

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *625536 B.C. Ltd. v. The Owners, Strata Plan LMS4385*,
2018 BCSC 1637

Date: 20180920
Docket: S-185432
Registry: Vancouver

Between:

625536 B.C. Ltd., 1052387 B.C. Ltd. and 581163 B.C. Ltd.

Petitioners

And:

The Owners, Strata Plan LMS4385

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Corrected Judgment: The text of the Judgment was corrected at
paragraph 15 on September 21, 2018

Oral Reasons for Judgment

Counsel for the Petitioners:

Jeremy E. Shragge

Counsel for the Respondent:

G. Stephen Hamilton

Place and Date of Hearing:

Vancouver, B.C.
September 20, 2018

Place and Date of Judgment:

Vancouver, B.C.
September 20, 2018

Introduction

[1] The petitioners seek an order pursuant to s. 165(b) of the *Strata Property Act*, S.B.C. 1998, c. 43 (the “Act”) requiring the respondent to cease assessing the petitioners retroactive strata fees. They also seek an order pursuant to s. 165(c) of the *Act* requiring the respondent to cancel any retroactive strata fees, including interest that have been assessed to date.

Background

[2] The facts are straightforward.

[3] The petitioners, 625536 B.C. Ltd. (“625”), 1052387 B.C. Ltd. (“105”) and 581163 B.C. Ltd. (“581”) are the owners of the following strata units in building #4 of a commercial development located at 12888 80th Avenue, Surrey B.C. known as “York Business Park” in respect of which the respondent is the Strata Corporation (“Strata”):

- a) strata lot 113/unit 205 (“Unit 205”) owned by 625;
- b) strata lots 92 and 93/units 101 and 102 (“Unit 101” and “Unit 102”) owned by 105; and
- c) strata lot 101/unit 110 (“Unit 110”) owned by 581.

[4] The Strata’s fiscal year end is June 30.

[5] At the 2016 annual general meeting of the Strata held on August 25, 2016, the owners unanimously approved the 2016-2017 annual budget (the “2016 Budget”). Pursuant to the 2016 Budget, the petitioners were assessed the following monthly strata fees for their respective units:

- a) Unit 205: \$315.49;
- b) Unit 101: \$265.83;
- c) Unit 102: \$295.04; and

d) Unit 110: \$274.59.

[6] The Strata charged the petitioners these amounts for the 12 months commencing October 2016.

[7] At the 2017 annual general meeting of the Strata held on August 29, 2017, the owners unanimously approved the 2017-2018 annual budget (the "2017 Budget"). Pursuant to the 2017 Budget, the petitioners were assessed the following monthly strata fees for their respective units:

- a) Unit 205: \$396.57;
- b) Unit 101: \$334.15;
- c) Unit 102: \$370.87; and
- d) Unit 110: \$345.16.

[8] The Strata commenced charging the petitioners these amounts in October 2017. It did so by sending the petitioners (and presumably all other owners) an invoice dated October 1, 2017 setting out the new strata fee for the unit together with a lump sum adjustment representing the difference between what had been paid for the months of July, August and September 2017 and what would have been paid for those months had the 2017 Budget been approved prior to July 1. In the case of Unit 205 the invoice read:

New Strata Fee (Lot 113 Unit 205) applicable from July as per AGM	\$396.57
Adj (July to September) New Fee: 396.57-Old Fee 315.49*3	\$246.24
GST	\$30.46
Total Amount	\$639.81

[9] The total amount in dispute in this petition is \$887.38.

[10] Counsel advised that driving this petition is the general importance of the issue raised to the strata property management profession and the need for clarity on the question of whether a strata corporation is entitled to invoice strata fees in the

manner the Strata did in this case. The *Act* is silent as to whether a strata corporation may charge fees in the form of the adjustments.

The Scheme under the Act

[11] Under the *Act* a strata corporation is responsible for payment of the common expenses of the strata corporation (s. 91). In order to do so, it must establish an operating fund and a contingency reserve fund (s. 92). It must prepare an annual budget for the coming fiscal year to meet its operating expenses (s. 103(1) and Regulations 6.6(1)). The owners must contribute to the strata corporation their strata lots' shares of the total contributions budgeted for the operating fund by means of strata fees (s. 99(1)). Any surplus at the end of the fiscal year is transferred to the contingency reserve fund or used to reduce the total contribution necessary for the next fiscal year's operating fund (s. 105(1)). Any deficit must be eliminated during the next fiscal year (s. 105(2)).

[12] Section 40(2) of the *Act* permits a strata corporation to hold its annual general meeting up to two months after the strata corporation's fiscal year end. The budget for the coming year is approved at the annual general meeting (s. 103(1)). A strata corporation must, within two weeks of the budget being passed, inform owners of any changes to their strata fees resulting from the new budget (s. 106).

[13] If a fiscal year to which a budget relates ends before a new budget is approved, the owners must, until the new budget is approved, continue to pay to the strata corporation the same monthly strata fees that they were required to pay under the previous budget (s. 104(2)).

[14] Section 59 of the *Act* stipulates that a strata corporation must, within one week of a request by an owner, a purchaser or a person authorized by an owner or purchaser, provide an Information Certificate ("Form B") containing the prescribed financial information relating to a strata unit. Section 115(1) of the *Act* requires a strata corporation, within one week of a request by an owner or purchaser, to provide a "Form F" certifying that the owner does not owe money to the strata

corporation. Section 115(2) deems a Form F to be current for the purpose of Land Title registration for a period of 60 days from the date it is issued.

The Respective Positions of the Parties

The Petitioners

[15] The petitioners say that the Adjustments are a contravention of the *Act* because there is nothing in the *Act* or the Strata's By-Laws that expressly (or by necessary implication) gives the Strata the ability to charge fees other than those approved in the annual budget. The petitioners argue that had the legislature intended to allow a strata corporation to adjust strata fees retroactively, it would have said so.

[16] The petitioners say further that the retroactive application of monthly fee increases is irreconcilable with a strata corporation's obligation to provide an accurate and reliable Information Certificate ("Form B") and Certificate of Payment ("Form F"). The result could be that an owner who purchased a strata unit (in reliance on those forms) during the interim period between the end of a fiscal year and the imposition of new fees containing adjustments for the shortfall of fee payments in the fiscal year prior to approval of the new fees would be liable, *ex post facto*, to pay arrears for a period prior to them owning the unit.

The Strata

[17] The Strata concedes that, if the adjustments charged in this case for the months of July, August and September 2017 are found to have been "retroactive", the petition should succeed because there is no authority under the *Act* to create a retroactive obligation on strata owners. However, the Strata submits that what occurred was not an attempt to create a retroactive obligation.

[18] The Strata submits that, absent a statutory provision expressly prohibiting a strata corporation charging the adjustments, it is entitled to do so because the adjustments are consistent with the intent and framework of the *Act*, namely that:

- a) it is incumbent upon a strata corporation to raise sufficient monies through the collection of monthly strata fees to meet its annual expense obligations;
- b) a strata corporation is permitted to hold its annual general meeting to approve a new budget and strata fees up to two months after its fiscal year end;
- c) the adjustments are merely a reconciliation of the amounts paid and collected up to the time of the new budget with what ought to have been paid and collected had the new budget been in place as at the end of the previous fiscal year.

[19] The Strata submits that the adjustments accord with the principle that a strata corporation must collect strata fees in order to pay its common expenses based upon the budget. The collection of too much or too little is contemplated by s. 105 of the *Act* which sets out how surpluses and deficits at the end of a fiscal year are to be handled. The mechanism of the adjustments at the beginning of a fiscal year is merely an application of the same principle.

[20] The Strata argues that, if no adjustment is made and a deficit results at the end of the fiscal year, that deficit must be eliminated during the next fiscal year, pursuant to s. 105(2) of the *Act*. The purpose of the adjustments is simply to collect the anticipated deficit as soon as it is known rather than have to eliminate it in the next fiscal year with higher fees.

[21] The Strata submits that an adjustment of strata fees does not render the Form B or Form F inaccurate or unreliable any more than would a deficit or surplus identified at the end of the fiscal year.

Analysis

[22] The modern approach to statutory interpretation has repeatedly been reiterated by this court, by our Court of Appeal and by the Supreme Court of Canada

in cases such as *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), at para. 26; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 (CanLII), at para. 10; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), at para. 27; *The Owners, Strata Plan NEW97 v. Timberline Developments Ltd.*, 2011 BCCA 421 at paras. 12-16; and *The Owners, Strata Plan LMS 1495 v. 07538874 B.C. Ltd.* at paras. 35-37. In *Timberline*, the Court stated:

[12] The accepted principle for purposes of interpreting a statutory provision is contained in this much-endorsed passage from E.A. Driedger, *The Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach; namely, the words of an Act are to be read 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.

[13] The words of a section to be interpreted must first, therefore, be understood in the context of the Act as a whole. In addition, in this case, attention must be paid to the fact that both ss. 217 and 227 are contained in Part 13 of the Strata Property Act, which deals specifically with phased strata plans.

[14] As well, the words of an Act are to be read or understood “in their grammatical and ordinary sense”. That is, words must be given their plain meaning, considered in the context of the legislation as a whole.

[15] Finally, the plain meaning of the words, as read in their statutory context, must not conflict with the overall design and purpose of the legislation, nor with the intention of Parliament or the Legislature as it appears from the language of the Act.

[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.

[23] Section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 provides that:

8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[24] The question for determination is whether the words of the Act, read 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 the legislature, giving such fair, large and liberal construction and interpretation as best ensures the attainment of the *Act*'s objects, authorise a strata corporation to do what the Strata did in this case.

[25] It is commonplace for a strata corporation to hold its AGM after its fiscal year end. If the AGM is held prior to the end of the fiscal year, financial statements must be prepared and circulated to the owners in advance of the AGM (s. 103). Then, within eight weeks following the AGM, updated financial statements must be circulated (BC Regulation 43/2000 s. 6.7(2)). By holding the AGM for a given fiscal year after the previous fiscal year end, the requirement for two sets of financial statements is averted.

[26] Section 104(2) of the *Act* provides that if a fiscal year to which a budget relates ends before a new budget is approved, the owners “must until the new budget is approved, continue to pay the same monthly strata fees” they were required to pay under the previous budget. On a plain reading of s. 104(2), the obligation to pay fees based upon the new budget does not arise until the new budget has been passed.

[27] In my view, a subsequent “adjustment” to the fees paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge. I note that there have been at least two decisions of the Civil Resolution Tribunal that found such charges were retroactive: *The Owners, Strata Plan NW 2729 v. Haddow et al*, 2018 BCCRT 37 at paras. 37 - 47; *The Owners, Strata Plan KAS 1459 v. Leonard*, 2018 BCCRT 159 at paras. 27 – 28. The *Leonard* decision followed the decision in *Haddow* without analysis.

[28] In *Haddow*, the Tribunal based its determination in large part of the notion that the strata fee information required to be disclosed in a Form B or Form F would be inaccurate if a prospective purchaser of a strata unit obtained those forms (a Form F remains “current” for a period of 60 days after it is issued: *Act* s. 115(2)) prior

to the approval of a new budget. The buyer would be led to believe that the seller's strata fee payment obligation was up-to-date when in fact it was not.

[29] With the greatest of respect to the Tribunal, I disagree. An owner's strata fee obligation does not arise until it is approved at the AGM. The Form F (and indeed the Form B) will have been accurate when issued. The Tribunal in *Haddow* appears to have begun its analysis based upon the conclusion that the fees had been imposed retroactively. In my view they were not.

[30] There is no requirement in the *Act* that strata fees be paid in equal installments. Plainly, the schedule of strata fee payments can require equal monthly installments, or installments that include adjustments to make up a deficit between what was paid and what would have been paid had the budget for the current fiscal year been in place at the commencement of the current fiscal year. Fees for one month may be different than for other months.

[31] The Strata could easily have included the adjustments as part of the fee schedule included in the 2017 Budget materials which were sent to the strata owners and approved at the AGM. Instead, it merely set out in the materials a schedule showing what each strata unit's monthly fees under the 2017 Budget would be, based upon the unit entitlement. Alternatively, the Strata could have convened a meeting to approve a special resolution imposing a special levy for the adjustment: *Act* s. 108.

[32] Instead, the Strata simply sent the petitioners (and the other owners) an invoice which included the adjustment in question. The strata fees that were invoiced were precisely those that had been approved at the AGM. Because the Strata's invoices for the months of July, August and September 2017 were based upon the previous fiscal year's fees, the October 2017 invoice simply included the deficit that had not been invoiced for those earlier months. The Strata could not have invoiced for the deficit any earlier than it did because the new fees had not been approved until the AGM. The deficit only became due and payable after the AGM as a result of the 2017 Budget being approved.

[33] In my view, a full answer to the petitioners' argument is this: the 2017 Budget did not establish a new fee schedule for only the period after the AGM – it established a new fee schedule for the entire fiscal year, commencing July 1, 2017. The October 2017 invoices did nothing more than require payment of the fees that were approved by the owners.

[34] I agree with counsel for the Strata that the petitioners' argument undermines the objects of the legislature and the intentions of the *Act*, namely to ensure that strata corporations, which are responsible for the payment of the expenses associated with the strata development, are able to fund those expenses by way of an operating fund contributed to by the individual strata unit owners in proportion to their unit entitlements.

Conclusion

[35] The petition is dismissed, with costs at Scale B.

“G.C. Weathrill J.”