Court of Queen's Bench of Alberta

Citation: Braun v Condo Corp. No. 9612496, 2018 ABQB 623

Date: 20180824
Docket: 1801 09218
Registry: Calgary

Between:

Christopher Jason Braun and Lori Lynn (White) Braun

Applicants

- and -

The Owners: Condominium Corporation No. 9612496, Barbara Keefe and Unit Management Ltd.

Respondents

Reasons for Decision
of
J.T. Prowse, Master in Chambers

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[1] This matter came forward in morning chambers on July 24, 2018. I subsequently received brief written arguments from the parties.

[2] The issue is whether owners of a condominium unit (the "Brauns") are liable to reimburse their Condominium Corporation for approximately $1,500 in legal expenses which the Corporation incurred obtaining an order allowing inspection of the Brauns' condominium unit.

[3] The issue was brought to court by the Brauns, who seek a ruling that the Condominium Corporation engaged in 'improper conduct' as defined in section 67 of the *Condominium Property Act* (the "CPA") by:

(i) improperly accessing the Brauns' unit, and

(ii) levying a charge against the Brauns' unit for legal fees incurred by the Condominium Corporation in connection with obtaining access.

[4] The Condominium Corporation cites bylaw #3 and section 24 of the CPA for its authority to access the Brauns' unit.

[5] For the reasons I set out below, it is my conclusion that only bylaw #3 is relevant.

[6] Bylaw #3 states:

An owner shall:

> (a) Subject always to the Act, permit the Corporation and its agents, at all reasonable times on reasonable notice (except in case of emergency when no notice is required) to enter the unit for the purposes of:
>
> > (iv) gaining access to and provide maintenance and testing of the fire sprinkler system ...

[7] Section 24 states:

> 24(1) Easements or restrictions implied or created by this Act or the bylaws take effect and are enforceable
>
> > (a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and
> >
> > (b) without any express indication of those tenements.
>
> (2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing that the dominant tenement is entitled to benefit from.
>
> (emphasis added)

[8] What is important to notice is that, while section 24(1) deals with three types of easements (found in the bylaws, created by the CPA, implied by the CPA) section 24(2) only deals with one of those three, namely, easements implied by the CPA.

[9] Section 24.1 of the CPA contains many modifications and qualifications to this third type of easement, namely the right of entry 'in respect of easements implied by this Act'.

[10] However, in the case before me, we need look no further than the right of entry contained in the bylaws. Therefore section 24.1 is not relevant to this analysis.

[11] To confirm this observation, I will quote from section 24.1 and underline the critical wording. Section 24.1 states:

> (1) Except as otherwise permitted in this section, no person may enter a unit under section 24(2) without the consent of the owner of the unit or of an adult person lawfully on the premises that comprise the unit.

(2) A person may enter a unit under section 24(2) without consent or notice if that person has reasonable grounds to believe that an emergency requires that person to enter the premises to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(3) Subject to subsection (4), a person may enter a unit under section 24(2) without consent but after notice to the owner or person in possession of the unit to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(4) A person is not entitled to enter a unit under subsection (3) unless

(a) the notice is served on the owner of the unit or an adult person in possession of the unit at least 24 hours before the time of entry,

(b) the entry is made on a day that is not

(i) a holiday, except that the person may enter on a Sunday if the day of religious worship of the adult person in possession of the unit is not Sunday and that adult person has provided to the person wishing to enter the unit a written notice of that adult person's day of religious worship, or

(ii) the day of religious worship of the adult person in possession of the unit if that day is not Sunday and that person has provided to the person wishing to enter the unit a written notice of that day,

and

(c) the entry is between 8 a.m. and 8 p.m.

(5) A notice under subsection (3) must

(a) be in writing,

(b) state the reason for the entry, and

(c) name a date and time of entry that comply with subsection (4). (emphasis added)

The physical layout of the fire sprinkler system

[12] The units are side by side units, each with a lower garage and living space on the upper floors. The living spaces have a standard water type fire sprinkler system. The garages have a dry fire sprinkler system.

[13] In wet pipe systems, the overhead sprinkler piping is filled with water under pressure. Dry fire sprinkler systems, on the other hand, do not have water in the sprinkler piping, but only pressurized air or nitrogen. The pressurized air holds back the water supply at a main dry-pipe valve.

[14] The dry fire sprinkler system ran through all the garages. In other words, each garage did not have its own dry fire sprinkler system, but all were connected.

The notice given to the Brauns

[15] I will now relate the events in order to determine whether, pursuant to bylaw #3, the Brauns were given reasonable notice for a reasonable time, or whether there was an emergency so that no notice was required.

[16] The following chronology is taken, largely *verbatim*, from the affidavit of Barbara Keefe, who was the volunteer president of the condominium association:

- On the evening of February 2, 2018, I was alerted to a problem with Hillandale's pressurized dry air/fire suppression system (the "System"). The System's air compressor, which is located in my condo unit, began to run very loudly, which I understood to indicate a leak in the System had developed. The pump engaged every 30 minutes and the System was losing approximately 16 pounds of pressure every 30 minutes. At that time I did not know where in the System the leak was. Given that this was an important health and safety issue, I immediately contacted U-Win Fire Protection ("U-Win"), the plumbing company contracted to repair and maintain the System. Grant Readman ("Mr. Readman"), a representative from U-Win, arrived that evening and told me to temporarily shut off the System's dry-side water flow to avoid a potential catastrophic leak.

- I was also told by Mr. Readman that an investigation into the cause of the leak and repairs to the System should be undertaken as soon as reasonably possible as the shut off meant portions of the Hillandale would not have the designed fire protection. I was also told that all units would have to be investigated on the same date for the inspection to be successful. I was also told by Mr. Readman that during the temporary shut off of the System, I or someone else would have to monitor the condominium continuously, as the System was no longer armed and protected, leaving the garages and furnace rooms at Hillandale vulnerable.

- I contacted Hillandale's alarm monitoring companies, F & G Controls Inc. and SecurTek, on the evening of February 2, 2018 to let them know of the issue. Hillandale's property manager, Unit Management Ltd. ("Unit Management"), and I then arranged for a technician from U-Win to come to Hillandale on February 4, 2018 to inspect the System and search for the source of the leak. I used the contact information I had for Hillandale's unit owners and renters to issue notifications about the inspection.

- It is my practice in notification emails to include all unit owners or tenants by carbon copy or blind copy (cc or bcc). I understood that on February 3, 2018, I had done so in an email wherein I indicated, in part, as follows:

  > "Urgent; the fire suppression system indicator is
  > that we have a leak in the garage sprinkler system.

> Please check your garage to listen for hissing sound or any leaks."

- A number of unit owners/tenants responded to my email, none of whom indicated that they had found a leak. I then, again understanding that I was including all unit owners or tenants, indicated as follows in a subsequent email on February 3, 2018:

> Dear Neighbours, Thank you so much for your cooperation this evening. We have not managed to identify the location of the leak and will need to have the fire safety company inspect. The plumber from U-Winn Fire Protection Service will be here tomorrow morning at 10 am and will require access to all the garages. Please let me know if a specific time is best for your inspection.

- When units are purchased or occupied by new tenants, the Hillandale By-laws require that up to date contact information be given to Hillandale and Unit Management. On February 3, 2018, I did not have contact information for the tenant in Unit 1137 [owned by the Brauns]. When I sent the notice, I understood that I was using the current email address for the owner of Unit 1137. The owner of Unit 1137 had not provided a telephone number nor a current mailing address.

- On the morning of February 4, 2018, I accompanied Mr. Readman for inspections of Hillandale's units to find the leak. As we were going to the units, I called each unit occupant to let them know that we were coming. I was able to contact every occupant except those in Unit 1137. No problems with the System were discovered in the 13 units Mr. Readman inspected that morning. None of the unit owners in these 13 units raised any concern with our accessing their units to conduct this inspection.

- Along with Mr. Readman, I knocked on the door of Unit 1137, a unit owned by Christopher Braun ("Mr. Braun"), who I understood to be an engineer by training, and his wife Lori Braun. The unit is legally referred to as Unit 3 (the "Unit"). Russ Reuser ("Mr. Reuser"), who I then discovered was renting the Unit, opened the door and I stepped inside the entryway as it was very cold outside. I explained the situation to him, in particular that this was a safety issue for the entire complex that needed to be dealt with immediately, and asked if he would grant us access to the garage/furnace level of the Unit to inspect the System.

- Mr. Reuser refused my request, saying that he did not know me. Instead, another person in the Unit said she would go downstairs to listen for leaks. She apparently did this and said that she did not notice anything. Mr. Readman and I then left. Given that the Unit was the only one to have not been inspected by a qualified person, a repeat inspection was scheduled for all units on February 7, 2018. Notification was again sent out in

advance. While we were at the neighbouring unit, Mr. Reuser opened the garage door to the Unit.

- I asked Mr. Reuser if the plumbing professional could inspect the garage and furnace area at that time. I also explained that I did not have Mr. Braun's current telephone information. Mr. Reuser then called Mr. Braun and Mr. Reuser's phone was passed to me. I told Mr. Braun that there was a major leak in the dry side sprinkler for the entire complex and we needed to immediately access to the Unit to find the leak. He asked why I did not contact him earlier, and I explained that I had tried by email and asked if he could provide me with current contact information. Mr. Braun said "No" and that I could contact Unit Management to get this. I told him that I had the same information that Unit Management had, but he still refused. The phone was then returned to Mr. Reuser. Mr. Reuser still refused access.
- On or about February 10, 2018, I sent another notification to all unit owners indicating that further inspections of the System were required and would be attempted on February 13, 2018.
- On February 13, 2018, another inspection of the units was attempted. I am advised by Rick Stone, a plumbing subcontractor to U-Win who was at the Unit on February 13, 2018, and do verily believe, that at that time he spoke to Mr. Reuser and again advised Mr. Reuser that it was very important that access be granted to the Unit to try to find the leak. Mr. Reuser then permitted access to the Unit. Upon entry to the Unit's furnace room, Mr. Stone immediately discovered what he described to me as a loud hissing noise emanating from a large crack in the drip drum valve of the System. The ruptured valve was replaced on that date. I was then advised by U-Win that we could turn on the System. U-Win did this on February 13, 2018.
- In the early morning hours of February 14, 2018, I was awoken by the compressor pump starting again. This indicated to me that there was still a leak in the System at the replaced valve or otherwise. This compressor started every 6-7 hours for the next few days, losing 16 pounds of pressure each 6-7 hour time period. As a result of this, I again contacted U-Win, who advised that they would need to come back to Hillandale to reinspect the System in all units. At that time I was not told to shut the System off. However, I was advised that any potential further leak would need to be found and fixed.
- Another inspection was scheduled for February 25, 2018. Now that I had Mr. Reuser's contact information, on the afternoon of February 23, 2018, I sent a text message to Mr. Reuser, notifying him of the continuing issue and requesting access to Mr. Braun's Unit on February 25, 2018.
- At 5:02 p.m. on February 23, 2018, Mr. Braun called me. The call finally allowed me to get Mr. Braun's updated telephone information, as

previously he had provided neither the Board nor Unit Management Ltd. with this nor had he updated his address on the Land Title Certificate for the unit he owns.

- During the telephone call with Mr. Braun on February 23, 2018, I told him that the plumbers had indicated to me that they thought there was still a leak in the Unit, and that given obvious safety concerns we needed to reinspect and repair. Mr. Braun notified me that he would allow access to his Unit, but only on the condition that I and a representative from Unit Management Ltd. attended with the inspectors. Given the urgency and despite there being no basis for the imposition of the condition, I agreed and contacted U-Win and Unit Management Ltd. to request their attendance.
- Further to Mr. Braun's request on the phone call, a notice of the intention to inspect Mr. Braun's Unit at 10:30 a.m. on February 25, 2018 was sent to Mr. Braun by email on February 23, 2018. Mr. Braun acknowledged receipt of the email at 7:46 a.m. on February 24, 2018.
- I, along with my husband and technicians, attempted to inspect Mr. Braun's Unit on February 25, 2018. Mr. Braun, who was at the unit, refused us entry, as Pete Dhaliwal of Unit Management Ltd. was not with us, per Mr. Braun's demand.
- At the March 7, 2018 meeting of the Hillandale Board, the Board voted to send a demand letter to Mr. Braun. On March 12, 2018, a letter demanding access (the "Demand Letter") to Mr. Braun's unit was sent to Mr. Braun by Laurie Kiedrowski of Mcleod Law. Ms. Kiedrowski's office charged Hillandale $1,553.99 for her services respecting same.
- Access was finally granted to Mr. Braun's Unit on March 16, 2018. The necessary plumbing repairs were done, allowing the System to be fully operational again.
- The Board voted to not charge Mr. Braun the fees relating to the multiple inspector visits, made necessary by Mr. Braun's failure to co-operate, if he covers the legal fees. Had the inspectors been permitted access to the Unit on February 4, 2018, the leak would have been found immediately and Hillandale would have saved over $600.00 in plumbing fees. The Board has never sought these fees back from Mr. Braun.
- I personally lost nearly five weeks of paid work as a result of having to monitor the System while it was turned off. I have never been compensated for this time.
- The refusal of Mr. Braun to co-operate compromised the safety and security of Hillandale and the 30 people who live there. This was a health and safety issue that needed to be addressed as quickly as possible which was both obvious, and communicated to Mr. Braun and Mr. Reuser.

[17] In his responsive affidavit Mr. Braun asserted that he had, upon purchasing the unit in 2011, given Unit Management his contact information, which had not changed since that date. Further he says that he at one time served on the board of the condo association with Ms. Keefe and she had corresponded with him via email on numerous occasions.

[18] I am not in a position to adjudicate factual disputes and so I will assume, for the purposes of this application, that the Brauns had provided their contact information as required and that it had somehow been misplaced by the Corporation.

Was the notice to inspect properly given by the Corporation?

[19] For the reasons which follow it is my conclusion that proper notice was given by the Corporation for the inspection of the fire sprinkler system on February 25, 2018.

[20] Bylaw #3 does not require that notice be given in writing. It merely requires 'reasonable' notice.

[21] The fact that the notice in this case was sufficient to allow Mr. Braun to be there is apparent from the fact that Mr. Braun was present when the appointed time came on February 25, 2018.

[22] Mr. Braun had no right to insist that a representative of the management company be present for the inspection.

[23] The Brauns rely on section 71.1 of the CPA, which sets out requirements for serving documents on an owner (including written notices) but, as indicated, the notice under bylaw #3 did not have to be written, so that section is inapplicable. There was oral notification of the proposed inspection by telephone on February 23, 2018.

[24] The Brauns further rely on bylaw #53, which deals with service of notices. However, that bylaw clearly deals with written notices (it is not possible to put an oral notice under a front door or in a mailbox) and in any event is permissive, not mandatory.

The claim for legal fees

[25] Given the Brauns refusal to allow an inspection of the fire sprinkler system on reasonable notice, it was necessary for the Corporation to retain legal counsel to make a more formal demand for an inspection, and the legal fees charged by the Corporation are properly chargeable to the Brauns. This is not the imposition of a fine or penalty, it is reimbursement for funds expended by the Corporation.

[26] Accordingly I deny the Brauns application for a ruling that the Condominium Corporation engaged in 'improper conduct' as defined in section 67 of the Condominium Property Act (the "CPA") by:

- improperly accessing the Brauns' unit, and
- levying a charge against the Brauns' unit for legal fees incurred by the Condominium Corporation in connection with obtaining access.

[27] Further, there are no sufficient grounds for removing Ms. Keefe from the board. Even if I had ruled in favor of the Brauns in this application, I would have seen no reason to remove Ms. Keefe from the board.

Costs

[28] If the parties cannot agree on the costs of this application, they may seek a ruling from me in that regard.

Heard on the 24th day of July, 2018.
Dated at the City of Calgary, Alberta this 24th day of August, 2018.

J.T. Prowse
M.C.C.Q.B.A.

Appearances:

Lisa Handfield
for the Braun Applicants

Patrick Heinsen
Borden Ladner Gervais LLP
for the Respondents