IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Binichakis v. Porter,*
2015 BCSC 750

Date: 20150507
Docket: S104331
Registry: Vancouver

2015 BCSC 750 (CanLII)

Between:

Issidoros Binichakis and Evelyn Binichakis

Plaintiffs

And

Carol Porter, Ronald Smitherman,
The Owners, Strata Plan NW 1676 and Paragon Realty Corporation

Defendants

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment in Chambers

Counsel for Plaintiffs:	Issidoros Binichakis Evelyn Binichakis (Appearing in person)
Counsel for Defendants:	S.M. Smith
Place and Date of Hearing:	Vancouver, B.C. December 8 and 9, 2014
Place and Date of Judgment:	Vancouver, B.C. May 7, 2015

[1] The defendants apply for a summary judgment pursuant to Rule 9-6 of the *Supreme Court Civil Rules,* B.C. Reg 168/2009 to dismiss all claims of the plaintiffs set out in a further amended notice of civil claim.

[2] The plaintiffs are husband and wife and are the owners of Strata Lot 46 of a condominium project located in Surrey, B.C., commonly known as Cedar Grove. They have commenced several claims against the owners, Strata Plan NW 1676 ("the strata corporation") which is responsible for managing and maintaining the common property and common assets of Cedar Grove for the benefit of the owners of units in the strata corporation.

[3] The plaintiffs have also asserted claims against the defendants Carol Porter and Ronald Smitherman, who are past members of the strata council for Cedar Grove. Mr. Smitherman passed away following the commencement of this proceeding. The claim against the defendant Paragon Realty Corporation, a management company retained by the strata corporation, was dismissed on February 18, 2013 pursuant to an order of Mr. Justice Butler.

[4] The plaintiffs have asserted multiple claims against the defendants which I will summarize below, all but one are hereby dismissed for the reasons set out in relation to each claim.

[5] Cedar Grove is a 153 unit condominium project located in three separate low rise buildings on 100 Ave. in Surrey. The unit owned by the plaintiffs is located in Building "A" of the development and was purchased by the plaintiffs in December 2000. The plaintiffs allege that they purchased strata lot 46 with the intention that their son would reside in the unit and also with the intention of renting out the unit until their son moved into the unit.

[6] The plaintiffs originally issued a writ of summons and statement of claim on June 17, 2010 in which they claimed essentially the same relief as in the present action. On November 3, 2010 the plaintiffs, following a demand made by the defendants, converted the statement of claim to a notice of civil claim. That notice of

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civil claim was struck by order of Mr. Justice Butler, who allowed the plaintiffs to file a new notice of civil claim within 30 days. On February 20, 2012 another amended notice of civil claim was filed by the plaintiffs after obtaining leave from Madam Justice Bruce.

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Summary Judgment

[7] In the notice of application, the defendants have applied for a summary judgment for dismissal of the claims of the plaintiffs, which is an application provided for under Rule 9-6 of the *Supreme Court Civil Rules.* Specifically, Rules 9-6 (4) and (5) provide:

> (4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or a part of a claim in the claiming party's originating pleading.
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> (5) On hearing an application under sub rule (2) or (4), the court,
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> a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
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> b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference to an accounting to determine the amount,
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> c) If satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
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> d) May make any other order it considers will further the object of these Supreme Court Civil Rules.

[8] Rule 9-6 requires a court to grant judgment when it is satisfied there is no genuine issue for trial with respect to the plaintiff's claims. Mr. Justice Pearlman in *Leger v. Metro Vancouver YWCA,* 2013 BCSC 2021 recently summarized the principles to apply on a summary judgment application at para. 16:

> …An application under Rule 9-6 asserts that the claim or defence is factually without merit. It differs from Rule 9-5, where the pleadings are attacked on the basis that the action or the defence, as the case may be, cannot succeed as a matter of law: *Drummond v. Moore*, 2012 BCSC 496 (CanLII). The test for summary judgment is whether there is a *bona fide* triable issue to be determined: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 (CanLII). The court must be satisfied that it is plain and obvious or beyond doubt that the action will not succeed. If the court is left in doubt about whether there is a triable issue, the application should be dismissed: *Progressive Construction Ltd. v. Newton* (1980), 1980 CanLII 493 (BC SC),

> 25 B.C.L.R. 330 (S.C.). In *Skybridge* at para. 10, the court held that a judge hearing an application under the summary judgment rule must "examine the pleaded facts to determine which causes of action they may support; identify the essential elements required to be proved at trial in order to succeed on each cause of action; and determine if sufficient material facts have been pleaded to support each element of a given cause of action."

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[9] The case of *L.D. (Guardian ad litem of) v. Provincial Health Services Authority*, 2011 BCSC 628 makes it clear that under the former *Supreme Court Rules* under which *Skybridge* was decided, there was no equivalent to Rule 9-6(5) allowing a court to determine issues of law. However, in that case Sewell J. cautioned that a court should only decide an issue of law if satisfied that there is no real dispute about the material facts and that the issue of law is well settled by authoritative jurisprudence (para. 20).

[10] With those principles in mind I turn to the claims of the plaintiffs.

<u>The Harassment and Intimidation Claim</u>

[11] The bylaws of the strata corporation permitted owners to rent their units. The plaintiffs rented strata lot 46 to tenants in December 2002, and those tenants left in June of 2003. The plaintiffs allege that the resident caretaker of Cedar Grove intimidated and harassed the plaintiffs and their tenants due to allegations the tenants were dealing in illegal drugs from strata lot 46. As a result, say the plaintiffs, they had no option but to terminate the rental agreement. The plaintiffs further alleged that due to the harassment they were unable to rent strata lot 46 and were forced to move into the unit themselves.

[12] Among several defences to this claim, the defendants submit that the claim is statute barred, and I agree. It was in September 2003 when the plaintiffs allege they were forced to move into the unit as a result of the actions of the resident caretaker and would have been aware at that time of costs or losses which could be occasioned as a result of their move. Section 3(5) of the former *Limitation Act*, R.S.B.C. 1996 c. 266 [*Limitation Act*], which applies to the plaintiff's claim, provides for a limitation period of six years which would have required the plaintiffs to bring an action by no later than September of 2009. The original writ of summons was issued

on June 10, 2010, well outside the period of time within which they had to commence an action.

[13] The defendants also raised several other defences in addition to the limitation defence. They argued, *inter alia,* that the facts as pleaded by the plaintiff do not prove the elements of the tort of intimidation, the tort of harassment is not recognized by the courts of British Columbia, and the plaintiffs have not proven any losses. I am persuaded by the limitation defence but the latter defences similarly persuade me that there is no genuine issue for trial on this claim. Therefore this claim is dismissed.

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Assaults

[14] Mr. Binichakis firstly claims he was assaulted by the defendant, the late Mr. Smitherman, on March 21, 2007. Mr. Binichakis testified at discovery that he had "redness on his throat" resulting from a choking motion by Mr. Smitherman perpetrated on him in the course of a strata meeting. However, he also stated he did not receive medical attention nor did he report the incident to the police.

[15] The defendant Mr. Smitherman denied that he assaulted Mr. Binichakis, however the affidavits of two other persons, Ms. Porter and Mr. Marchi, who were at the strata council meeting in question, confirm that Mr. Smitherman touched Mr. Binichakis. The strata council meeting minutes of the meeting recorded a disruption by Mr. Binichakis which resulted in the meeting having to be adjourned.

[16] The facts of this incident are clearly in dispute, however s. 3(2)(a) of the *Limitation Act* in force at the time of the incident required a claim for personal injury to be brought within two years of the incident. In this case the claim was advanced over three years after the incident and is therefore statute barred.

[17] The second assault alleged by Mr. Binichakis allegedly occurred on May 21, 2008 when the defendant Ms. Porter or others trapped him in an elevator in Building A. Ms. Porter denies any involvement in Mr. Binichakis being trapped in the elevator and deposed that the elevator ceased operation at that time due to a mechanical

malfunction. She attached to her affidavit a report from Otis Elevators, who were contracted to service the elevators and attended at the building after Mr. Binichakis had been rescued from the elevator by the fire department after 15-20 minutes. The Otis Elevators report confirmed that the brake core in the elevator had to be adjusted.

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[18] There is no evidence, only speculation on the part of Mr. Binichakis, that anyone had caused Mr. Binichakis to be trapped in the elevator and even if there were such evidence, there is no evidence of any injuries or damage caused to Mr. Binichakis. Furthermore, this claim was advanced outside the two-year limitation period for personal injury. Both assault claims are dismissed.

Parking Agreement Claim

[19] The plaintiffs allege they entered into a parking agreement with the strata corporation and that the strata corporation breached the parking agreement by:

a) Failing to ensure the plaintiffs had exclusive use of the spaces;
b) Placing snow on those spaces during the winters of 2007 / 2008 and 2008/2009;
c) Terminating the agreement without the plaintiff's consent;
d) Towing the plaintiff's vehicles from those stalls; and
e) Increasing the fee for use of the stalls.

[20] There are covered and uncovered parking spaces at each of the three buildings at Cedar Grove. The strata corporation had a bylaw in place between 2003 and 2008 which permitted owners to use specified parking stalls for licensed and insured motor vehicles only, which bylaw was extended under a similar provision in 2008. On September 1, 2003 the plaintiffs entered into a parking arrangement governed by the strata bylaws, which allocated the use of one specific parking space per unit and four additional specific stalls for $10 per month. In September of 2014, the strata council approved a motion to authorize the strata corporation to increase the cost of the additional stalls, ie. the stalls in addition to the one parking stall assigned per unit at no charge, to $20 per month. The plaintiffs were charged the increased fee which they paid without objection.

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[21] During the winter months of 2007 / 2008 and 2008 / 2009, snow was piled on the assigned parking stalls on one occasion by the snow removal agent. In his examination for discovery, Mr. Binichakis agreed that the plaintiffs were not deprived of the use of the stalls during this time as the vehicles he regularly parked in them were at other locations being repaired. On other occasions during the same winters, the strata corporation admitted that the company hired to remove snow did on occasion pile snow on some spaces not occupied by a vehicle simply because there was no other location to pile the snow. On those occasions the piles were in place for short durations and owners were permitted to park in other spaces not affected by the snow piles.

[22] In August of 2008, the strata corporation revoked the plaintiff's parking privileges for non-payment of strata lot account fees, as was permitted by the by-laws of the strata corporation. This resulted in the plaintiffs receiving notice of the strata corporation's intention to revoke parking privileges for failure to pay strata fees, as evidenced by the letters that were sent to the plaintiffs appended to the affidavit of Ms. Porter.

[23] On three occasions, the strata corporation arranged for the towing of the plaintiff's vehicles which were no longer authorized to park as a result of the default in payment of strata fees and failure to comply with a notice to remove any vehicles in spaces which had been revoked due to non-payment. Fines were also levied under the bylaws due to the plaintiff's having vehicles parked in spaces which were not licensed or insured as required by the bylaws. The plaintiffs were given notice via letters of their breach of the bylaws, the fines imposed and the towing that would result (tabs U and V of the affidavit of Ms. Porter).

[24] The claims made in relation to the parking of vehicles on strata property and the use of common property within the strata development is strictly governed by the strata corporation (see s. 76 of the *Strata Property Act*). The duty of a strata corporation to manage the common property including use of the same must be for the benefit of all owners (*Sterloff v. Strata Plan VR2613* (1994), 38 R.P.R. (2d) 102

(B.C.S.C.)) which duty extends to control of a parking lot (*Bea v. Strata Plan LMS 2138,* 2008 BCSC 133).

[25] Pursuant to ss. 119 and 128 of the *Strata Property Act,* the strata council also has the authority to implement bylaws for the control, management, maintenance, use and enjoyment of the strata lots and common property. This allows the strata council to pass bylaws to cancel privileges of owners including parking privileges, to tow vehicles not authorized to park on the premises, to charge a fee for parking, to change the terms of parking including fees, and to otherwise determine conditions under which vehicles may park on common property.

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[26] Contrary to the submissions of the plaintiffs, there was no formal parking agreement between the parties and the use of the parking spaces was governed exclusively by the bylaws. The plaintiffs failed to comply with the terms of the bylaws relating to parking and were therefore subject to a fine imposed under the bylaws after notice to the plaintiffs. The fines included a continuing fine which was authorized by s. 135(3) of the *Strata Property Act.*

[27] For the reasons set out above, this claim is dismissed.

Security Services Agreement

[28] The plaintiff Issodoros Binichakis claims the sum of $63,365 for services performed at the strata development relating to security. This claim rests upon the ability of Mr. Binichakis to prove that he was hired by the strata corporation to perform security services and that he performed such services. If an agreement and performance of the services are proven, he must then satisfy the court as to the compensation to which he is entitled.

[29] The facts relating to this claim are as follows:

a) The minutes of the September 2005 strata council meeting reflect that Mr. Binichakis, as a member of the strata council at the time, was assigned to the duty of assisting Ms. Carol Porter, also a strata council member, with

security matters at Cedar Grove. The minutes do not reflect a decision to hire Mr. Binichakis to perform any security related work.

b) In his examination for discovery, Mr. Binichakis agreed that he was never told by the strata council nor the members of the strata council that he would be paid for the tasks assigned to him as a member of the strata council, as was the situation with other strata council members who were assigned tasks for the management of Cedar Grove. Mr. Binichaskis also admitted that until he issued invoices for his services approximately three years after the services were allegedly performed, he had never told the strata council that he expected to be paid.

c) There is no evidence before the court as to the terms of any alleged “express, alternatively implied, further alternatively tacit term” which may have been agreed upon by the strata council.

[30] The evidence does not support, in any way, the allegation of Mr. Binichakis that there was an agreement to provide security services for which he was to be compensated. This claim is accordingly dismissed.

<u>Trespass</u>

[31] Under this claim, the plaintiffs allege that the defendant Ms. Porter and/or the strata corporation damaged, or more appropriately, vandalized, a GMC vehicle owned by the plaintiffs which had been parked in stall A19 of Cedar Grove.

[32] There is no doubt that the plaintiff’s vehicle was damaged while parked in stall A19 which included a window being smashed and a tire being slashed.

[33] There is no evidence supporting the claim of the plaintiff that Ms. Porter or any member of the strata corporation damaged the vehicle. In his examination for discovery, Mr. Binichakis agreed that he does not know who caused the damage to his vehicle. Mrs. Porter deposed that she did not cause any damage to the vehicle.

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[34] The claim by the plaintiffs that damage was caused by Ms. Porter or any other person associated with the strata corporation is, based on the evidence before me, merely speculation. It is also worthy to note that the plaintiffs never did report the damage to the strata corporation or to the police. Accordingly, there being no evidence to support this claim it is also dismissed.

Occupier's Liability

[35] Mr. Binichakis asserts a claim under the *Occupier's Liability Act,* R.S.B.C. 1996, c. 337 against the strata corporation arising from a "slip and fall" in December 2008 on an icy portion of a sidewalk in the parking lot in front of Building A at Cedar Grove. Mr. Binichakis submits the strata corporation breached the duty of care imposed on it by s. 3 of the *Occupier's Liability Act* and claims damages for injuries suffered to his left arm and right hip.

[36] At his examination for discovery, Mr. Binichakis admitted that the sidewalk had been shoveled and that he had been aware that the ground was generally slippery. Further, he admitted that he was engaged in a conversation with his wife before the fall and was not paying attention to where he was walking at the time.

[37] The defendants filed an affidavit in defence of this claim which was sworn by Craig Stanford, who was a resident of Cedar Grove at the time of the slip and fall. Mr. Stanford deposed that he believed that the incident took place on December 30, 2008. He deposed that at the time he was working on the garage door to Building A, adjusting the vehicle door so that it remained in an open position during a heavy snow storm, which was commonly done so as to avoid vehicles sliding into and damaging the garage doors.

[38] Mr. Stanford deposed that he heard Mr. Binichakis fall and went towards Mr. Binichakis to see if he needed help, which resulted in Mr. Binichakis yelling a profanity at Mr. Stanford who then returned to his work. Mr. Stanford added that he saw Mr. Binichakis get up and walk into Building A; Mr. Binichakis did not appear to be injured.

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[39] The strata corporation also submitted evidence of the snow removal policy that was in place at the time of the incident, as well as evidence that a contractor had been contracted to plow, shovel and salt any snow-covered or icy areas at Cedar Grove when necessary and that this contractor had plowed snow on December 26 and 28, 2008 and shoveled and applied salt on December 30. There was no evidence as to where the shoveling and salting had taken place.

[40] The elements a plaintiff must prove in a negligence action are:

a) that there was a duty of care owed to the plaintiff by the defendants;

b) that there was a breach of that duty of care in that the defendants failed to exercise the standard of care required in the circumstances;

c) the plaintiff suffered damages; and

d) the plaintiff's damage was caused by the defendant's breach.

[41] Section 3 of the *Occupiers' Liability Act* creates a duty of care on owners or occupiers of premises as follows:

> 3. (1) An occupier of premises owes a duty to take that care that in all circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.
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> (2) The duty of care referred to in subsection (1) applies in relation to the
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> a) condition of the premises,
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> b) activities on the premises, or
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> c) conduct of third parties on the premises.

[42] Clearly, it is the obligation of the strata corporation to take steps to see that a person will be reasonably safe on the premises. In *Foley v. Imperial Oil Limited,* 2011 BCCA 262, at para. 28 the Court of Appeal discussed this standard of care:

> [28] The standard imposed by the *Act* is one of reasonableness; the reasonableness of the system implemented to safeguard the particular risk on the premises, and the reasonableness of the implementation of that system. The standard of reasonableness is not one of perfection. As was noted by the trial judge at para. 55, citing *Lamont v. Westfair Properties (Pacific) Ltd.,* 2000 BCSC 406 at para. 20, "An occupier is not expected to be an insurer against all risks".

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[43] In the circumstances of this case, the question to be decided in determining whether the strata corporation breached the duty of care is whether or not the plan of the strata corporation to remove snow and ice during the winter and especially during a heavy snow storm together with whether the strata corporation adequately implemented that plan was reasonably sufficient to care for the premises and the persons using the premises.

[44] The defendants submit the plaintiff's claim should be dismissed because the strata corporation met the standard of care by budgeting for and having snow removal services in place. In the alternative the defendants argue the plaintiff has not provided any evidence of injury so has not proved that element of the claim.

[45] As the defendants accurately point out, whether the strata corporation's plan for snow removal was reasonable and whether the implementation of that plan was reasonable is a question of fact, in consideration of the weather conditions, the condition of the premises, the steps taken by the strata corporation to keep the premises safe in those circumstances, the foreseeability of danger and the nature and use of the area: *Kilroy v. British Columbia Buildings Corp.* (1994), [1994] B.C.W.L.D. 349 (B.C.S.C.), citing *Malcolm v. Waldick* (1991), 83 D.L.R. (4th) 114 (S.C.C.).

[46] Although the strata corporation has put forward evidence regarding its snow removal policy, the contractor that was hired, and certain days on which snow removal took place, I have no evidence as to where that snow removal took place, whether it was adequate, any foreseeable dangers, or the weather conditions at that time. I am unable to determine on the evidence whether the policy was reasonable or whether it was implemented reasonably. The plaintiffs and the defendants disagree about whether the standard of care was met and this is a factual dispute for trial.

[47] The only evidence of injury is Mr. Binichakis' testimony at his examination for discovery that he hurt his left arm and right hip. There is however, clear evidence that he fell from Mr. Stanford, though Mr. Stanford did see him get up and walk away

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without any apparent difficulty. Though this evidence of injury is tenuous at best, I hesitate to conclude that there is no genuine issue for trial.

[48] I decline to dismiss this claim against the strata corporation, although I do dismiss this claim as against the personal defendants as the plaintiff has not pleaded any material facts to prove that they were personally subject to the duty of care.

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Defamation

[49] Mr. Binichakis deposes that in July of 2006 a defamatory statement concerning Mr. Binichakis was made by the resident manager of Cedar Grove while Mr. Binichakis was entering Building A. The statement need not be repeated in these reasons.

[50] One of the essential elements of a claim of defamation is that the words must have been communicated by the speaker to at least one other person. In this case, Mr. Binichakis submits that the statement was made in the presence of the strata manager, Mr. Marchi.

[51] Mr. Marchi does not recall the statement having been made in his presence. This is a factual dispute that cannot be resolved on summary judgment.

[52] However, the *Limitation Act* also applies to this claim. Section 3(2)(e) requires a claim for defamation to be brought within two years of the defamatory statement having been made. In this case, the claim was brought almost four years after the statement was alleged to have been made and accordingly, the claim was brought out of time and must be dismissed.

Oppression

[53] The plaintiffs assert that various actions of the strata corporation were unfair to them. They allege the strata corporation failed to produce certain documents when they were statutorily obligated to do so, wrongfully filed a lien against the plaintiff's unit for failure to pay fines, denied Mr. Binichakis the opportunity to serve as a member of the strata council, charged the plaintiffs "incorrect" maintenance

fees and attempted to intimidate the plaintiffs by levying fines in an effort to "silence the plaintiffs' criticism of the strata corporation and strata council".

[54] The plaintiffs apply for relief under ss. 164 and 165 of the *Strata Property Act.* Section 164 provides:

> **Preventing or remedying unfair acts**
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> 164(1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
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> (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
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> (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
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> (2) For the purposes of subsection (1), the court may
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> (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
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> (b) vary a transaction or resolution, and
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> (c) regulate the conduct of the strata corporation's future affairs.

[55] The Court of Appeal in *45931 B.C. Ltd. v Strata Plan BCS1589*, 2012 BCCA 44 confirmed that the definition of "significantly unfair" includes actions which are oppressive and unfairly prejudicial in nature. The Court determined at para. 30 that for an action to be "significantly unfair" for the purposes of s. 164 it must meet the following two-part test:

> 1. Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner?
>
> 2. Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?

Documents

[56] Section 36 of the *Strata Property Act* permits an owner to request certain documents listed in s. 35 of the *Act* and the strata corporation is only required to produce documents it has in its possession.

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[57] The plaintiffs claim they requested certain documents pursuant to s. 36 and those requests were not complied with. However, it is not clear that the balance of the requests by the plaintiffs relate to any of the documents listed in s. 35 of the *Act* and in any event, the requests for documents by the plaintiffs are not clear or particularized such that the defendants could respond.

[58] One of the only requests that was clear was for a document "showing that Cedar Grove was no longer a leaky condominium". In the affidavit of the strata manager Mr. Marchi filed by the defendants, Mr. Marchi deposed that the plaintiffs had been provided with copies of letters from the project engineer stating that the work relating to water ingress at Cedar Grove had been completed. That correspondence responds to the request of the plaintiffs.

[59] Another request sought historical parking assignments in the Cedar Grove parking areas; however, as Ms. Porter has deposed in her affidavit #3, the strata corporation only maintains current assignments of parking spaces.

[60] The plaintiffs have not pleaded material facts or produced sufficient evidence to support the claim for document production.

Maintenance Fees

[61] The plaintiffs allege the strata corporation charged incorrect maintenance fees to the plaintiffs from 2003-2010. The fees payable by the owners of Lot 46 are determined by the budget passed by the owners within the strata corporation and the Schedule of Unit Entitlement which sets out each unit's proportionate share of the operating expenses. In his examination for discovery, Mr. Binichakis admitted that the strata fees for his unit are calculated by using the Schedule of Unit Entitlement and the operating budget passed by the owners. There is no evidence before me that the strata corporation charged any fees beyond what the plaintiffs would reasonably expect to be charged according to the Schedule of Unit Entitlement.

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Fines

[62] The plaintiffs allege the strata corporation wrongfully issued fines against the plaintiffs for alleged parking bylaw infractions from 2007 to 2008. The plaintiffs claim they have asked the strata corporation to remove the fines, but the strata corporation has refused to do so and furthermore it failed to give the plaintiffs notice of the alleged bylaw infractions. The defendants argue that the plaintiffs should have the reasonable expectation that if they violate the bylaws of the strata corporation they will receive a fine. This allegation was discussed in my reasons pertaining to the parking agreement; the fines were validly issued pursuant to the bylaws and the evidence shows the plaintiffs did receive notice of their violations. These actions of the strata corporations were not outside the reasonable expectations of the plaintiffs.

Lien

[63] On April 13, 2004, the strata corporation registered a lien against strata lot 46 in the amount of $2,197.50 for unpaid fees and did not include any fines which had been levied against the plaintiffs' and their unit. In his examination for discovery, a transcript of portions of which were appended to an affidavit filed for this hearing, Mr. Binichakis acknowledged that the amount of the lien included only unpaid strata fees and no unpaid fines. The lien was discharged in March of 2005 after the plaintiffs paid the arrears of strata fees which had been owing.

[64] Section 116 of the *Strata Property Act* permits the strata corporation to register a lien for unpaid strata fees against title to the unit in question in the amount of unpaid strata fees. The plaintiffs had outstanding strata fees, the strata corporation registered a lien in the amount of those fees, and after the plaintiffs paid the arrears the lien was discharged. I cannot see how this would be outside of the reasonable expectations of the plaintiffs. They have not proven that this action of the strata corporation was significantly unfair.

AGM

[65] Regarding the claim of the plaintiffs that the strata corporation "denied Issidoros Binichakis the opportunity to continue serving as a council member of the

strata council by failing to provide notice of the 2007 annual general meeting of Cedar Grove", Mr. Marchi has deposed in his affidavit that notice of the 2007 annual general meeting was sent to all owners by mail, including the plaintiffs. Presumably notice of the annual general meeting was received by the plaintiffs as the records of the strata corporation confirm that Mr. Binichakis attended the 2007 annual general meeting, which fact was confirmed by Mr. Marchi and Ms. Porter in their affidavits. Both of those persons deposed that Mr. Binichakis advised those present after nominations had closed that he wished to stand for election and the new council had been elected.

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[66] I accept that the plaintiffs did receive notice of the 2007 notice of the annual general meeting; Mr. Binichakis attended the meeting and he does not deny he attended. Even if he did not, there was a good faith effort made by the strata corporation to deliver the notice by mail, which is all that is required by s. 47 of the *Strata Property Act.* There is no requirement to deliver the notice into the hands of the owner.

[67] An election of the members of the strata council was conducted at the meeting and Mr. Binichakis was not elected. His reasonable expectation as a strata owner could only be to receive notice of the meeting, attend the meeting, and stand for election, he has no right to be elected and as a result there was no loss suffered by him because of these events. Furthermore, it was in 2010 that Mr. Binichakis first raised this issue as a claim. The decision of *Christiansen v. Strata Plan KAS 468,* 2013 BCSC 1714 is authority for the proposition that the jurisdiction of this court to order a strata corporation to act is limited to current issues, whereas this claim relates back to 2007 and an alleged loss as a result of not having received notice of a meeting. He cannot now complain of a lack of notice and even if his allegations of a lack of notice were to be accepted, which they are not, there is no cause of action resulting from the same which would entitle Mr. Binichakis to succeed in a claim as a result of the elections for council in 2007.

Summary of Findings

[68] The defendants have been successful in having the claims of the plaintiffs dismissed save for the “slip and fall” claim.

[69] Regarding costs, the parties may make submissions in writing as to entitlement to costs which must be received within 30 days of the issuance in writing of these reasons for judgment.

“Jenkins J.”

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