

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mathews v. The Owners, Strata Plan VR
90,*
2015 BCSC 1801

Date: 20151005
Docket: S156357
Registry: Vancouver

Between:

**John Elden Mathews, Zachary Hanson Mathews,
Erika Mathews, and Barbara Lynn Mathews**

Petitioners

And

The Owners, Strata Plan VR 90

Respondent

Before: The Honourable Mr. Justice Ehrcke

Reasons for Judgment

Counsel for the Petitioners:

A.J. Chang

Counsel for the Respondent:

J.A. Bleay

Place and Date of Hearing:

Vancouver, B.C.
September 10, 2015

Place and Date of Judgment:

Vancouver, B.C.
October 5, 2015

I. INTRODUCTION

[1] The respondent, The Owners, Strata Plan VR 90 (the “Strata Corporation”) is a residential strata development consisting of 158 residential strata lots located at 1445 Marpole Avenue, Vancouver, B.C., also known as “Hycroft Towers”.

[2] The petitioners own units in the Strata Corporation that they wish to rent out to tenants. John Mathews is an owner of strata lot 6; Barbara Mathews is the owner of strata lot 113. Zachary and Erika Mathews (the “Mathews”) own strata lot 127 (the “Mathews’ Unit”) as joint tenants.

[3] The petitioners challenge the validity of the bylaws of the Strata Corporation (the “Bylaws”), and specifically s. 35, which restricts their right to rent out their units.

II. BACKGROUND

[4] In 2014, a fire broke out in the Mathews’ Unit causing extensive damage to it and approximately 30 other units. The Mathews and many other unit owners had to move out for an extended period of time. By May 2015, repairs to the Mathews’ Unit had been completed, and it was possible for the Mathews to move back in.

[5] On May 28, 2015 the Mathews wrote to the strata council for the Strata Corporation requesting permission to rent out their unit on the basis of hardship. Their letter stated:

Hycroft Council 1445 Marpole Avenue Vancouver, BC

Re: Rental permission request for Unit #709 citing hardship exemption

Dear council,

We are writing to request permission to rent our unit #709. Our unit is now completed in repairs from the fire of 2014. We have given a lot of consideration to returning to our home however, we’ve incurred a significant amount of hostility and harassment from other owners in Hycroft and do not think this is possible to return at this time.

Examples of these hostile events include, but are not limited to, the following:

- Receiving anonymous hate mail in our mailbox telling us that they want us to suffer, that they hope we have a horrible Christmas, and demanding that we sell and move out and never return.

- When leaving the building a woman followed us in her car, driving behind us at our walking speed for more than a block, continuing to our parked car while watching us load our vehicle. It was scary and we felt threatened.
- Having a man try to prevent us from using the elevator and then refuse to acknowledge a friendly hello, noting that "he doesn't talk to people like us."
- General rudeness, back turns, and stare downs from a few residents which is upsetting.

We feel much of this hostility stems from the fact that the insurance company and/or council published statements that the cause of the fire was negligence. This information aggravated the situation, and was irresponsible to disseminate at such an early stage in the investigation. There are, as yet, no legal proceedings commenced but only a court can make a determination of negligence. We maintain a denial of liability for this loss. Even if the oil stain we used on the hardwood floor caused the fire, which is not established on the evidence, only speculated, we followed the product manufacturer's instructions and, if any cause of action exists, it should be directed to the product manufacturer for a failure to warn.

We understand that many owners suffered as a result of the fire, for which we have significant empathy. However, it is unreasonable that we have been treated with such hostility, significantly affecting our use and enjoyment of our own home, indeed our first home as a married couple. We have decided that returning to this environment and the stress that continued harassment and hostility will cause to us is not in the best interests of our family. Further, since we've left our home at Hycroft, we have had our first child. Erika is no longer working and a third year teacher's salary can only be stretched so far. We request permission to rent our unit because we cannot afford to rent separate accommodation if we do not have rental revenues to satisfy our mortgage payments.

Finally, at this year's AGM meeting it was noted that one or more attendees requested the council obtain a letter of apology from us. In 2014, shortly after the fire, I did forward a letter to council stating our regret for the fire starting in our unit and apologizing for the trouble it caused. Please feel free to share the letter if you think it would be appropriate.

[6] Over the course of the next several weeks the Strata Corporation and the Mathews corresponded with each other regarding the rental request. The correspondence from the Mathews referred only to hardship as the basis for their request to rent the Unit.

[7] On June 1, 2015, the manager for the Strata Corporation wrote to the Mathews requesting proof of hardship. The Mathews provided additional details in a

letter dated June 9, 2015. On June 23, 2015, the Strata Corporation advised the Mathews that their request to rent had been denied, but invited them to provide further information if they wanted to request a reconsideration. In a letter dated July 8, 2015, legal counsel for the Mathews advised that they were prepared to submit further documentation in support of a hardship application, but also advised that they considered the Bylaws' restriction on renting to be unenforceable.

[8] On July 22, 2015, legal counsel for the Strata Corporation advised that the Mathews' application had been considered by the Strata Corporation, but that it had been denied on the basis that it did not disclose a hardship that could be alleviated by allowing rental of their unit.

[9] The Mathews did not submit any further correspondence in connection with their request, but rather commenced renting the Mathews' Unit on September 1, 2015 without receiving approval from the Strata Corporation to do so.

III. THE BYLAWS

[10] Section 35 of the Bylaws of the Strata Corporation sets out the provisions regarding the rental of strata lots. It provides:

35 (1)

- (a) No more than one (1) Strata Lot within the Strata Plan will be leased or rented at any given time.
- (b) The Strata Council reserves the right to exceed the limitations set out in this Bylaw should it be deemed necessary, based on a hardship case or extenuating circumstances.
- (c) No Strata Lot may be leased for a period of more than one year, and such arrangements must be pursuant to a maximum one year lease.
- (d) These limitations shall be administered and enforced by the Strata Council.

(2) For the purpose of enforcing these limitations, the following administrative provisions apply:

- (a) An Owner who wishes to lease a Strata Lot shall first obtain approval from the Strata Council. The Owner shall deliver to the Strata Council or the Property Manager employed by the Strata Corporation a written request for a Lease Permit together with the following:

- i) The name, occupation and address of each tenant or person who will occupy the Strata Lot during the term of the proposed lease;
 - ii) Where applicable, the business telephone number of the tenant or tenants;
 - iii) The commencement date and term of the lease;
 - iv) A completed "Form K - Notice of Tenant's Responsibilities (section 146, Strata Property Act);
 - v) If requested by the Strata Council, a security deposit in an amount not to exceed \$400.00 to be held by the Strata Corporation for the purposes set forth in this Bylaw.
- (b) Upon receipt of a written request for a Lease Permit from an Owner together with the items and information outlined above, the Strata Council or the Property Manager employed by the Strata Corporation may within 14 days of receipt of the request either:
- i) issue a Lease Permit to the Owner, or
 - ii) advise the Owner the request has been denied.
- (c) Only a Strata Lot in respect of which a Lease Permit has been issued pursuant to this Bylaw and which has not been cancelled pursuant to this Bylaw may be leased by the Owners.
- (3) A Lease Permit shall be deemed to be cancelled in any of the following events:
- (a) in the event that the tenant or tenants named in the Lease Permit cease to occupy the Strata Lot named in the Permit as their principal residence; or
 - (b) in the event that the Owner and/or the tenant has failed to comply with the provisions of the Strata Property Act, the Bylaws and the Rules and Regulations of the Strata Corporation for a period of thirty (30) days after notice of the non-compliance has been mailed to the Owner and/or the tenant by the Strata Corporation; or
 - (c) in the event that the lease in respect of which it was issued is terminated, assigned, or sub-let, or expires without renewal, or the approval to rent has not been exercised within 60 days of the approval date.
- (4) Sub-leasing of the Strata Lot or portions thereof shall not be permitted.
- (5) Any Owner who leases a Strata Lot without first obtaining a Lease Permit pursuant to this Bylaw or continues to lease a Strata Lot after the cancellation, without replacement, of a Lease Permit issued with respect to that Strata Lot shall, notwithstanding section 27 (1) of these Bylaws, be liable to pay to the Strata Corporation a fine in the amount of \$500.00 for each contravention of this Bylaw.

(6) A security deposit paid to the Strata Corporation pursuant to section (2) (a) v) of this Bylaw shall be held by the Strata Corporation on the following terms and conditions:

- (a) The Strata Corporation may apply the full amount of the deposit or any portion thereof on account of any monies payable to the Strata Corporation under these Bylaws or with respect to any damage, loss, or expense suffered by the Strata Corporation as a result of damage or injury to the common property, assets, or common facilities of the Strata Corporation caused by any person occupying the Strata Lot in respect of which the deposit is made;
- (b) The balance of the deposit, if any, plus interest, shall be repaid by the Strata Corporation to the Owner in any of the following events:
 - i) if the Strata Lot in respect of which the deposit is made becomes vacant or unoccupied; or
 - ii) if the Owner retakes possession of the Strata Lot as his or her principal residence; or
 - iii) if a new Lease Permit is issued with respect to the Strata Lot.

(7) The Strata Corporation shall have the right to terminate the tenancy of any tenant who repeatedly or continuously contravenes a reasonable and significant Bylaw or rule of the Strata Corporation and who seriously interferes with another person's use and enjoyment of a Strata Lot, common property or common asset (section 138).

(8) Tenants who do not vacate and give up the premises when required to do so by the Strata Corporation shall be subject to Court action. All legal proceedings required for the forceful eviction of the tenants will be undertaken by the Strata Council, and all legal and other costs incurred will be charged to the Strata Lot Owner.

(9) The Strata Corporation shall remove and dispose of any property or possessions remaining on common property after notice to remove and dispose of the property has been given to the tenant and the costs of such removal and disposition shall be charged to the Strata Lot Owner.

(10) Should any Owner of a Strata Lot lease or rent the Strata Lot in contravention of the limitations contained in this Bylaw, the Strata Council shall be entitled to take any or more of the following actions:

- (a) Take all necessary steps to terminate the tenancy agreement or lease on behalf of the Strata Lot; or
- (b) Notwithstanding section 27 (1) of these Bylaws, levy a fine not to exceed \$500.00 for each month in contravention, such fine to be added to and form part of the month's assessment or levy to be collected by the Strata Corporation from the Owner of the Strata Lot, and the Strata Council is hereby authorized to take all necessary steps to collect such amounts from any Owner,

- (c) Seek a declaration of any Court of competent jurisdiction with regard to the enforcement with limitation and/or an injunction to prevent the continued rental or leasing of such Strata Lot; and upon receiving such declaration or injunction, costs shall be the responsibility of the Strata Lot Owner contravening the provisions of the Bylaw and shall be recoverable on a solicitor and own client basis by the Strata Corporation; and
- (d) Should any portion of this Bylaw be deemed unenforceable by any Court of competent Jurisdiction, then for the purposes of interpretation and enforcement of the Bylaw, each sub-paragraph hereof shall be deemed a separate provision and severable, and the balance of the provisions contained herein shall remain in full force and effect.

(11) Notwithstanding the provisions of this Bylaw and sub-paragraphs thereof, the Council will, upon the application of a resident Owner, normally authorize the occupancy of a resident Owner's furnished or unfurnished unit during their absence for a period not exceeding one (1) year, providing the required Form "K" has been completed.

IV. ANALYSIS

[11] The petitioners submit that the Strata Corporation cannot restrict their right to rent out their units because s. 35 of the Bylaws does not comply with the requirements of s. 141(3) of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "Act"). Section 141 provides:

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:
 - (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.

(3) A bylaw under subsection (2) (b) (i) must set out the procedure to be followed by the strata corporation in administering the limit.

[12] The petitioners argue that s. 35 of the Bylaws does not set out a sufficiently clear and logical procedure for administering the restriction on the number of units

that may be rented. They submit that in order to meet the requirements of s. 141, the procedure set out in the Bylaws must be detailed enough that an owner can see how he or she can attain the right to rent and must make clear how the strata corporation makes its decision.

[13] The petitioners rely on the decision of this Court in *Carnahan v. The Owners Strata Plan LMS522*, 2014 BCSC 2375. In that case, Mr. Justice N. Brown wrote at paras. 32-34:

[32] Section 141(3) creates two obligations for a strata corporation purporting to restrict the number of strata lots that may be rented: (1) the strata corporation must have a procedure for administering the limit; and (2) that procedure must be set out in the strata corporation's bylaws.

[33] The Strata Corporation submits that a plain reading of s. 141(3) shows that strata corporations must have a procedure for administering the rental limit, not that the procedure must have a specific form. I agree. Unlike s. 144, which sets out the procedure a strata corporation must follow when it considers a hardship exemption, s. 141(3) gives a strata corporation considerable discretion in devising a procedure for administering a rental limit.

[34] However, merely because the legislature did not set a particular procedure to follow does not leave a strata corporation with unfettered discretion to decide the content and scope of that procedure. By obliging a strata corporation to set out the "procedure," s. 141(3) requires it to establish a process for administering the rental limit that is clear and logical, not ambiguous or arbitrary. A strata corporation must do more than set out a single step in the process. Rather, the procedure must be detailed enough that a strata owner, or a prospective strata owner, who reads the bylaws can clearly see how the strata corporation decides which strata owner is entitled to lease their strata lot when the rental restriction limit is not reached, and how a strata owner can attain that right. Such a requirement protects strata owners from the application of an informal and arbitrary procedure. Moreover, the bylaw's procedure must not itself allow the strata corporation to administer the rental limit arbitrarily. In my view, these minimum procedural requirements for the administration of a rental limit accord with the objective of balancing the rights of individual strata owners with the strata corporation as a whole.

[14] Mr. Justice N. Brown went on to provide some practical guidance as to what might be included in an acceptable rental restriction procedure. He wrote at paras. 41-44:

[41] I will now make some general comments about the information strata corporations should consider including in procedural bylaws for the administration of a rental limit. These considerations are simply offered as guidance and are not exhaustive requirements for a rental restriction procedure.

[42] The *British Columbia Strata Property Practice Manual* suggests that procedural bylaws should address the following matters:

- (a) Must the application to rent be in writing?
- (b) What information must be included in the application to rent?
- (c) Who receives applications to rent? Should applications be sent to the strata council or the strata management company?
- (d) Within what time frame will the strata corporation respond to an application? Must the strata corporation's response be in writing?
- (e) How much time does the owner have to find a tenant before permission to rent is revoked and another owner is given permission?
- (f) If the limit has been reached, is there a waiting list? If so, what is the procedure for use of the waiting list?
- (g) What is the penalty for renting a strata lot in contravention of a rental limit?

(L. Joy Tataryn, ed., *British Columbia Strata Property Practice Manual*, looseleaf (Vancouver: The Continuing Legal Education Society of British Columbia, 2008) at §11.6.)

[43] To these, one could add the following:

- (a) Is there a time limit on the rental period, or is it for an indeterminate period?
- (b) In what circumstances could the right of an owner to rent their strata lot be revoked? For example, when a renting owner sells, transfers, or takes occupancy of the strata lot? When a tenant vacates the strata lot? When a strata owner or tenant fails to comply with certain bylaws? When an owner fails to pay strata fees, and if so, in what circumstances?

[44] It is not necessary that a rental restriction procedure outline all of the abovementioned information to meet the requirements of s. 141(3). These are just possible examples. However, these are the kind of matters a strata corporation should consider when drafting rental restriction bylaws.

[Emphasis added.]

[15] Mr. Justice Brown considered the bylaws that were in place for Strata Plan LMS522 and found that they did not comply with s. 141(3) of the *Act*.

[16] Clearly, however, each case must be decided on its own specific circumstances, and therefore, the question before me is whether the particular features of s. 35 of the Bylaws for Strata Plan VR90 comply with the *Act*. In this regard, I find the suggestions of Mr. Justice Brown at paras. 42-43 of his reasons helpful, bearing in mind that they were intended as guidance and are not exhaustive requirements.

[17] Looking at s. 35(1)(c) of the Bylaws, I observe that it sets a time limit on the rental period, which is one of the matters suggested at para. 43(a) of *Carnahan*.

[18] Section 35(2)(a) of the Bylaws provides that an application to rent must be in writing, may be delivered to the Strata Corporation or the property manager, and must include specific information, which is listed in detail in items (i)-(iv). These are the items suggested in para. 42(a), (b), and (c) of *Carnahan*.

[19] Section 35(2)(b) of the Bylaws provides for the Strata Corporation to advise the owner of its decision within 14 days of the request. This is something suggested in para. 42(d) of *Carnahan*.

[20] Section 35(5) of the Bylaws specifies the penalty for renting a strata lot in contravention of the bylaw. This is something suggested in para. 42(g) of *Carnahan*.

[21] Section 35(3) of the Bylaws specifies the circumstances in which an owner's right to rent may be revoked. This is something suggested in para. 43(b) of *Carnahan*.

[22] While the Bylaws do not provide for a waiting list as suggested in para. 42(f) of *Carnahan*, and while this addition clearly would have been a helpful feature, I am unable to conclude that this omission, when considered in the context of the Bylaws as a whole, is fatal to the Bylaws' validity.

V. CONCLUSION

[23] In all the circumstances, I find that the Bylaws of the Strata Corporation in the present case comply with the requirements of s. 141 of the *Act*, in that they contain a sufficiently clear and detailed procedure for administering the rental limit.

[24] The petition is accordingly dismissed, with costs to the respondent.

The Honourable Mr. Justice W.F. Ehrcke