Citation: ☼ The Owners, Strata Plan NW3075 v. Stevens 2018 BCPC 2
Date: ☼20180108
File No: 22866
Registry: Abbotsford

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

SMALL CLAIMS

BETWEEN:

THE OWNERS, STRATA PLAN NW3075

CLAIMANT

AND:

CORALEE DAWN STEVENS

DEFENDANT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE K. D. SKILNICK

Counsel for the Claimant:	H. J. Dunton
Appearing in person:	C. D. Stevens
Place of Hearing:	Abbotsford, B.C.
Dates of Hearing:	November 1-3, 2017
Date of Judgment:	January 8, 2018

Summary of Evidence

[1] The Claimant in this matter is a strata corporation, established pursuant to Part II of the *Strata Property Act* of British Columbia. It collectively represents the owners of the strata units of a building located in Abbotsford, BC called Central Heights Manor. The Claimant's bylaws require the occupants of Central Heights Manor to be at least 55 years of age.

[2] One of the units in Central Heights Manor was owned by the Defendant's mother, Agnes Mary Alexandra Stevens. On October 14, 2014, ownership of the unit was transferred into the joint names of the Defendant and her mother. This was done for estate planning purposes in order to avoid having to probate what was otherwise not a substantial estate. The Defendant did not reside at the property at the time of transfer.

[3] On March 22, 2015, Agnes Mary Alexandra Steven passed away. Understandably, this was a very emotional and difficult time for the Defendant. She has explained the circumstances leading up to her mother's passing and some of the problems she faced following her mother's death. In addition, the Defendant has been diagnosed as having Post-Traumatic Stress Disorder, severe anxiety and other emotional health challenges. At the commencement of the trial, the Defendant provided a letter from her physician and explained that because of her condition, she anticipated difficulty in feeling intimidated by the presence of some of the members of the Strata Council. As matters turned out, the Defendant proved able to present her case very capably and in a much more organized fashion than most self-represented persons who appear in Small Claims Court.

[4] The Claimant alleges that at some point in time, the Defendant took up residence in the suite that her mother had lived in. The Defendant has just turned 48 years of age this past August, and will not reach the age of 55 until August of 2024. Bylaw 39 (3) and (4) of the current bylaws read as follows:

> (3) Each strata lot is reserved for occupancy by a person 55 years of age of older.
>
> (4) A person, excluding a spouse, under the age of 55 years shall not be permitted to reside in a strata lot.

[5] The Defendant was aware of the age restriction in the building. On March 26, 2015, just four days after her mother's passing, she sent an email to the Strata Council introducing herself and informing them that she was now the sole owner of her late mother's unit. In the letter she asked for permission to live in the unit. She wrote:

> "I am requesting the council's permission that I may live in the suite that my Mom gifted to me so that I would have a place to live for the rest of my life. This was her wish. I understand that there is a bylaw that the building is 55 and over. I will be 46 in a few months. I am a person with a disability on a lifetime government pension. I currently live in an apartment in Abbotsford that after my rent is paid I have very little over. I sometimes rely on the community food bank to help with food. I understand that I am now responsible for any strata maintenance fees that come with owning the suite. I will soon incur a financial hardship because I don't have money or savings to pay both my rent and in addition the monthly strata fees."

[6] The Defendant went on to ask the Strata Council to take into account that she was a single person without children or pets and that she would live quietly. She offered to provide references from her previous landlords.

[7] On April 13, 2015, the Claimant's property manager replied to the Defendant, informing her that the Strata Council had considered her request, but that the request was denied.

[8] On June 17, 2015, the Claimant's property manager wrote to the Defendant alleging that "someone associated with your Strata Lot has been smoking on the Common Property." The letter directed the Defendant's attentions to various portions of the Strata Corporation's bylaws and went on to state "It is the request of Council you comply with the Strata Corporation Bylaw and Rules. Failure to Comply may result in fines being levied against your Strata Lot by Council." Enclosed with the letter was a "Response Form" and the Defendant was told that her opportunity to respond to the accusation in the letter could be done by completing the form by July 3, 2015 and sending it to the property manager by fax. The letter instructed the Defendant not to contact the agent directly.

[9] On June 24, 2015, the Defendant wrote to the Strata Council, through the property manager. She informed Council that while her mother was in hospital, a Strata Council member had led her to believe that she would be permitted to live in her mother's former suite and that another woman, who was the wife of a council member, concurred with this. The Defendant set out some of the difficulties she was having in dealing with her late mother's estate. She stated in this correspondence, "I am pleading that the Strata Council will please reconsider its decision and allow me to live in the suite out of compassion for my individual situation." She went on to set out reasons why they should do this, and asked for some understanding on their part.

[10] On July 16, 2015, the Claimant's property manager wrote to the Defendant, informing her that the Claimant was taking "the matter under advisement" and that it would be seeking legal advice on the question. The property manager wrote to the Defendant again on September 15, 2015. In the letter the property manager reminded

the Defendant about the age restriction for occupants of the building as contained in the bylaws. The letter did not respond to the question of whether it is acceding to or denying her request. The letter threatened that fines would be imposed after November 1, 2015 if “the person(s)” remain after October 31, 2015.

[11] The Defendant sent a written response to the Strata Council on September 18, 2015. In her response she pointed out that under the bylaws, a visitor under the age of 55 may stay for as long as six weeks in any six month period. She denied that she was residing in the unit, calling the suggestion “a complete untruth”. She acknowledged that she had been in the unit to attend to matters pertaining to her mother’s estate. In her letter she discussed a number of other concerns regarding ways that she believed she had been treated unfairly by the Claimant. The Defendant resent her letter again on September 30, 2015.

[12] On December 14, 2015, the Claimant’s property manager once again wrote to the Defendant and advised her that the Claimant had received legal advice “regarding underage residency” and told her that her request for an exemption from the age restriction would be presented to the owners at the next Annual General Meeting.

[13] Harold Klassen is the owner and occupant of the unit next to the one owned by the Defendant. He is also the Vice-Chair of the Strata Council. He testified that at the beginning of January of 2016 he witnessed the Defendant moving into the unit that her mother had lived in. He testified that he observed a moving van from which items were unloaded and moved into the Defendant’s mother’s unit, causing him to conclude that the Defendant was now residing in the unit. He was concerned about what appeared to

be a clear violation of the age restriction bylaw that all of the strata owners were subject to, and he lodged a complaint with the Strata Council.

[14] The AGM had not yet taken place, when, on January 5, 2016, the Claimant had its property manager write the Defendant again, alleging that she was in violation of the Strata Corporation Bylaws. Specifics of the allegation were set out in the letter thusly:

> "The Strata Council noted a moving van unloading personal items into Unit #121 on December 31, 2015. Per the Strata Bylaws and as noted in previous correspondence (see attached), person(s) under the age of 55 must not reside in your Strata Lot. Taking up residency in this Unit is therefore in contravention of the Strata Corporation Bylaws."

[15] This letter quoted the relevant sections of the Bylaws including sections 30 and 31, which read as follows:

> 30. MAXIMUM FINE
>
> (1) The Strata Corporation may fine an owner or tenant a maximum of:
>
> (a) $200 for each contravention of a Bylaw.
>
> (b) $50 for each contravention of a Rule.
>
> 31. CONTINUING CONTRAVENTION
>
> If an activity or lack of activity that constitutes a contravention of a Bylaw or Rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

[16] The letter warned the Defendant that if she did not vacate the unit, additional fines of $200 would be levied to her Strata Lot's account each week until she vacated it. The letter also informed the Defendant that the upcoming Annual General Meeting, to be held on January 20th, would consider her request for an exemption from the bylaws, but reminded her that no such exemption had yet been approved.

[17] Sometime between the receipt of this letter and the Annual General Meeting, the Defendant wrote in response to the Claimant's letter. In this letter, the Defendant acknowledged that a complaint had been made against her. She wrote:

> "It is unfortunate that a resident/owner reported to the Strata Council that I was residing in the suite prior to January 1st, this was completely incorrect, this was upsetting, as I was issued a warning letter that I would be receiving fines shortly if I continued to reside in the condo."

[18] In this letter, the Defendants said that she had only spent a total of five nights in the unit prior to New Year's Day of 2016. She went on to admit however that she was now living in the unit, writing "I have nowhere to go and would be homeless if I was not currently residing in the suite." She added: "On January 1st I began residing in the suite because I had no other choice…" She apologized to the other owners for "moving into my home for January 1st without permission and breaking the bylaws" but said that she had no other choice, given her need for government support. The Defendant explained that her only source of income was a government disability pension and that she would have been cut off of that if she owned a home that she was not living in.

[19] The Defendant said in the letter that in the fall of 2014, when her late mother was in hospital, she was told by a Strata Council member that she would be allowed to live in the unit, even though she was below the prescribed age. Earlier in the letter, she said that she was "not emotionally capable of selling the suite that had been my mother's home."

[20] The Minutes of the Annual General Meeting, held on January 20, 2016, record that a vote was taken at the meeting on the following resolution:

> Be it resolved by a ¾ vote of the Owners, Strata Plan NW3075 (the "Strata Corporation") that Coralee Stevens, who is less than 55 years of age is, due to disabilities, entitled to reside in Strata Lot #10 as long as she continues to exhibit the said disabilities and is under the age of 55 years.

[21] A secret ballot was held on the motion. The ballots were scrutinized and counted and the motion was defeated by a vote of 40 (opposed) to 9 (in favour.)

[22] On March 4, 2016, the Claimant's lawyers wrote to the Defendant, informing her that as she was continuing to be in breach of the age restriction bylaw, Strata Council was bound by the provisions of sections 26 and 31 of the *Strata Property Act* to enforce the bylaws. They reminded her that her request for an exemption had been denied at the Annual General Meeting. A formal demand was made in the letter for the Defendant to vacate her unit, and asked her to confirm that she could do so by April 30, 2016. The letter advised her that if she did not respond and did not vacate the premises, the Claimant would "take whatever action is necessary and pursue whatever remedy is available." The letter said that this could include an application for an injunction ordering her to vacate the premises and for the costs of such application to be assessed against her.

[23] On April 18, 2016, the Claimant's property manager wrote to the Defendant once again complaining of her violation of the age restriction bylaw and once again telling her that a failure to comply with the bylaws could result in a fine of $200 per week "until the unit is vacated." It contained an invoice for $3,990.98 that represented fines for seventeen weeks, as well as the bill from the Claimant's lawyers for $590.98, for a total balance owing of $3,990.98.

[24] The following day, April 19, 2016, the Defendant wrote to the Claimant, once again requesting that she be exempted from compliance with the bylaw due to hardship. In the letter, she wrote "I will not be asking for a hearing but just a written decision from council." The Claimant responded, by a letter from their property managed dated May 4, 2016, informing her that it was denying her request for the exemption. In the letter, it was stated that the Defendant could re-apply if she supplied the following information:

- Verification of her monthly income, including a copy of her 2015 and 2016 income tax returns
- Her "records of employment history and loss of work income"
- Verification of financial assets, including savings, RRSPs and a current bank statement
- Details of her mortgage including the balance owing, the purchase price of her unit, her monthly payment amount and any penalties
- Invoices for personal expenses such as mortgage, vehicle payments and utilities
- Her alternative living accommodation costs and type
- A statement setting out "why renting your unit would be the best option for you and how renting will improve your financial situation"

[25] On June 24, 2016, the Claimant's lawyer sent two letters to the Defendant, each marked "without prejudice". Counsel for the Claimant has waived any privilege attaching to these letters and has presented them as evidence at this trial. The first letter contained a demand that the Defendant vacate the unit "without delay." If she failed to do so, the letter warned that the Claimant could utilize several remedies, which included the imposition of fines, or the commencement of an action in the Supreme Court of British Columbia. The second letter informed her that she would be sued in this court for the amount of unpaid fines under the bylaw.

[26] This action was commenced by a Notice of Claim filed on July 6, 2016. The Notice of Claim named both the Defendant and her late mother as Defendants, but the claim against the Defendant's mother was discontinued on November 23, 2016. In a Special General Meeting of the Claimant held on October 26, 2016, the following motion was passed:

> "Be it resolved by a ¾ vote of the Owners, Strata Plan NW 3075, Central Heights the Strata Corporation is authorized to proceed with legal action against Strata Lot 10 to enforce the minimum occupancy age of fifty-five (55) years as set out in Bylaw 39."

[27] The motion passed by a vote of 39 (in favour) to 8 (opposed) with 3 spoiled ballots. On September 5, 2017, both the Notice of Claim and Reply in this action were amended. The Claimant alleged that the amount owing for outstanding fines was $19,029.76 and the Defendant disputed this calculation and also raised other defences alleging non-compliance on the part of the Claimant with section 135 of the *Strata Property Act.*

[28] On February 27, 2017, Counsel for the Claimant once again wrote to the Defendant in a letter marked "without prejudice" (for which privilege was subsequently waived.) In the letter, counsel for the Claimant complained of "abusive, threatening and harassing behaviour towards other residents and their guests, and towards the strata council and its members, both through personal confrontation and by your letters." It made reference to specific letters from the Defendant and informed her of instances that were characterized as bullying and harassment "with a variety of truly appalling words and actions". It referred to bylaw 3(1) which prohibited owners from causing a nuisance or unreasonably interfering with the rights of other owners to use and enjoy the common

property. In the letter the Claimant once again threatened to take legal action against the Claimant, and listed several legal remedies available to it.

[29] In cross-examination, the Defendant acknowledged some questionable conduct on her part which included attending to the home of the Claimant's counsel and taking photographs of the home. She said that she did so in order to document difficulties she had in serving documents, something that the Claimant disputes.

[30] On July 13, 2017, the Honourable Mr. Justice Walker of the BC Supreme Court gave reasons for judgement in the action commenced by the Claimant. Those reasons are cited as *The Owners, Strata Plan NWS3075 v. Stevens* 2017 BCSC 1306. In that action, the Defendant alleged that she was not residing in the strata unit as alleged by the Claimant. Justice Walker rejected this defence and made a finding of fact that the Defendant had been residing in the unit since the time of her mother's death. He stated:

> [6] Ms. Stevens' defence is that she does not reside at the premises (unit 121). I disagree. I am satisfied that she has resided at unit 121 since her mother's death and, despite her submission to the contrary, she continues to reside there. I say that for these reasons: She continues to use the suite daily to cook meals and to bathe. She also does her laundry there once a week. Ms. Stevens sleeps in the unit at least two days a week, and has for some time. Although she sleeps in her trailer (off-site) when she is not sleeping in unit 121, she continues to use unit 121 as a residence and keeps many of her personal effects there.
>
> [7] As a result, I do not accept Ms. Stevens' submission that she is not in residency of unit 121. Her requests for exemptions from the bylaw have been denied. I find that she is in breach of the bylaw. I grant the declaration sought by the petitioner in paragraphs 1 and 3 of the petition…
>
> [9] In light of Ms. Stevens' ongoing residency in the unit, I have no choice but to grant the declaration that Ms. Stevens is in breach of Bylaw 39(3) of the petitioner's bylaws which prohibits persons under the age of 55 years from residing in the strata lot. I also order that she be prohibited from occupying her residence, either permanently or temporarily, unit 121.

[31] Justice Walker found the bylaw in question to be “presumptively valid”. He did not make a finding on the application concerning the Defendant’s alleged harassing conduct, but did make the following statement:

> [13] However, I can say, and find, that based on your own words Ms. Stevens, as contained in your own evidence, you have engaged in inappropriate threats and have used language that either borders on, or crosses the line of, abuse and harassing behaviour, and it simply has to stop.

[32] The Defendant was directed not to send any communications directly to members of the strata council. She was directed to deal with either the property manager or the Claimant’s lawyer. Similarly, the Claimant was directed to contact the Defendant through its property manager or its lawyer and not through individual members of the Strata Council.

[33] The Defendant testified that she was unhappy with Justice Walker’s decision, which she describes as “quick and hasty”. She maintains that she was not residing in the unit, contrary to the findings of Justice Walker. She provided a large number of photographs which she says prove that she was not living in the unit at the time when the fines were rendered. She said that she is unsure if she told anyone that she was moving out of the unit, and says that she should not be fined on the basis of someone witnessing a moving van. She said that she planned to appeal the decision of Justice Walker, but did not do so because she could not afford to pay for a transcript of the proceedings. On August 21, 2017, the British Columbia Court of Appeal refused the Defendant’s application under Rule 56 of the Court of Appeal Rules to be exempted from payment of fees on her appeal.

[34] The Defendant alleges that other underage persons have been allowed to reside in the building and finds it unfair that she is being treated differently than these persons. When cross-examined about what evidence she had to support this contention, she relied on hearsay, rumour, suspicion, gossip, but did not provide any direct evidence to support these allegations. The Defendant had set out who she believes that some of these people are in an affidavit she had filed in the BC Supreme Court, but this hearsay was not confirmed, either by any of those persons themselves or by any of the Claimant's witnesses.

[35] Much of the cross-examination of the Defendant concerned various accusations which she has made against other occupants in the premises. She has accused the Claimant of using strata funds to make illegal loans, and accused another owner of having a gambling problem. In my view, none of this was directly relevant to the issues that are now before me. Counsel for the Claimant was of the view that this reflected on the Defendant's credibility or lack thereof. In the final analysis however, much of the facts are not in dispute, aside from the Defendant's contention that she was not residing in the building during the time that she was fined. Determination of that issue will turn on whether or not the finding of Mr. Justice Walker is binding on this court.

Position of the Parties

1. The Claimant

[36] The Claimant asks for an order for judgement in the amount of $16,688.63 representing the amount of fines levied against the Defendant from January 4, 2016 until July 13, 2017. This is within the period for which Justice Walker made a finding of fact that the Defendant resided in the unit in question, in contravention of the Claimant's

bylaw prohibiting persons under the age of 55 from residing in the building without a proper exemption. The Claimant argues that all of the pre-requisites for levying these fines required by the *Strata Property Act* have been met. Specifically:

1. The Claimant received a complaint about a violation of the bylaws.
2. Particulars of the complaint were provided to the Defendant.
3. The Defendant was afforded a reasonable opportunity to answer the complaint.
4. The Defendant was afforded the opportunity to request a hearing concerning the complaint, but chose not to do so.

[37] The Claimant argues that it is not open to the Defendant to deny that she resided in this unit during the period that the fines were levied because this has been found as a fact by the Supreme Court of British Columbia, a court whose decisions are binding on this court. Under the principle of *res judicata* (a Latin maxim which means “a thing adjudged, or settled by judgement”) this court is bound by that finding of fact. The Claimant also says that the Defendant is being disingenuous by claiming that she was not residing in the suite after admitting that she was in her correspondence to the Claimant, and points out that after acknowledging in writing that she was residing in the unit, the Defendant never told anyone in writing or otherwise that she had moved out of the unit.

[38] The Claimant submits that it has been reasonable in affording the Defendant numerous opportunities to avoid legal proceedings and waited before the imposition of fines.

2. The Defendant

[39] The Defendant disputes that it has been proven that she was ever in violation of the bylaw by actually residing in the unit. She argues that the presence of a moving van does not prove residency and says that the finding of Justice Walker is wrong.

[40] In the event that residency is established by the finding of fact made in the Supreme Court, the Defendant argues that the Claimant has nevertheless failed to comply with section 135 of the *Strata Property Act,* which requires that the subject of a complaint is to be given particulars of the complaint. She argues that proper particulars must include sufficient information to allow her to properly defend herself against what it is she is accused of doing. She says that such particulars must include the date, time, and location of the breach, and sufficient description of the offending conduct. She argues that the particulars provided in this case are inadequate. She concludes that, because the Claimant has not provided proper particulars of the breach, section 135 of the Act uses language which directs that the Claimant "must not" impose a fine under these circumstances.

[41] The Defendant also alleges that the Claimant is enforcing its bylaws unevenly and in a discriminating manner against her, while ignoring similar conduct on the part of other persons. This argument might have more force if there had been admissible and probative evidence tendered in support of this contention. It has also not been shown what in law, if anything, prevents the Claimant from exercising its discretion to grant bylaw exemptions to some persons while denying them to others. More evidence would be required as to what factors were considered in any other exemption, presuming that such exemptions exist.

Applicable Law and Analysis

1. Res Judicata

[42] The Defendant says that the Claimant has not proven that she was in breach of the bylaw and denies that she was residing in the subject unit during the time that the fines have been levied. In response, the Claimant says that firstly, this has been proven by the Defendant's own statements in her letter in which she admits to residing in the unit, and secondly this is already been found as a fact in the proceedings in Supreme Court. The Claimant says that the Defendant's residency in the subject unit during the time that the fines were levied is *res judicata*. In other words, that issue has already been decided as between these two parties by a court whose decision is binding on this court and therefore the Defendant is prevented from re-litigating that issue.

[43] The principle of *res judicata* is a form of what is known as "estoppel." A person is "estopped" or prevented from making an argument or presenting a defence because the matter has already been decided as between the same parties by a court of competent jurisdiction. The rule is intended to bring an end to litigation of an issue. Otherwise, if an issue was decided by one judge, the party who was unhappy with the decision could raise the matter before another judge (not on appeal) in the hope that this time the matter would be decided differently. The unhappy party in that litigation could ask yet another judge to rule on the matter and the matter could go on to ridiculous lengths. There has to be some finality to the litigation. No party should have to prove or disprove the same issue on the same facts over and over again, and the principle of *res judicata* is intended to put a stop to this.

[44] In *Re Bullen* (1971) 21 D.L.R. 628, Mr. Justice Atkins of the BC Supreme Court summarized the requirements for estoppel by *res judicata* at paragraph [9] of the decision as follows:

> (i) that the alleged judicial decision was what in law is deemed such;
>
> (ii) that the particular judicial decision relied upon was in fact pronounced, as alleged;
>
> (iii) that the judicial tribunal pronouncing the decision had competent jurisdiction in that behalf;
>
> (iv) that the judicial decision was final;
>
> (v) that the judicial decision was, or involved, a determination of the same question as that sought to be controverted in the litigation in which the estoppel is raised;
>
> (vi) that the parties to the judicial decision, or their privies, were the same persons as the parties to the proceeding in which the estoppel is raised, or their privies, or that the decision was conclusive in rem.

[45] In this case, the decision of Justice Walker was clearly a judicial decision, and was not a gratuitous or obiter comment. Proof of its pronouncement comes from the transcript of the reasons for judgement that was entered into evidence in this matter. The Supreme Court of British Columbia was clearly “a court of competent jurisdiction” with the authority to make the finding that was made. The decision is now final and has not been successfully appealed. The decision involved the exact same issue (i.e. whether or not the Defendant was residing in the unit during the relevant time period) that is now before this court. It was decided in the Supreme Court on its merits and not on any other basis, such as a technical objection. The exact same parties are involved in both court actions.

[46] All of the elements of estoppel by *res judicata* are present in this case. The issue of whether or not the Defendant was residing in the unit during the time that these fines were levied was decided on its merits by the BC Supreme Court in the previous action and this court is bound by that finding on this issue. The Defendant is estopped from arguing that she was not resident in the suite during the period of these fines.

2. Compliance with Section 135 of the *Strata Property Act*

[47] The Defendant is not prevented from raising the issue of whether or not the Claimant has complied with Section 135 of the *Strata Property Act*, as that issue was not the subject of the decision of Justice Walker. The section reads as follows:

> 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.
>
> (2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).
>
> (3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

[48] Under this section, a strata corporation is not allowed to fine anyone unless it has followed due process as set out in this section. Under this section, there are a number of things which must take place before a fine can be imposed. These can be summarized as follows:

1. Someone must have made a complaint to the strata corporation against the person sought to be fined.

2. The strata corporation must then give the person it intends to fine written particulars of the complaint.

3. Once written particulars have been provided, the person who may be subject to the fine must be given a reasonable opportunity to answer the complaint.

4. The person liable to be fined can request a hearing concerning the complaint.

5. If the person alleged to have committed the breach is a tenant, then the owner of the unit that the tenant resides in must be given notice of the complaint.

6. After the person who is liable to be fined has received particulars of the complaint, and has either responded to the complaint, or if a reasonable period of time to respond has passed and the person has not responded the complaint, or if a hearing has been held in regard to the complaint, the strata corporation must give written notice to the person, informing him or her of the outcome and whether or not it has decided to impose a fine, and if so, what the amount of that fine is.

7. It is only after the strata corporation has complied with all of these requirements that it can impose a fine against the alleged offender.

[49] This procedural requirements for a strata corporation to impose a fine were considered by the British Columbia Court of Appeal in *Terry v. Strata Plan NW 309* 2016 BCCA 449. In that decision, Mr. Justice Fitch of the BC Court of Appeal wrote:

> **27** Section 135 of the *Act* sets out the procedure a strata corporation must comply with before imposing a fine for contravention of a bylaw. The provision is not complex and its requirements are straightforward. A fine

> must not be imposed unless the strata corporation has received a complaint about the alleged contravention of a bylaw and given the owner or tenant written particulars of the complaint with a reasonable opportunity to be heard in response, including a hearing if one is requested. The *Act* does not specify the form in which notice of the particulars of complaint must be given, nor does it define what constitutes a reasonable opportunity to answer the complaint.
>
> **28** In my view, an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue. In addition, the owner or tenant must be given a reasonable opportunity to answer the complaint. What constitutes a reasonable opportunity to be heard in response is a case-specific inquiry that must take account of the nature of the alleged contravention, the context in which the violation is said to have occurred, and the time that might reasonably be required to gather information or evidence needed to answer it.

[50] The Defendant argues that there has been non-compliance with section 135 in several respects. Each of the requirements will now be examined to determine if the Claimant is within its rights in fining the Defendant.

(a) Making a Complaint

[51] I am satisfied that a complaint was made to the Claimant, complaining that the Defendant was residing in a strata unit and was a person under the age of 55 years, contrary to Bylaw 131. I am also satisfied that this complaint was made prior to the issuance of the fine. Harold Klassen testified that he made such a complaint, and this is consistent with the letter which was sent to the Defendant on January 5, 2016.

[52] Section 135 of the *Strata Property Act* does not require a complaint to be made in writing. If that was what was intended, the statute would have said so, (as it did in section 135 (1) (e), where it requires the strata corporation to furnish particulars in writing.)

(b) Providing Witten Particulars of the Complaint

[53] The Claimant argues that it has met this requirement in its letter to the Defendant of January 5, 2016. In this letter, the Claimant's property manager summarizes the complaint as follows:

> "The Strata Council noted a moving van unloading personal items into Unit #121 on December 31, 2015. Per the Strata Bylaws and as noted in previous correspondence (see attached), person(s) under the age of 55 must not reside in your Strata Lot. Taking up residency in this Unit is therefore in contravention of the Strata Corporation Bylaws."

[54] The Defendant argues that this does not constitute proper particulars as required by section 135 (1) (e). She says that having a moving van unload personal items into a unit is not, by itself, a violation of the bylaws. After referencing the moving van, the next sentence references previous correspondence, specifically the property manager's letter to the Claimant dated September 15, 2015, in which the Defendant was told that persons under the age of 55 years must not reside in her unit. The letter of January 5th reminds the Defendant that persons under the age of 55 must not reside in her strata lot. It then says that taking up residence is contrary to the bylaws.

[55] Counsel for the Claimant acknowledged that this notice is not perfect, but says that it meets the requirements of the Act. It tells the Defendant which bylaw she is in breach of, and it tells her how she has breached the bylaw. He also argues that it was clear enough for the Defendant to understand what her alleged breach was, because she responded in writing on January 20, 2016.

[56] In her response it is clear that the Defendant understands the nature of the complaint. She writes "it is unfortunate that a resident/owner reported to the Strata

Council that I was residing in the suite prior to January 1st…" She goes on to admit that she is in breach of the bylaw. She writes "On January 1st, I began residing in the suite because I had no other choice…" Counsel argues that the Defendant had sufficient particulars of the nature of the complaint against her such that she was easily in a position to answer the complaint.

[57] The Defendant argues that the Claimant has not complied with this requirement so it cannot impose fines against her. She says that proper particulars should set out the location, date, time and nature of the breach, and that the particulars that she was provided with are woefully inadequate.

[58] The phrase "particulars of the complaint" does not have a specific definition under the *Strata Property Act*. In *Terry v. The Owners, Strata Plan NW 309, supra,* the BC Court of Appeal said that particulars in this context must be "sufficient to call to the attention of the owner or tenant the contravention at issue." The Court also implied that they need not be complex when it said that this "provision is not complex and its requirements are straightforward".

[59] In *Strata Plan LMS 3259 v. Sze Hang Holding Inc*. 2016 BCSC 32, the strata corporation notified strata owners of alleged bylaw violations by using a form on which a box was checked, indicating what section of the bylaws was alleged to be breached. No further details were provided. The Honourable Madam Justice Harris of that court held that this was sufficient for the requirements of section 135. She wrote:

> [206] "I conclude that the plaintiff met the procedural requirements of s. 135 to notify the defendants of the particulars of alleged contravention and to provide the defendants with an opportunity for a hearing to answer the complaint that they had violated the signage bylaw.

[60] The use of the word “particulars” suggests that there should be some amount of detail provided concerning the breach, and at first glance, it might seem that more detail is required than what was provided by the Claimant to the Defendant in this case. That would certainly be a wise practice on the part of the Claimant. However, according to the decisions of courts which are binding on this court, section 135 does not require this level of detail. The particulars must simply be sufficient to make the alleged bylaw violator aware of what his or her alleged breach is. In this case it is clear from the Defendant’s correspondence that she was aware of what she was alleged to be doing that was in breach of the bylaws: i.e. residing in a strata unit when she was yet 55 years of age. She acknowledged as much in her letter in response and she never complained in her length response about not being furnished with enough information to answer the complaint, or to address the Annual General meeting.

[61] In the letter from the Claimant’s lawyers to the Defendant on March 4, 2016, the particulars of the alleged breach are set out with equal or greater clarity. The Defendant was once again reminded about the bylaw, and she was told that she was in breach of that bylaw because she was in occupancy of the unit, but was under 55 years of age, and was not the spouse of an owner who was 55 years of age or older. Similarly, in the property manager’s letter to the Claimant of April 18, 2016, the complaint is phrased as concerning “an underage occupant residing at your Strata Lot.” The letter of June 24, 2016, sets out the particulars of the alleged breach in especially clear language. All of these letters make it clear to the Defendant what her alleged bylaw offence is.

[62] Accordingly, I find that the Claimant has provided the Defendant with written particulars of the complaint which led to the fines that were imposed against her that are sufficient to meet the requirements of section 135.

(c) Reasonable Opportunity to Respond

[63] Each of the letters to the Defendant from the Claimant's property manager informs the Defendant that she has an opportunity to respond to the complaints. The letter of January 5th gave her until January 20, 2016 to respond. This date is significant because it is the day of the Annual General Meeting. The Defendant did prepare and submit a response and stated her case in considerable detail. The letter of April 18th gave the Defendant until May 3, 2016 to respond. She provided a written response the next day. I was not directed to any part of the Defendant's correspondence showing that she ever complained about insufficient time to respond. I find that the Defendant received a reasonable opportunity to respond to each of these complaints.

(d) Right to Request a Hearing

[64] Section 135 (1) (e) gives the person who is subject to a fine the right to request a hearing in respect of their alleged violation. The section does not require the strata corporation to inform the person of this right, and the notice is not deficient because of the failure to do so. But if the subject of the complaint requests that a hearing be held, the strata corporation is obliged to hold a hearing on the complaint.

[65] In response to the first letter from the Claimant's property manager, the Defendant did have a form of hearing, in that her request of exemption was presented at and considered by the strata council and owners at the Annual General Meeting held

on January 20, 2016. In response to the second letter, which was dated April 18, 2016, the Defendant responded the following day, writing “I will not be asking for a hearing, but just a written decision from council.” Accordingly, I find that this requirement of section 135 of the Act has been complied with.

(e) Written Notice of the Outcome

[66] On May 4, 2016, the Claimant’s property manager informed the Defendant in writing that council had denied her requests. This was followed up by a letter from the Claimant’s lawyer dated June 24, 2016, demanding that the Defendant pay the fines which had accrued up to that time. It is clear that the Defendant was made aware that her requests for exemption from the fines and from compliance with the bylaw were denied, and that the final requirement under section 135 of the Act has been complied with.

[67] While the Defendant’s compliance with the prerequisites for imposition of fines may not always have been done in the clearest, most direct or most articulate manner, a review of each of these elements satisfies me that the Claimant has complied with section 135 of the *Strata Property Act.*

3. Legal Fees

[68] The Defendant was billed for the Claimant’s legal fees as part of the invoice which she was given, informing her of the amount that she owed in outstanding fines. Counsel for the Claimant concedes that this amount should not be included as a part of any judgement awarded to the Claimant by the Defendant. Section 19(4) of the *Small Claims Act* provides that “(4) The Provincial Court must not order that one party in a

proceeding under this Act or the rules pay counsel or solicitor's fees to another party to the proceeding." There is also an argument to be raised that the Defendant has already paid her portion of this cost once in the form of her strata fees, though this argument has less force if she is found to have caused the problem in the first place. In any event, the Claimant is not seeing the inclusion of this amount in any judgement it receives and it will not be included in any judgement awarded to the Claimant.

Order

[69] It is unfortunate that the dispute between the Claimant and the Defendant has progressed to the length that it has. Small Claims Court offers many off-ramps for people who are willing to reasonably resolve their contentious issues. In this case, there was a considerable amount of correspondence exchanged between the parties before fines were imposed and litigation in two courts was commenced. At the conclusion of the litigation in the British Columbia Supreme Court, Mr. Justice Walker gave the Defendant some advice that she has chosen not to follow.

[70] This dispute is fuelled by differing perspectives. No doubt, many of the Claimant's owners must be wondering what they have to do to get the age restriction in their building enforced, given all the many court applications that have taken place up to now. For the Defendant, she is unable to understand why the Claimant's members won't bend the rules for her, so that she does not have to sell her unit or give up her disability income. Unfortunately frustration on the part of both parties had made these issues difficult to resolve amicably.

[71] Fairness requires that this case must be decided according to law. The law should not be contorted, regardless of the fact that sympathies lie on both sides. With

the benefit of hindsight, the Defendant probably would have been better off if she had found a realtor and listed the property for sale after it became clear that a substantial majority of the other owners of this strata did not wish to give up their right to reside in a building occupied by persons who were 55 years or older. They were not unreasonable in wanting to do so. This is what they paid for when they bought their units, and it must seem unfair to them that one person could unilaterally deny them this right. The other owners (or at least those among them who are reasonable) were willing to play by the rules when it came to respecting the outcome of the vote at the Annual General Meeting and the Defendant should also have done so.

[72] The Defendant's unwillingness to respect the outcome of the vote stems from the emotion that followed the loss of her mother, the personal health issues that she faces, and her fear that she will not be able to collect both a disability pension and also own this home. Now the value of her asset will be reduced by the amount of fines. It is unfortunate that insult was added to injury in some of the things written in her correspondence. Some of her actions, such as invading the privacy of the Claimant's counsel and his family, do not present her in the best light, and she is surely capable of being a better person than this. It is my hope that she will let go of this conflict before the financial and emotional costs grow beyond what they have.

[73] The Claimant will have judgement against the Defendant for the amount of the fines, assessed at $200 per week for the period from January 4, 2016 until July 13, 2017 (67 weeks) for a total of $13,400. It will also be awarded prejudgement interest on this amount, calculated in accordance with the prescribed regulations (for ease of

calculation, from July 13, 2017), and costs as claimed in the Amended Notice of Claim in the amount of $266.00.

Dated at the City of Abbotsford, in the Province of British Columbia, this 8th day of January, 2018.

_____

(The Honourable Judge K. D. Skilnick)