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.
>
> …
>
> 121 (1) A bylaw is not enforceable to the extent that it
>
> …
>
> (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.
>
> (2) Subsection (1) (c) does not apply to
>
> (a) a bylaw under section 141 that prohibits or limits rentals,

[11] Part 8 of the *SPA* addresses rentals, and the following sections in that Part are relevant:

> 139 (1) An owner developer who rents or intends to rent one or more residential strata lots must
>
> (a) file with the superintendent before the first residential strata lot is offered for sale to a purchaser, or conveyed to a purchaser without being offered for sale, a Rental Disclosure Statement in the prescribed form, and
>
> (b) give a copy of the statement to each prospective purchaser before the prospective purchaser enters into an agreement to purchase.
>
> …
>
> 141 (1) The strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided in subsection (2).
>
> (2) The strata corporation may only restrict the rental of a strata lot by a bylaw that
>
> (a) prohibits the rental of residential strata lots, or
>
> (b) limits one or more of the following:
>
> (i) the number or percentage of residential strata lots that may be rented;

(ii) the period of time for which residential strata lots may be rented.

(3) A bylaw under subsection (2) (b) (i) must set out the procedure to be followed by the strata corporation in administering the limit.

[12] The provision at issue follows:

143 (1) Subject to subsection (4), a bylaw that prohibits or limits rentals does not apply to a strata lot until the later of

(a) one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and

(b) one year after the bylaw is passed.

(2) Subject to subsection (1), if a strata lot has been designated as a rental strata lot on a Rental Disclosure Statement in the prescribed form, and if all the requirements of section 139 have been met, a bylaw that prohibits or limits rentals does not apply to that strata lot until,

…

(b) in the case of a Rental Disclosure Statement filed after December 31, 2009, the date the rental period expires, as disclosed in the Rental Disclosure Statement.

[Emphasis added.]

[13] The parties also refer to:

145 (1) If an agreement for the rental of a residential strata lot contravenes a bylaw that prohibits or limits rentals, the tenant

(a) is not in contravention of the bylaw, and

(b) may, within 90 days of learning of the landlord's contravention, end the tenancy agreement without penalty by giving notice to the landlord.

…

147 (1) A landlord may assign to a tenant some or all of the powers and duties of the landlord that arise under this Act, the bylaws or the rules, but may not assign to a tenant the landlord's responsibility under section 131 for fines or the costs of remedying a contravention of the bylaws or rules.

[14] The defendants have posed the following point of law to be answered:

Whether section 143 of the *Strata Property Act* is applicable to the licenses entered into by [HighStreet], whereby the licenses cannot be restricted by the Strata Corporation and section 46.5 of the strata bylaws does not therefore restrict [HighStreet's] business.

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[15] The matter is set for trial commencing October 30, 2017.

ISSUES

[16] I find it more convenient to phrase the issue before me as follows: Can HighStreet claim the benefit of s. 143(1)(a) of the *SPA,* such that bylaw 46.5 does not restrict its ability to enter into contracts to license the Lot to its clients as accommodation for a period of less than 180 days?

ANALYSIS

[17] The starting point in this application is to heed the principles guiding statutory interpretation. Those principles are not in dispute, but their application and significance to the facts before me are.

Principles of Statutory Interpretation

[18] Section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 states that enactments must be construed to give them such “fair, large and liberal construction and interpretation as best ensures the attainment of its objects". The leading case on statutory interpretation is *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27. The B.C. Court of Appeal affirmed that principles from *Rizzo* in *The Owners, Strata Plan NES 97 v. Timberline Developments Ltd.*, 2011 BCCA 421 [*Timberline*]. At para. 12 of *Timberline* the Court of Appeal states that the only principle of statutory interpretation is that the words of the legislation must be interpreted in “their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

[19] Following that discussion, the Court of Appeal comments on the *SPA* (*Timberline* at para. 16):

> In general terms, the purpose of the *Strata Property Act* is to lay down clear rules for the creation, registration and transfer of strata titles and for the delineation of the respective rights and responsibilities of those who develop strata plans, and those who purchase or who may subsequently wish to transfer a strata property.

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[20] The parties also agree that when the *SPA* was introduced, one of its purposes was to balance the interest of various parties (municipalities, developers, strata corporations, and owners) by clarifying their rights and obligations. The predecessor to the *SPA* was characterized as a form of consumer protection: *The Owners, Strata Plan VIS2968 v. K.R.C. Enterprises Inc.*, 2007 BCSC 774 at para. 27. As such, the court should take into consideration the remedial aspects of the legislation*: W Redevelopment Group, Inc. v. Allan Window Technologies Inc.*, 2010 BCSC 1601 at para. 131.

[21] HighStreet relies on *Hansard* extracts that it says buttress its position that the legislature intended to protect the ability of owners to rent their strata lots. The *SPA* was introduced in 1998. At that time, Rich Coleman was in opposition, and he expressed concern about the impact of the original s. 143 on owner/investors. There was a change in government, and in 2009, Mr. Coleman became the Minister responsible for the *SPA*. He introduced an amendment to s. 143. He repeated the sentiment he had expressed at the time the legislation was introduced:

> If I go to buy a piece of property, make an offer of purchase and sale, and in that offer of purchase and sale and in the bylaws of that organization it clearly states that my unit can be rented, and I make that investment on that basis, that should not be taken away from me. [British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard*), 39th Parl., 1st Sess., Vol. 3, No. 7 (5 October 2009) at 904-06 (Hon. Rich Coleman)]

[22] He described the amendment as a measure to limit situations where strata corporations could pass restrictive bylaws to the detriment of the interests of owners and purchasers with regard to the marketability of their units. It delayed for one year the application of a bylaw that prohibits or limits rentals in order to give “owners a chance to make appropriate arrangements".

[23] HighStreet says Minister Coleman’s statements coincide with the interpretative presumption that the legislature does not intend to interfere with property owners’ right to use property without being explicit: *Hamilton (City) v. Equitable Trust Co.*, 2013 ONCA 143. The defendants do not dispute that principle.

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[24] HighStreet also submits that headings can be used to help interpret the legislation (*Jacobs v. Laumaillet*, 2010 BCSC 1229) and that a court must be careful to give meaning and effect to every word used (*Greater Vancouver Regional District v. British Columbia (Attorney General)*, 2011 BCCA 345). Those principles are not contentious.

THE PARTIES' POSITIONS

[25] The defendants submit the issue is straightforward. HighStreet is a tenant that permits by license occupation of the Lot for less than 180 days, so the bylaw applies. The defendants submit s. 143(1)(a) does not apply because HighStreet is not a tenant "occupying" the Lot; its clients occupy the lot.

[26] HighStreet's position is that the protection in s. 143(1)(a) only has two requirements: (i) there is a rental restriction bylaw, and (ii) there exists a continuing tenancy relationship that pre-dates the rental restriction bylaw. HighStreet's position is that it meets both conditions.

ANALYSIS

[27] The defendants submit bylaw 46.5 restricts any occupation of a strata lot for less than 180 days regardless of whether that occupation results from a lease, sub-lease, contract, or license. Relying on the power to pass bylaws that address the control, management, maintenance, use, and enjoyment of strata lots (s. 119), the defendants submit that bylaw 46.5 regulates the "use" of a lot. In that way, they say the bylaw is not merely a "rental restriction" bylaw. HighStreet's licensing arrangements are not rentals, and the defendants say that is fatal to HighStreet's argument that it can claim protection under s. 143(1)(a).

[28] HighStreet submits s. 119 cannot override what it says is the clear meaning of s. 143(1)(a). It relies on the interpretive principle that specific legislation takes precedence over general legislation. Its position is that the power to enact bylaws in s. 119 is a general provision whereas s. 143(1)(a) is directed at specific types of bylaws - those that restrict rentals.

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[29] The defendants submit HighStreet's position amounts to equating the rights of the licensees to the rights of a tenant, which is improper because a license is not an interest in land. The defendants submit that nothing in the *SPA* applies to the contractual arrangements HighStreet has with its licensees. In its view, section 143(1)(a) protects Mr. Christman's tenancy agreement with HighStreet but does not go further than that.

[30] However, HighStreet argues that the wording of s. 143(1)(a) makes it clear that the statute confers protection against restrictive bylaws on the Lot itself. Its position is that the legal status of its arrangements with its client is irrelevant. The question is whether the Lot is under the terms of a valid tenancy at the time when the restrictive bylaw is passed. If so, those restrictions cannot apply to the Lot until a year after the tenancy expires. In support of this argument, HighStreet says I must examine the entire statutory scheme addressing rental restrictive bylaws in the *SPA* and not just s. 143(1)(a).

[31] First, HighStreet argues that s. 143(1)(a) should be seen as an expansion of the rights conferred on first-time purchasers by s. 139. Section 139 states that an owner/developer may designate certain strata lots as rental units by way of a rental disclosure statement (a "Form J") which alerts potential purchasers to whether there are rental restriction bylaws in place. HighStreet submits the wording of ss. 139 and 143(1)(a) place primacy on the fact that a strata lot is rented, rather than protecting the rights of an owner, landlord, or tenant.

[32] HighStreet also points to s.140, which allows a purchaser to cancel without penalty an agreement to purchase if an owner/developer fails to comply with s. 139. HighStreet argues this underscores the importance the legislature placed on a contracting party's ability to rely on a rental disclosure statement. That proposition is not controversial.

[33] HighStreet next points to ss. 121 and 141(2) of the *SPA*. The latter limits the strata corporation's ability to impose rental restrictions to the following: (i) a complete prohibition; (ii) a quantitative restriction on the number of lots in total that can be

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rented; or (iii) a quantitative restriction on the period of time they can be rented for. HighStreet concedes that the bylaw at issue in this case falls into the third category.

[34] HighStreet argues one must read ss. 141 and 121 together. Section 121(1)(c) states that a bylaw is not enforceable if it prohibits or restricts the right of an owner to freely sell or lease an interest in the strata lot. HighStreet submits the sections together signal the legislature's intention to limit rental restrictions.

[35] However, s. 121(2)(a) explicitly states that the protection in s. 121(1)(c) does not apply to bylaws passed pursuant to s. 141 that limit or prohibit rentals. Given that HighStreet has conceded bylaw 46.5 does fall under the category in s. 141(2)(b)(ii), I do not see how this submission supports its position.

[36] HighStreet also refers to a number of other provisions to argue that the legislature intended to confine a strata corporation's ability to restrict rentals: (i) s. 142 (excludes application of rental restrictions to family members); (ii) s. 144 (creates the owner's ability to apply for exemption of rental restriction on the basis of hardship); and (iii) ss. 164 and 165 (establishes the right to bring action against the strata corporation). I do not think those sections provide strong support for HighStreet's position; they are consistent with s. 141, but they do not provide an independent basis to prefer HighStreet's interpretation of that section to the defendants'.

[37] The Strata's response to these submissions remains unchanged; it argues none of the sections identified by HighStreet are relevant because they do not protect licensing arrangements entered into by tenants.

[38] It is not clear to me that this responds to HighStreet's position. I did not understand HighStreet to champion the rights of its licensees. HighStreet's submissions focus on the words "does not apply to a strata lot" in subsection 143(1). By contrast, the defendants submit the key words are in subsection 143(1)(a): "tenant who is occupying the strata lot". Its argument is that because HighStreet does not occupy the Lot, s. 143(1)(a) is irrelevant.

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[39] The parties advised me that there was no case on point to assist me. The defendants rely on well-established principles of property law that licensees do not have an interest in land, and their rights cannot in any way be equated to the rights of a tenant, which they say includes the protection afforded by s. 143(1)(a).

[40] The defendants rely on, among others, *Carmichael v. Dolmage* (1946), [1947] 1 D.L.R. 781 (B.C.C.A.). The issue in that case was whether a tenant breached the conditions of her lease by allowing her brother to move in and use her apartment. Her lease contained a clause that if she assigned or sublet her apartment without consent of the landlord, the lease would be subject to forfeiture. In order to avoid forfeiture, she had to remain the actual tenant and maintain her rights. On the advice of her solicitor, she drafted a letter to give her brother “leave and license to move in and occupy the premises ... understanding that you do not, under this arrangement, or otherwise, acquire any rights in any way derogatory to or conflicting with, or endangering my position as a tenant”. She could terminate the license without notice.

[41] The trial judge found that the arrangement amounted to a sublet, and therefore the tenant had breached her lease. The Court of Appeal reversed that decision. It states that determining whether that arrangement amounted to a sublet (also described as an assignment, a parting with possession or a letting), depends upon whether the brother had a right of exclusive possession, or “legal possession”. The Court points out that, “legal possession … may or may not include actual occupancy". The Court goes on to say the following:

> [11] I think it is self-evident that actual occupancy cannot confer legal possession against the lessee where the occupant, as in this case, cannot legally refuse to vacate at any moment the lessee, who has permitted his occupancy, may choose to cancel that permission. But *Taylor* v. *Caldwell*, *supra*, appears to go even further. It was a case where, notwithstanding that the occupant paid a substantial sum for the use of premises for a specific period, and where it may be assumed therefore that the owner or lessee had no legal right to cancel that occupancy, yet the court held the owner or lessee had retained possession of the premises. …

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[42] In *Carmichael*, the Court of Appeal also refers to *Chaplin v. Smith,* [1926] 1 K.B. 198. In that case, the chamber's judge held that a tenant breached a covenant not to “part with possession” and forfeited his lease because he had a verbal agreement with his company that it would pay him rent and the company would carry on its business on the premises. The Court of Appeal reverses that finding by deciding that as long as the tenant retained possession, he did not breach the covenant. In that case an important factor was that the tenant kept a key to the premises. The Court of Appeal in *Carmichael* comments on the impact of *Chaplin v. Smith* on the facts before it:

> [18] The learned Lord Justice did not say [the tenant] remained in possession throughout. The carefully chosen quoted language conveys the meaning and the circumstances that although the company occupied the premises, and paid [the tenant] a rent for that occupation, it could not acquire any legal possession, because [the tenant] at all times retained a right to immediate legal possession, which he could enforce at any time.

[43] The Court of Appeal in *Carmichael* also noted that the test for underletting did not depend on the payment of rent; to find an “underlet”, there must be a conferral on a third party of some estate or interest in land. That remains true even if the third party has entire occupation of the premises, because the right to legal possession is determined by the contract. Thus, entire occupation may signify legal possession. However, if there is an agreement stating that the tenant is not giving up any legal right to possession, then the significance of occupying the entire premises disappears.

[44] The defendants submit *Carmichael* supports their position because it confirms the occupancy of the Lot does not confer on the occupant any rights akin to an interest in land. The defendants submit s. 143(1)(a) uses the phrase “a tenant who is occupying” the strata lot to confirm that the protection from restrictive bylaws accrues only to those with an interest in land (the tenant and the owner). The bylaw restricts tenants, owners, and occupants from allowing occupancies of less than 180 days.

[45] The defendants also rely on *The Owners Strata Plan VR 2213 v. Duncan*, 2010 BCPC 123. The issue in that case was whether s. 146(2) of the *SPA* and the

provisions of a particular bylaw applied to a licensing arrangement. Section 146(2) required an owner, within two weeks of renting its suite, to notify the strata corporation of that rental by completing "A Notice of Tenant's Responsibilities Form K". The bylaw required the strata to receive notice of any rental, and imposed a moving fee.

[46] The owner had an agreement with a company that was in the business of providing accommodation to others, under the terms of a licensing agreement. The strata corporation's position was that anyone who occupied a unit was a tenant, and therefore the owner's obligations to provide a Form K were triggered, as were the payment of moving fees. The Court did not agree; it held that persons lawfully occupying units are neither owners nor tenants nor subtenants. While the strata was entitled and required to know the identity and contact information for each unit owner, tenant and subtenant, the legislation did not require delivery of Form K anytime when there was a change in who occupied that unit, unless the occupant was also a tenant. In my view, this case provides strong support for the defendants' position.

[47] The defendants also rely on *Spagnuolo v. Owners, Strata Plan* BCS 879, 2009 BCSC 1733, which considers another case (*Abbas v. the Owners, Strata Plan LMS 1921*, 2000 BCSC 1930) whose result counsel submits prompted the legislature to amend the wording of s. 143 to its current form. I do not find either case assist me in deciding the issue here.

[48] Although HighStreet acknowledges licensees do not receive an interest in land, it submits that it has "control of the strata lot" and it has exclusive use and control, so it ought to be able to benefit from the protection of s. 143. HighStreet argues that the pivotal word in the bylaw is "rental" and it is improper to view its clients' legal status as "merely" a use of the premises for the purpose of bylaw enforcement. It relies on a liberal reading of the *SPA* to say the court ought to interpret s. 143(1)(a) as applying to this situation, consistent with the scheme's intention to limit bylaws that restrict rentals.

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[49] There is no dispute that HighStreet's legal relationship with its clients is as licensor and licensee. The law has recognized for centuries that a license does not grant an interest in land. Nothing in the legislation alters that basic principle. Therefore, HighStreet is partially correct. Bylaw 46.5 cannot purport to invalidate HighStreet's tenancy with Mr. Christman; but that relationship is not at issue in this case.

[50] The case law discussed above indicates that the determinative factor is "legal possession" regardless of occupancy. HighStreet's exclusive use and control of the Lot confirms it has an interest in land as a tenant. But the contracts it has with its clients, do not convey that interest, or any rights attached to it, including the right of exclusive possession. HighStreet can remove its clients and cancel their licenses at will.

[51] Thus, HighStreet at all times retains legal possession of the premises. To accede to HighStreet's interpretation would be to ignore the legal significance of it entering into licenses rather than leases or subleases.

[52] Moreover, to the extent HighStreet is attempting to draw some kind of analogy between its licenses and "rentals", bylaws 46.3 and 46.4 make it abundantly clear that rentals cannot be for a period less than one year, and owners cannot sublease.

[53] Taking into account all the arguments based on statutory interpretation and the case law, I conclude there is nothing in the legislation suggesting that occupancy of units arising outside of a tenancy agreement are protected in any way. In my view, that is the very reason why s. 143(1)(a) is phrased to apply to strata lots where the tenant occupies the strata lot when the bylaw is passed. The legislature could have said a rental restrictive bylaw does not apply until one year after a rental in place at the time the bylaw is passed expires. In my view, the phrasing chosen was to clarify that only tenants occupying the lot can benefit from the non-applicability of rental restrictions.

Conclusion

[54] For all those reasons, I agree with the defendants' submissions and the resolution to point of law is as follows:

> Section 143 of the *Strata Property Act* is not applicable to the licenses entered into by HighStreet, and thus, those licenses can be restricted by the Strata Corporation, and section 46.5 of the strata bylaws does therefore restrict HighStreet's business.

COSTS

[55] Because they were successful, the defendants are entitled to their costs. If that is not appropriate for some reason of which I am not aware, the parties have liberty to request a brief hearing before me to address that issue so long as they contact the Registry to do so no later than 30 days after the date of this judgment.

"Sharma J."

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