

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan VR812 v. Yu*,
2019 BCSC 693

Date: 20190401
Docket: L180151
Registry: Vancouver

Between:

The Owners, Strata Plan VR812

Applicant

And

Emily Yu

Respondent

Before: The Honourable Mr. Justice Davies

Oral Reasons for Judgment In Chambers

Counsel for the Applicant:

G.S. Hamilton

Counsel for the Respondent:

A. Kurt
(as Agent for N. Ganapathi)

Place and Date of Trial/Hearing:

Vancouver, B.C.
April 1, 2019

Place and Date of Judgment:

Vancouver, B.C.
April 1, 2019

[1] **THE COURT:** On September 21, 2017, Emily Yu was found to have breached the bylaws of the strata corporation that is the petitioner in this proceeding by renting her strata unit for short-term leases in a business endeavour. She variously advertised that business endeavour as Oasis Hostel or Oasis House.

[2] Ms. Yu claimed to have the right to do so because that business was exempt from the bylaws because the operation was somehow grandfathered.

[3] That argument was rejected by the Civil Resolution Tribunal (CRT) and fines were imposed.

[4] Ms. Yu appealed the CRT decision and continued to rent her unit. In May of 2018, her appeal of the CRT ruling was dismissed by this court and the order of the CRT was pronounced as an order of this court.

[5] Ms. Yu continued to rent the unit until the contempt proceedings were brought against her in this court that were heard by me on October 24, 2018.

[6] On October 24, 2018, I found that the strata corporation had proven beyond a reasonable doubt that Ms. Yu was in contempt of the orders of the CRT and of this court.

[7] I also ordered that determination of the appropriate punishment for that contempt be adjourned for four months. My intent was to allow Ms. Yu the opportunity to prove that her defiance of the orders would cease.

[8] In December of 2018, the strata corporation sought further findings of contempt based on Ms. Yu's alleged continued rental and advertising. I found that the further alleged contempt had not been proven beyond a reasonable doubt, however, at the same time, a consent order was entered by which Ms. Yu was ordered to take all possible steps to prevent further advertising of her unit for rent.

[9] In that December application, the strata corporation also sought an order for the conduct of the sale of Ms. Yu's unit because of the alleged continuing contempt and the failure to pay outstanding fines.

[10] Ms. Yu responded that she had listed the unit for sale and intended to move. In those circumstances, I adjourned the conduct of sale application to the hearing of these sentencing proceedings.

[11] These sentencing proceedings were adjourned from March of 2018 to today's date because Ms. Yu had changed counsel and was in China. She had gone to China in January of 2019 to be with her ailing father. In her absence, the only problems that continued with her unit related to the care of her two dogs who incessantly barked and for whom she did not have a full-time pet sitter.

[12] The SPCA became involved, but the problem was eventually rectified and the SPCA is satisfied that the dogs are not in danger.

[13] There has been virtually no activity in relation to the sale of Ms. Yu's unit, and the evidence before me on this application establishes that it is in extremely poor condition.

[14] Although Ms. Yu objected to the admissibility of that evidence as an invasion of her privacy, I have found that those submissions are without substance.

[15] Ms. Yu has now sworn that she does not want to sell her unit. She claims emotional commitment to it and to the neighbourhood. She also claims poverty and inability to relocate with her two dogs into appropriate accommodations.

[16] This hearing requires that I determine the appropriate punishment for Ms. Yu's contempt of court and also whether the strata corporation should now be granted conduct of sale of her unit.

[17] I will deal first with the appropriate punishment for contempt and, secondly, with the conduct of sale application.

Legal Principles

[18] In *Langford (City) v. dos Reis*, 2016 BCCA 460, Donald J.A. (in chambers) wrote at para. 1:

[1] On 12 May 2016, I found Ms. dos Reis guilty of civil contempt of this Court for breach of an order directing her to remove a building situated on her property in violation of a City of Langford by-law. On 18 February 2015, in reasons indexed as 2015 BCCA 55, this Court allowed an appeal from a ruling that the building's location did not violate the by-law. The Court gave Ms. dos Reis 60 days to remove it. After various administrative attempts to avoid the order were exhausted and the building remained in place, the City brought a motion for contempt. In reasons indexed as 2016 BCCA 201, I ruled as follows:

[23] The evidence establishes beyond a reasonable doubt that the respondent formed a stubborn resolve to keep her building regardless of the applicable by-law and a court order and she has pursued a course of conduct contrary to the order. I do not regard the appellant's forbearance in enforcing the order as providing the respondent with an excuse. The respondent had no reasonable prospect of succeeding on the variance applications. She had years to sort this conflict out with the appellant. After she failed to sustain her position in this Court, her "options" (her word) narrowed to compliance, and the administrative procedures she took were untimely.

[19] Justice Donald imposed a \$5,000 fine for Ms. dos Reis' contempt.

[20] Those circumstances are not dissimilar to the actions of Ms. Yu in her continuing disputes with the strata corporation concerning the alleged grandfathering-of-her-unit issue up until my finding of contempt on October 24, 2018.

[21] At paras. 12 to 14 in *Langford*, Donald J.A. succinctly addressed the legal framework applicable to sentencing in cases of civil contempt. He wrote:

[12] In my decision finding Ms. dos Reis in contempt, I confirmed the jurisdiction of this Court to exercise the power of contempt to enforce its orders based on s. 9(7) of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77. This provision gives this Court the same powers as the Supreme Court in matters of contempt. Rule 22-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, states that the power to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

[13] The objectives in sentencing for civil contempt were identified in *Carey v. Laiken*, 2015 SCC 17:

[31] The common law has developed to recognize two forms of contempt of court: criminal contempt and civil contempt. The distinction, which the parties to this appeal accept, rests on the element of public defiance accompanying criminal contempt: see, e.g., *United Nurses [United Nurses of Alberta v. Alberta (Attorney General)]* [and other citations, carrying on] With civil contempt, where there is no element of public defiance, the matter is generally seen "primarily as coercive rather than

punitive”: R. J. Sharpe, *Injunctions and Specific Performance* ... However, one purpose of sentencing for civil contempt is punishment for breaching a court order: *Chiang (Trustee of) v. Chiang*, 2009 ONCA 3 ... Courts sometimes impose substantial fines to match the gravity of the contempt, to deter the contemnor’s continuing conduct and to deter others from comparable conduct: [citing] *Sharpe*, at 6.100.

- [14] In a general commentary, Mr. Justice Chiasson for this Court in *Larkin v. Glase*, 2009 BCCA 321, referred to authority for the view that compliance, not punishment, is the primary goal of sentencing, although deterrence is relevant to compliance:
- [48] A very useful discussion of the criteria applicable to sentencing for contempt of court was provided by Burnyeat J. in *Transportation Lease Systems Inc. v. Viridi*, 2009 BCSC 695 ...
- [49] Sentencing for contempt of court is not governed by the sentencing purposes and principles in s. 781 of the *Criminal Code* ... although these criteria provide a useful backdrop. As observed by McEwan J. in *British Columbia (Attorney General) v. Perry Ridge Water Users Assn.* (1997), 43 B.C.L.R. (3d) 258 at 266 ... “[t]he primary objective of the civil law sanction for contempt is to secure compliance with the courts’ orders rather than punishment”.
- [50] While concern for the administration of justice is not, per se, a factor in sentencing for civil contempt (*Interfor v. Simm*, 2000 BCCA 500, at para. 17; *Continuing Care Employers’ Bargaining Association v. A.U.P.E.*, 2002 ABCA 148, at para. 113), deterrence and rehabilitation are factors relevant to securing compliance with court orders.
- [51] In my view, deterrence is of more importance than rehabilitation, although the latter must not be ignored. Remorse is relevant to deterrence. A party who recognizes the error of disobedience and acts on it signals to society at large respect for court orders. Lack of remorse conveys the opposite message.
- [22] Of significance also in this case is para. 21 of *Langford* in which Justice Donald wrote:

[21] I have not been given any specific details of Ms. dos Reis’s income or expenses or the value of her assets and liabilities. Given that she is a property owner and that she is a self-employed seamstress likely of modest means, I am satisfied that a fine of \$5,000 will achieve the objectives of sentencing and not be a crushing penalty. The fine is intended to defend the integrity of court orders, deter Ms. dos Reis from persisting in her anti-social behaviour and deter others of like mind. It is an amount proportionate to the seriousness of the contempt and Ms. dos Reis’s defiant attitude. The

contempt is aggravated by the long delay in any attempts at compliance. While there is no evidence that she has previously defied court orders, Ms. dos Reis remains unrepentant and has not purged her contempt. Such compliance as has occurred has been grudging, disobliging, tardy, and incomplete.

[23] I consider the following aggravating and mitigating circumstances to be most important to the determination of the appropriate fine for Ms. Yu's contemptuous conduct from May of 2017 to October of 2018.

[24] The aggravating circumstances are:

1. Ms. Yu's continued assertion that the bylaws did not apply to her notwithstanding the orders of the CRT and of this court and her continued breaches of those bylaws for profit during that period.
2. The disruption caused to all of her neighbours by her conduct in breach of those bylaws for which I am satisfied she has never apologized.
3. The cost to the strata corporation caused by her conduct for both the CRT proceedings and the proceedings in this court.
4. The fact that Ms. Yu ignored the order of the CRT, which is now the body charged with resolving strata corporation disputes in a most cost-efficient way, by requiring the involvement of the process of this court before she would cease her conduct. I agree with counsel for the strata corporation that general deterrence in relation to others of like mind of Ms. Yu and respect of the process of the CRT concerning the determination of strata corporation disputes requires that the integrity of the CRT process be upheld by an appropriate denunciation order in this case.
5. In my opinion, Ms. Yu is not truly remorseful for her actions or the difficulties and cost she has caused to her neighbours and the strata corporation. She has, in my view, only reluctantly and recently when

faced with resolute action on behalf of the strata corporation and her pending punishment accepted and obeyed the orders of this court.

[25] The mitigating circumstances are:

1. Ms. Yu has now paid all of the outstanding fines for which she is responsible and is up to date with her strata fees.
2. Although costs have not yet been assessed, they are scheduled to be assessed on April 11, 2019.
3. Most importantly, Ms. Yu has, although with reluctance, complied with my orders of October 24, 2018, and the consent order of December 2018.

[26] I find that in all of the circumstances an appropriate fine for Ms. Yu's contempt is \$5,000. I am satisfied that such a fine is not too onerous notwithstanding her present claims of poverty. It must be recalled that her contemptuous actions were profit-motivated and a fine should not amount to a licence. As I told Ms. Yu, had she not complied with my order of October 24 since that date, I would likely have imposed a sentence of incarceration rather than a fine.

[27] I have also determined that it would not be appropriate at this time to order conduct of sale of the unit as part of the punishment for her contempt.

[28] Although such an order is open in cases such as this, as established in *Bea v. Owners, Strata Plan LMS 2138*, 2015 BCCA 31, it is in my view a remedy of last resort. Although Ms. Yu's conduct is deserving of rebuke, the fact is that she has paid outstanding fines and has been compliant with the order of this court since October 24, 2018. Ms. Yu has been a very bad neighbour and has made life difficult for her neighbours and the strata corporation, but her conduct has not, in my view, yet reached a level that requires the sale of her unit with the conduct to the strata corporation.

[29] I have determined that the strata corporation's application for the conduct of sale should be adjourned until 60 days after the outstanding costs issues in this proceeding including the reasonable costs of this hearing on the same basis as the order of October 28, 2018 have been assessed.

[30] Any failure by Ms. Yu to pay those costs would, in my view, amount to conduct requiring further consideration by the court, and I will be seized of any such further application.

[31] I reserve the right to edit the reasons as may be necessary for readability. The result will not change as a consequence of any editing I may undertake. Anything further?

[32] I HAMILTON: Yes, I am just – I just wanted to point out there had been three appearances since the first order which is December 12, March 12, and then today.

[33] THE COURT: Costs will be payable for all of the appearances. When I say that, I add this, this was a venture for profit. The costs associated with that should not be borne by the strata corporation.

"Davies J."