COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478,* 2019 BCCA 64

Date: 20190221
Docket: CA44526

Between:

HighStreet Accommodations Ltd.

Appellant
(Plaintiff)

And

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

Respondents
(Defendants)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice Dickson
The Honourable Mr. Justice Fitch

On appeal from: An order of the Supreme Court of British Columbia, dated June 22, 2017 (*HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, Vancouver Docket S156291).

Counsel for the Appellant: E. Kassaris, J.A. Hutchinson

Counsel for the Respondent: S. Todesco

Place and Date of Hearing: Vancouver, British Columbia, February 13, 2018

Place and Date of Judgment: Vancouver, British Columbia, February 21, 2019

Written Reasons by:
The Honourable Madam Justice Dickson

Concurred in by:
The Honourable Mr. Justice Harris
The Honourable Mr. Justice Fitch

Summary:

The appellant challenges the judge's decision that s. 143 of the Strata Property Act does not protect the appellant from the application of a bylaw which restricts it from providing short-term accommodation to its clients in a strata lot that it rents from the owner. It argues the judge interpreted s. 143 of the Strata Property Act unduly narrowly, erroneously limiting its right to deal with the strata lot as it saw fit in the absence of an applicable restriction. Held: appeal dismissed. The purpose of the Strata Property Act is to protect purchasers of strata properties, balance the interests of stakeholders and ensure consistency, fairness and equity among owners. The words "occupying" and "ceases to occupy" in s. 143 mean physical occupation by a tenant. Neither the appellant nor any other tenant physically occupied the strata lot when the bylaw was passed. The bylaw thus applied to the strata lot one year later and the appellant is subject to its terms.

Reasons for Judgment of the Honourable Madam Justice Dickson:

Introduction

[1] Residential use of strata property differs markedly from commercial use for short-term accommodation. For some owners, the latter creates a welcome opportunity to generate income; for others, a revolving door of strangers within their collective home. Acting through their governing authority, the members of a strata corporation may seek to limit short-term accommodation within a residential development, which can lead to disputes among affected parties. That is what happened in this case.

[2] The appellant, HighStreet Accommodations Ltd. ("HighStreet"), appeals from the judge's decision that s. 143 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*] does not protect HighStreet from the application of a bylaw which restricts it from providing short-term accommodation to its clients in a strata lot that it rents from the owner. For the reasons that follow, I would dismiss the appeal.

Background

[3] Daniel Christman is the registered owner of a residential strata lot in a building known as Spectrum Tower II (the "Strata Lot"). Located in Vancouver, Spectrum Tower II has 26 floors of condominiums, townhouses and a range of common facilities, including a swimming pool, a media room and an exercise room. The Strata Lot is governed by the respondent, The Owners, Strata Plan BCS2478

(the "Strata"), and managed by the respondent, Rancho Management Services ("Rancho").

[4] HighStreet is a hospitality management company that provides corporate housing to its clients through licensing arrangements. It leases properties from owners on a revenue-sharing basis and enters into contracts with its clients to provide furnished accommodation. Under a typical contract, HighStreet provides its client with residential use of the property, housekeeping services and access to building amenities, together with 24-hour-a-day on-call services. The average stay of HighStreet's clients is between 60 and 80 days.

[5] On November 28, 2012, Mr. Christman entered into a tenancy agreement with HighStreet with respect to the Strata Lot. The term of the tenancy agreement was November 28, 2012 to December 1, 2013, renewable on a month-to-month basis thereafter until termination by either party. It provides that Mr. Christman, as landlord, rents the Strata Lot to HighStreet, as tenant, and that HighStreet has quiet enjoyment of, reasonable privacy in, and exclusive use, control and marketing of the Strata Lot. The parties agree that HighStreet is a tenant as that term is defined in the *SPA*.

[6] In accordance with the *SPA* and the bylaws for the strata plan (the "Bylaws"), at the outset of the tenancy Mr. Christman gave the Strata a "Form K – Notice of Tenant's Responsibilities" executed by HighStreet. He also notified Rancho that he assigned to HighStreet certain powers and duties arising from the *SPA*, the Bylaws and related rules.

[7] Section 46 of the Bylaws is entitled "Rental of Strata Lots". Although the Bylaws do not limit the number of strata lots that can be rented at any given time, they do impose restrictions on rentals in Spectrum Tower II. In particular, under Bylaw 46.3 owners are not permitted to rent or lease a strata lot for a period shorter than one year. Nor is subletting of strata lots permitted under Bylaw 46.4.

[8] On December 6, 2012 the Strata held an annual general meeting and voted in favour of amending the Bylaws by inserting Bylaw 46.5. Shortly thereafter, Bylaw 46.5 was registered at the Land Title Office:

> 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.

[9] HighStreet and Mr. Christman maintained that Bylaw 46.5 does not apply to the Strata Lot by virtue of s. 143 of the *SPA*. Pursuant to s. 143, where a strata corporation passes a rental restriction bylaw there is a grace period before the bylaw applies to a strata lot. Subsection 143(1) provides:

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

[10] According to HighStreet and Mr. Christman, because HighStreet's tenancy predated the coming into force of Bylaw 46.5 and continued thereafter, pursuant to s. 143(1)(a) of the *SPA*, Bylaw 46.5 does not apply to the Strata Lot and, therefore, HighStreet is entitled to continue entering into short-term licensing contracts with its clients. The Strata disagreed. As a result, it repeatedly asserted that HighStreet violated Bylaw 46.5 by entering into the licensing contracts and fined Mr. Christman $500 pursuant to s. 7.1 of the *Strata Property Regulation*, B.C. Reg. 43/2000.

[11] After HighStreet commenced the underlying proceedings, the Strata and Rancho applied for judgment on a point of law pursuant to R. 9-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. They posed the following question for determination:

> 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.

[12] The judge ruled in favour of the Strata and Rancho. To place her ruling into context, I will outline relevant aspects of the *SPA* and then describe the judge's reasons for judgment.

Statutory Framework

[13] The *SPA* was enacted in 1998 and came into force on July 1, 2000. Building on the foundations of earlier strata property legislation, its objectives include protecting purchasers of strata properties, balancing the interests of stakeholders and ensuring consistency, fairness and equity among owners of strata lots. For these purposes, the statute lays out clear rules for the creation, registration and transfer of strata titles and delineates the respective rights and responsibilities of those who develop strata plans and those who purchase or may subsequently wish to transfer a strata property: *Barrett v. The Owners, Strata Plan LMS3265*, 2017 BCCA 414 at para. 48; *Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2016 BCCA 370 at para. 18; *Strata Plan NES 97 v. Timberline Developments Ltd.*, 2011 BCCA 421 at para. 16.

[14] Divided into 17 parts, the *SPA* establishes the legal framework within which strata property is owned and managed, individually and collectively. It begins with a definition and interpretation section that includes the following definitions:

> 1(1) In this Act:
>
> …
>
> "occupant" means a person, other than an owner or tenant, who occupies a strata lot;
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> …
>
> "owner" means a person, including an owner developer, who is
>
> a) a person shown in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person's own right or in a representative capacity, or …
>
> …
>
> "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;
>
> …

> "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;

[15] The *SPA* does not define the terms "occupy" or "rentals".

[16] Part 7 of the *SPA* deals with the authority of a strata corporation to pass, amend and enforce bylaws and rules with respect to strata property. It includes ss. 119 and 121, which authorize bylaws that provide for the management, use and enjoyment of both private and common strata property and limit the scope of permissible bylaws:

> 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,
>
> …

[17] Part 8 of the *SPA* deals with rentals of residential strata property. In addition to s. 143, relevant provisions in Part 8 include ss. 139, 141, 142, 144 and 147. Section 139 sets out rules for rental disclosure by owner developers; s. 141 limits the scope of permissible rental restrictions; s. 142 excludes application of rental restrictions to members of the owner's family; s. 144 permits owners to apply for exemption from rental restriction bylaws; and s. 147 permits a landlord to assign some powers and duties to a tenant. For present purposes, it is necessary to set out only the following parts of ss. 139 and 141:

> 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:
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> (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.
>
> …

[18] Section 143 of the *SPA* is the statutory provision specifically at issue. Introduced in its current form in 2009, it provides that where a strata corporation passes a rental restriction bylaw, there is a grace period of at least one year before the bylaw applies to a strata lot. Pursuant to s. 143, the general rule is that a rental restriction bylaw does not apply to a strata lot until the later of one year after a tenant occupying the strata lot when the bylaw is passed ceases to occupy it or one year after the bylaw is passed. In other words, a rental restriction bylaw does not apply to a strata lot for at least one year even if the owner occupied it when the bylaw was passed. The single exception is that a rental restriction bylaw applies without delay to a strata lot where an owner developer passes that bylaw before the first conveyance of the strata lot to a purchaser.

[19] Section 143 provides, in relevant part:

> 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,
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> …
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> (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.
>
> …
>
> (4) Subsection (1)(b) does not apply to a bylaw that is passed under section 8 by the owner developer.

Reasons for Judgment

[20] The judge began her reasons by describing the nature of the application, the background facts and the relevant *SPA* provisions. She reframed the question for determination as:

> 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?

[21] The judge characterized the point of law raised as a question of statutory interpretation. After describing general principles of statutory interpretation and the purposes of the *SPA*, she summarized 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.

[22] Next, the judge outlined the parties' arguments based on textual and contextual analyses of s. 143(1). She also reviewed case authorities on the nature of legal possession, occupancy and licensing agreements. After noting that a licence does not grant an interest in land, she emphasized HighStreet, not its clients, retained legal possession of the Strata Lot and existing bylaws prohibited rentals for a period of less than one year (Bylaw 46.3) and subleasing (Bylaw 46.4):

> [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.
>
> [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.

[23] The judge concluded that the *SPA* does not protect occupancy of strata lots arising outside of a tenancy agreement and that only tenants occupying a strata lot can benefit from the non-applicability of rental restrictions:

> [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.

On Appeal

[24] As they did in the court below, the parties frame the issue for determination quite differently. According to HighStreet, the key question is whether the effect of Bylaw 46.5 is to limit rentals and, if so, how s. 143 of the *SPA* applies to the factual matrix. According to the Strata and Rancho, the key question is whether s. 143 applies to HighStreet's commercial licensing arrangements with its clients, which, they say, turns on the distinction between a tenancy and a licensing relationship for purposes of the *SPA*.

Position of HighStreet

[25] HighStreet contends that the scheme of the *SPA* balances owner or tenant interests in renting their strata lots with the majority interest in potentially restricting their right to do so. Operating within this statutory scheme, s. 143 is aimed, it says, at preserving the *status quo* with respect to pre-existing tenancies by delaying application of rental restriction bylaws to strata lots during their currency. However, the judge failed to appreciate this statutory objective and, as a result, interpreted s. 143 unduly narrowly, erroneously limiting HighStreet's right to deal with the Strata Lot as it sees fit in the absence of an applicable restriction.

[26] According to HighStreet, on its plain words, there is only one reasonable interpretation of s. 143: a rental restriction bylaw does not apply to a strata lot if there is a continuing tenancy in place that predates the bylaw coming into force. Therefore, it says, Bylaw 46.5 does not apply to the Strata Lot and it is entitled to continue entering into licensing arrangements with its clients as it sees fit for the duration of its tenancy. In support of its position, HighStreet identifies five separate, though closely related, purported legal errors in the judge's analysis.

[27] First, HighStreet says, the judge failed to apply the statutory criteria by asking: i) does Bylaw 46.5 prohibit or limit rentals? ii) did HighStreet occupy the Strata Lot when Bylaw 46.5 was passed? and iii) has HighStreet ceased to occupy

the Strata Lot? These were the only three essential questions, but the judge focused instead on her perception of whether the legislature intended to protect licensing agreements such as those between HighStreet and its clients when it enacted s. 143. According to HighStreet, in doing so she ignored the statutory language the legislature chose to employ.

[28] Second, HighStreet says, the judge failed to determine that Bylaw 46.5 is a "bylaw that prohibits or limits rentals". Instead, she asked whether a licence confers an interest in land and whether, to the extent that Bylaw 46.5 prohibited HighStreet's licensing agreements, it was a permissible limit on the use of the Strata Lot. However, whether a licence confers an interest in land is not addressed in s. 143 and was not a question the judge needed to determine. On the other hand, it says, the judge did need to determine whether HighStreet's licensing agreements fell within the meaning of "rentals" in s. 143, but she did not.

[29] Third, HighStreet says, the judge erroneously assumed that it did not occupy the Strata Lot without considering the context and full meaning of the words "occupying" and "ceases to occupy". Emphasizing the difference between physical occupancy and legal occupancy based on exclusive control of premises, HighStreet argues the two forms of occupancy are not mutually exclusive and "occupying" is not limited to physical presence, citing *Ottawa Salus Corp. v. Municipal Property Assessment Corp.*, [2002] O.J. No. 4958 (S.C.J.); *Ottawa-Carleton Standard Condominium Corporation No. 961 v. Menzies*, 2016 ONSC 7699; *York Region Condominium Corporation No. 639 v. Lee*, 2013 ONSC 503 and the definition of "occupier" in the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337, s. 1. In HighStreet's submission, interpreted in context, the unqualified word "occupying" in s. 143(1) of the *SPA* does not restrict its protection to tenancies in which the tenant has continuous, exclusive, physical occupation and the judge unjustifiably narrowed its scope by importing a physical requirement. Given its complete control of the premises as tenant, HighStreet submits the fact that its licensees also occupy the Strata Lot does not defeat the protection of s. 143, which does not exclude tenants who are corporations.

[30] Fourth, HighStreet says, the judge failed to give meaning and effect to the words "does not apply to a strata lot". According to HighStreet, a rental restriction bylaw either applies as a whole to a strata lot or it does not apply. It says the judge's conclusion that Bylaw 46.5 cannot invalidate HighStreet's tenancy with Mr. Christman cannot stand together with her conclusion that it can prevent HighStreet from licensing the Strata Lot. In its submission, the choice is binary and s. 143 does not exempt specific relationships or property interests from particular aspects of the bylaw prior to the time of its application. Simply put, if Bylaw 46.5 does not apply to the Strata Lot, the restriction it creates does not apply.

[31] Fifth, HighStreet says, the judge erroneously interpreted the word "rentals" as confined to tenancies and, therefore, failed to include licensing restrictions as falling within Part 8 of the *SPA*. According to HighStreet, the judge's view that the provisions of Part 8 aim to protect existing proprietary interests and, in particular, the existing rights of tenants under their leases, influenced this conclusion. However, it argues, the legislature chose the broad term "rentals", which captures a range of transactions whereby the occupancy and use of property is granted in return for rental payments, Part 8 is meant to address different types of rental relationships between different parties regardless of the form of the agreement and its provisions are equally consistent with preserving the freedom of owners, tenants and subtenants to exercise rights ordinarily associated with legal possession of property, including a licensor's incidental right to license property use as a form of rental. Citing *Clarke v. Johnson*, 2014 ONCA 237, HighStreet also argues that, while a licence may not confer property rights to the licensee, the right to license property use is incidental to the licensor's proprietary rights and the choice to do so lies with the licensor.

Position of the Strata and Rancho

[32] The Strata and Rancho respond that the judge correctly concluded s. 143 does not apply to HighStreet's licensing activities. In their submission, Part 8 of the *SPA* does not protect occupancy of strata lots arising outside of a tenancy relationship, which differs from a licensing relationship. In this case, the only relationship in issue was the one between HighStreet and its licensees, who had no

proprietary interest in the Strata Lot and occupied it pursuant to the commercial relationship. In these circumstances, they say, the judge's task was not to determine whether Bylaw 46.5 is a bylaw which prohibits or limits rentals, which is only one form of strata lot use that it limits. Rather, the judge's task was to determine whether s. 143 of the *SPA* allowed HighStreet to circumvent the licensing prohibition in Bylaw 46.5 by virtue of its pre-existing tenancy.

[33] According to the Strata and Rancho, the *SPA* is consumer protection legislation and the consumers in question are owners of strata lots and *bona fide* end users, not business activities conducted within a residential strata corporation. In addition, they say, the rights of tenants under the *SPA* are incidental and addressed by the *Residential Tenancy Act*, S.B.C. 2002, c. 78. Emphasizing that Bylaw 46.5 does not prevent the owner, Mr. Christman, from renting the Strata Lot to any tenant, including HighStreet, they submit the judge correctly held that s. 143 does not apply to the licensor/licensee relationship. Accordingly, in their submission, the Strata was entitled to restrict HighStreet's licensing activities by virtue of Bylaw 46.5.

Issue for Determination

[34] In my view, the question posed by the Strata and Rancho below was inapt given the statutory provision to be interpreted. As HighStreet submits, s. 143(1) of the *SPA* determines whether a rental restriction bylaw applies to a strata lot, not whether it applies to a particular form of relationship or interest in a strata lot. However, the Strata and Rancho asked the judge to decide if s. 143 "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". This question implied, incorrectly, that s. 143 could apply to a relationship, which may help to explain why the judge reframed it for purposes of her statutory interpretation analysis. It also may help to explain why, in conducting that analysis, she addressed the nature of licensing relationships and proprietary interests in a strata lot, neither of which determine the question before the court.

[35] The question for determination is whether s. 143(1) of the *SPA*, properly interpreted, protects HighStreet from the application of Bylaw 46.5. As discussed below, the answer turns on a textual, contextual and purposive analysis of s. 143(1) and, in particular, the meaning, in this context, of the words “occupying” and “ceases to occupy”.

Analysis

Standard of Review

[36] The appeal involves a matter of statutory interpretation, which is a pure question of law. Accordingly, the standard of review is one of correctness: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8; *Barrett* at para. 40.

Principles of Statutory Interpretation

[37] Like all enactments, the *SPA* must be construed as remedial and given such fair, large and liberal interpretation as best ensures the attainment of its objects: *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8. In accordance with Driedger’s modern principle of statutory interpretation, the words of a provision must be read in their entire statutory context, in their grammatical and ordinary sense, harmoniously with the scheme and objects of the statute and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. In addition, wherever possible, every word used in a provision must be given meaning and effect: *Greater Vancouver (Regional District) v. British Columbia*, 2011 BCCA 345 at para. 1.

[38] In *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, the Supreme Court of Canada emphasized the important role played by context when a court interprets the words of a statute. After noting that “words, like people, take their colour from their surroundings”, Justice Iacobucci explained that where the words in question are in a statute which is itself a part of a larger statutory scheme, harmony, coherence and consistency between statutes dealing with the same subject matter is to be presumed: *Bell ExpressVu* at para. 27. As Justice Lambert stated in *Perry v. Vancouver (City)* (1994), 88 B.C.L.R. (2d) 328 (C.A.), the relevant context for consideration also includes the mischief a provision was designed to cure, the purpose of the legislature in effecting the cure and the means adopted to remedy the

mischief and effect the cure. As he also stated, the goal of the exercise is to ascertain the meaning of the words in their particular context, not to exhaust "the lexicological possibilities inherent in the words": *Perry* at para. 13.

[39] In most cases a court can reasonably interpret the words of a provision as part of a harmonious statutory whole without deviating from the grammatical and ordinary sense in which those words are understood generally: *Canada Trustco Mortgage Co. v. R.*, 2005 SCC 54 at para. 10. However, on occasion a stark literal reading may lead to a "manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended". In such circumstances, the "plain meaning" of the words may be modified in the interpretive process to avoid an absurd result and achieve the legislature's presumed intent: *R. v. Paul*, [1982] 1 S.C.R. 621 at 662.

[40] The intention of the legislature may be manifest in the words of a provision or by necessary implication. In addition, extrinsic evidence of its legislative history, such as Hansard debates, or the application of established principles of statutory interpretation may illuminate that intent: *R. v. Morgentaler*, [1993] 3 S.C.R. 463 at 484. For example, in this case, both parties rely on extracts from Hansard in support of their submissions regarding the purpose of the *SPA* and the intention of the legislature in enacting s. 143. Both also rely on statutory interpretation principles, including the principle that the legislature is presumed not to intend to abolish, limit, or otherwise interfere with established common law or statutory rights, including property rights, in the absence of explicit statutory language that it intends to do so: *Hamilton (City) v. Equitable Trust Co.*, 2013 ONCA 143 at para. 34.

Does s. 143(1) of the SPA protect HighStreet from the application of Bylaw 46.5?

[41] In my view, the ordinary meaning of its words, the legislative intent and the statutory context all support a single interpretation of s. 143(1): a rental restriction bylaw does not apply to a residential strata lot until the later of one year after a tenant who physically occupies that strata lot when the bylaw is passed ceases to do so as a tenant or one year after the bylaw is passed. I reach this conclusion based

on a textual, contextual and purposive analysis of s. 143(1) and, in particular, the meaning, in context, of the words “occupying” and “ceases to occupy”.

[42] As noted, the purpose of the *SPA* is to protect purchasers of strata properties, balance the interests of stakeholders and ensure consistency, fairness and equity among owners. After a strata lot is purchased, the primary stakeholders in question are the individual strata lot owners and the collective membership of a strata corporation. Their respective rights and interests are the focus of the statutory scheme the *SPA* establishes. Although the interests of tenants and other occupants are impacted, in my view those interests are largely incidental.

[43] The focus of the *SPA* on balancing the rights and interests of individual owners, on the one hand, and collective owners, on the other, is reflected throughout the legislation, including in Parts 7 and 8. Part 7 of the scheme balances the collective rights of owners, through the strata corporation, to govern permitted uses of strata property with the individual rights of owners to deal freely with their units (see, for example, ss. 119(2), 121(1)(c) and 121(2)). Part 8 balances their rights and reasonable expectations specifically with respect to the permissible use of residential strata lots for rentals at any given time.

[44] The provisions in Part 8 support this assessment of the legislature’s objects and intention. Section 139 requires an owner developer to provide a Rental Disclosure Statement to prospective owners specifying whether a residential strata lot may be used for rental purposes. Section 143 establishes a grace period of at least one year before a rental restriction bylaw applies to a residential strata lot regardless of whether an existing tenancy is in place, providing the owner with a reasonable period in which to adjust previously-held expectations based on a Rental Disclosure Statement or existing bylaws. However, where an owner has no relevant previously-held expectation, there is no grace period and a rental restriction bylaw applies to a strata lot immediately (s. 143(4)). In addition, s. 142 limits the scope of permissible rental restriction bylaws by providing that they cannot prevent an owner from renting to a family member and s. 144 enables an owner to apply for an exemption on the grounds that a rental restriction bylaw causes the owner hardship.

[45] The legislative history of the *SPA* also supports the foregoing assessment of its statutory objects. When it was introduced in 1998, the Honourable J. Kwan described the purpose of the *SPA* as "consumer protection in strata ownership", balancing the rights and interests of "municipalities, developers, strata corporations and individual owners" and providing strata corporations with "greater flexibility so that they can adapt to changes and better meet the needs of their owners": British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, 36th Parl., 3rd Sess., Vol. 11, No. 19 (13 July 1998) at 9922-9923 (Hon. J. Kwan). In addition, in 2009, when the Honourable R. Coleman introduced an amendment to s. 143(2) preserving the period of permissible rental use specified in a Rental Disclosure Statement, he emphasized the need to "give owners a chance to make appropriate arrangements" when a rental restriction bylaw is passed: British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, 39th Parl., 1st Sess., Vol. 4, No. 2 (6 October 2009) at 1010 (Hon. R. Coleman).

[46] With this background and overall context in mind, I turn to an analysis of s. 143 of the *SPA* and, in particular, the meaning of the words "occupying" and "ceases to occupy". For present purposes, it is unnecessary to interpret the meaning of the word "rentals" in the *SPA* and that exercise is best left for another day. The meaning of "occupying" and "ceases to occupy" is determinative because, as the Strata and Rancho acknowledge, Bylaw 46.5 is, at least in part, a rental restriction bylaw.

[47] To repeat, s. 143(1) of the *SPA* provides:

> 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.

[48] The first point to note is that s. 143 determines when a rental restriction bylaw applies to a residential strata lot. A residential strata lot is a strata lot designed or intended to be used primarily as a residence (*SPA*, s. 1). The word "residence"

generally connotes a person's home or abode, the place where a person or that person's family ordinarily eats, drinks and sleeps or where a person maintains a "bodily presence as an inhabitant" together with an element of permanency: *Strata Plan NW 499 v. Louis Estate*, 2009 BCCA 54 at paras. 25-29; *Okanagan-Similkameen (Regional District) v. Leach*, 2012 BCSC 63 at paras. 66-69. Although its officers or employees may do so, a non-corporeal entity such as a company does not inhabit or "occupy" a residence in this sense: *York Region Condominium Corp* at paras. 23-26. Nor does a tenant who is a natural person but who does not maintain any form of physical presence in a residence: *Louis* at paras. 23-29.

[49] The *SPA* defines an "occupant" as "a person, other than an owner or tenant, who occupies a strata lot", but it does not define "occupy" or "occupying". The word "occupy" has a variety of possible meanings according to the context in which it is used. As the court pointed out in *Ottawa Salus Corp.*, "occupy" is commonly used to mean "to physically reside in", "to take up" a place or "to hold" a position or office and "to keep busy; engage; employ". In the context of the property tax provision at issue in that case, the court held that "occupied" meant controlled, held and employed by a charitable institution to fulfil its charitable purposes: *Ottawa Salus Corp*. at paras. 18-21. The court in *Ottawa-Carleton Standard Condominium Corp.* interpreted "occupier" in a similar manner in holding a corporate lessee was obliged to comply with condominium rules: *Ottawa-Carleton Standard Condominium Corp.* at paras. 24-30. However, it must be recalled that the goal of the interpretive exercise is to ascertain the meaning of words as they are used in a particular context, not to exhaust all "lexicological possibilities": *Bell ExpressVu* at para. 27; *Perry* at para. 13. The fact that the word "occupy" does not require physical presence in all contexts does not mean that it never requires physical presence.

[50] The words "occupying" and "ceases to occupy" in s. 143 are used here in a provision which establishes a reasonable grace period before a valid rental restriction bylaw passed by the collective membership of a strata corporation applies to an individually-owned residential strata lot. In this context, in my view, they must mean physical occupation by a tenant, whether that tenant is a corporation or a natural person. If it were otherwise, an individual owner could defeat the collective

will of the strata membership by renting a residential unit to a non-resident tenant who would be free for an indefinite period thereafter to ignore duly passed rental restrictions applicable to other strata lots in the development. In my view, such an interpretation would undermine the carefully calibrated balance of individual and collective rights established by the *SPA* and defeat the intention of the legislature. It is not required by the plain meaning of the words in s. 143 and, in any event, would produce an absurd result.

Conclusion

[51] As noted, Bylaw 46.5 is, at least in part, a rental restriction bylaw. HighStreet, as the tenant, did not physically occupy the Strata Lot when it was passed, nor did any other tenant. Therefore, Bylaw 46.5 applied to the Strata Lot one year later. It follows that HighStreet is subject to its terms.

[52] For these reasons, I would dismiss the appeal.

"The Honourable Madam Justice Dickson"

I AGREE:

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Mr. Justice Fitch"