

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners Strata Plan LMS 2768 v.
Jordison,*
2012 BCSC 31

Date: 20120112
Docket: S116672
Registry: Vancouver

Between:

The Owners Strata Plan LMS 2768

Petitioner

And

Rose Jordison and Jordy Jordison

Respondents

Before: The Honourable Mr. Justice Blair

Reasons for Judgment

Counsel for the Petitioner:

P.J. Dougan

Counsel for the Respondents:

No one appearing

Place and Date of Hearing:

Vancouver, B.C.
November 25, 2011

Place and Date of Judgment:

Vancouver, B.C.
January 12, 2012

[1] The petitioner, The Owners Strata Plan LMS 2768 (the "Strata"), seek an order compelling the respondent, Rose Jordison, to sell the residential unit (the "unit") she owns in the strata complex in which she resides with her son, the respondent, Jordy Jordison, who is about 20 years old.

[2] The Strata brought this petition after several years of attempting to moderate what it describes as the Jordisons' harassment of other owners in the Strata who live in close proximity to the Jordisons' residence. Ms. Jordison is the registered owner of unit 213 - 15220 Guildford Drive, Surrey, British Columbia, the legal description of which is: Parcel Identifier 024-136-000, Strata Lot 109, Section 21, Block 5, North Range 1 West, New Westminster District, Strata Plan LMS 2768.

[3] The Jordisons' behaviour which concerns the Strata includes excessive noise, abusive language, uttering threats, and harassment, as described in the affidavits filed in support of the petition. The Strata has to date assessed financial penalties of some \$30,000 against Ms. Jordison, but these penalties have not had the desired effect of changing the Jordisons' behaviour.

[4] The application proceeded on November 25, 2011, in the absence of both Ms. Jordison and Jordy Jordison although both had ample notice of the application and the relief sought by the Strata. Process server, Roderick Livingston, deposed in his affidavit filed November 23, 2011 that he delivered the petition and supporting affidavits personally upon Ms. Jordison on October 11, 2011. Process server, Dean Price, deposed in an affidavit filed November 23, 2011 that on October 27, 2011, he served Jordy Jordison by posting the petition and affidavits in support on the door of the Jordisons' residence at 213 - 15220 Guildford Drive, Surrey, pursuant to an order of substitute service granted by this Court on October 25, 2011. Neither respondent filed an appearance or otherwise responded to the service of the petition upon them. The petitioner set the matter for hearing on November 25, 2011, and the notice of hearing filed November 18, 2011 advises that the petitioner forwarded a copy of the notice to the Jordisons.

Evidentiary Basis for Application

[5] The Strata relies in its application upon affidavits outlining the Jordisons' involvement with the Strata and other members of the Strata since May 31, 2006, when Ms. Jordison obtained title to her residence in the Strata's complex and into which she moved on or about June 3, 2006.

[6] The three primary affiants in support of the petition are Kevin O'Donnell, the manager of the Strata's housing complex in which the Jordisons reside, Teresa Gifford, a strata member whose residence is located immediately below that of Ms. Jordison, and Birgit Tuckwood, also a strata member whose residence is located down the hall from Ms. Jordison's residence. Ms. Tuckwood must pass Ms. Jordison's residence to access her own residence. Another ten affiants provide corroboration of some of the events involving the Jordisons which Ms. Gifford and Ms. Tuckwood referred to in their affidavits.

[7] Mr. O'Donnell deposed that before Ms. Jordison took possession of her residence the Strata forwarded to her a "Welcome Package" explaining about life in a strata complex, an owner's responsibilities to obey the law, a copy of the Strata's Bylaws (the "Bylaws"), together with material which specifically cited noise, including heavy walking or stomping as being concerns about which owners needed to be aware and to minimize. The package also contained instructions to owners that they were responsible for their children's conduct and requested that they moderate their children's noise.

[8] Mr. O'Donnell deposed that the relationship between the Strata and the Jordisons quickly deteriorated as the Strata responded to complaints about the Jordisons contravening the use of the Strata's common property, harassment, abusive language, intimidating behaviour and excessive noise in various forms, all actions being contrary to sections 1.1, 4.1 and 4.2 of the Bylaws. As an exhibit to his affidavit he enclosed some 30 or more warning letters, demand letters, and invoices forwarded to Ms. Jordison by the Strata and legal counsel between March 22, 2007 and August 4, 2011. The March 22, 2007 letter, directed to Ms. Jordison, advised

there had been complaints to the Strata council about the sounds of pounding on the floor, doors slamming, and screaming and yelling coming from her unit. The second letter to Ms. Jordison dated May 9, 2007 advised that the Strata council was imposing a \$100 fine on her unit after her son told the Strata's resident manager to "shut up" when the latter told him that he was not allowed on the balcony of Ms. Jordison's unit before the railings were put in place.

[9] Similar complaints followed over the years with the Strata seeking, through its correspondence, to have the Jordisons modify their behaviour to bring them into compliance with the Bylaws. The correspondence also advised Ms. Jordison of the fines imposed against her by the Strata as a result of their breaches of the Bylaws. Mr. O'Donnell stated that the Strata's correspondence had no effect on the Jordisons' behaviour.

[10] Mr. O'Donnell also deposed that the Strata had fined Ms. Jordison "thousands of dollars" for contraventions of the Bylaws by she and her son, but he did not provide a full accounting of the fines. Counsel, in submissions, advised that the fines imposed on Ms. Jordison amounted to some \$30,000. I could not confirm that sum from the material attached to Mr. O'Donnell's evidence, but I do accept that the fines appeared to total a sum in excess of \$20,000.

[11] Mr. O'Donnell deposed that Ms. Jordison's response to the Strata's concerns and fines were to deny the complaints and to describe the fines as illegal and against which they threatened to take legal action. No such action was taken, although in February 2011, Ms. Jordison filed a complaint with the Human Rights Tribunal (the "Tribunal") that the Strata's actions against her were discriminatory because the activities about which the Strata complained were the result of her son's physical and intellectual disabilities caused by the autism with which she asserted her son suffered. Mr. O'Donnell deposed that after the Tribunal ordered Ms. Jordison to provide medical evidence of her son's autism. The Jordisons did not file the medical evidence and withdrew their complaint from the Tribunal.

[12] Mr. O'Donnell deposed that none of the actions taken by the Strata had been successful in changing the Jordisons' attitudes or behaviour. He confirmed the statement contained in Part 2 of the petition that, as a result of the difficulties posed by the Jordisons, the Strata's owners, at their annual general meeting held June 13, 2011, unanimously voted to authorize the Strata to commence legal action by way of a petition seeking orders that the Jordisons comply with the Bylaws, that Ms. Jordison sell her unit, vacate the unit, and pay the Strata's legal costs. Mr. O'Donnell further deposed that the ongoing difficulties posed by the Jordisons left the only option available to the Strata being to seek the Court's assistance to enable the Strata to comply with its duty to enforce its Bylaws as imposed by s. 26 of the *Strata Property Act*, S.B.C. 1998, c. 43, as amended (the "Act").

[13] The affidavits provided by Ms. Gifford and Ms. Tuckwood describe in detail how the Jordisons, through their actions directed specifically against them, had made their living conditions close to unbearable. The complaints of Ms. Gifford and Ms. Tuckwood to the Strata, accompanied by their audio videotapes and still pictures taken of the Jordisons, corroborated in part by others involved in the Strata, together with the difficulties encountered by the Strata when dealing with the Jordisons, form the basis upon which this petition is founded.

[14] As referred to earlier in these reasons, the affidavit material filed in support of the petition was served personally upon Ms. Jordison on October 11, 2011, and substitutionally upon Jordy Jordison on October 27, 2011. The Jordisons did not respond to the evidence found in the Strata's affidavit material although they had plenty of time to do so as the petition was not heard until November 25, 2011. Therefore, the only evidence before me is that filed on behalf of the Strata's petition, but for some unsworn statements made by Ms. Jordison in the occasional responses she made to the Strata between 2007 and 2011 and contained as exhibits attached to Mr. O'Donnell's affidavit.

[15] Ms. Gifford, on March 5, 2007, wrote the first of more than twenty letters to the Strata complaining about the noise coming from the unit above hers, that being

the unit occupied by the Jordisons. Her letters set out the dates the noise occurred, described the type of noise, and occasionally the length of time that the noise persisted.

[16] In her first letter, Ms. Gifford wrote about the noise coming through her ceiling and how someone on February 14, 2007 in the Jordisons' unit hit the floor of that unit sufficiently hard that it dislodged two pictures from walls in her unit. Eleven months later, on February 12, 2008, she wrote again to the Strata complaining about the excessive noise coming from the Jordisons' unit, noting that on nine of the days between January 20 and February 11, 2008, she heard loud pounding, slamming doors, and stomping on the floor above from the Jordisons' unit, the sounds continuing for fifteen to sixty minutes at a time.

[17] Ms. Gifford wrote the Strata again on February 25, 2008, complaining that on seven of the days between February 14 and 25 there was loud and sometimes extremely loud banging, stomping across the floor above her unit, as well as skipping from one end of the upstairs unit to the other, all being sounds which continued for differing but lengthy periods.

[18] September 16, 2008 saw another letter from Ms. Gifford to the Strata with similar complaints of sounds of banging, pounding, and stomping for periods of time on seven of the days between August 1 and September 15, 2008. In another letter dated March 4, 2009, Ms. Gifford complained yet again of noise from the Jordisons' unit on eleven of the days between January 27 and March 2009, consisting of very loud bangs, stomping and pounding, someone jumping, the sounds continuing for varying periods of time.

[19] Ms. Gifford wrote the Strata again on April 14, 2009, about noises from the Jordisons' unit on eight of the days between March 26 and April 14, 2009, consisting of very loud stomping from room-to-room and continuing for as long as two hours. On April 14, Ms. Gifford, after working a night shift, was awakened at 14:12 hours to the sound of three large bangs from the Jordisons' unit. She also indicated that in her estimation the noise from the Jordisons' unit was increasing overall.

[20] In her July 13, 2009 letter to the Strata, Ms. Gifford described three days between July 7 and 13 when persons in the Jordisons' unit stomped from room-to-room, pounded on the floor of their unit and caused a very large bang. Ms. Gifford also wrote that whenever she went onto the patio of her unit, he, whom I presume to be Ms. Jordison's son, would make a point of going onto his unit's patio above her and would then harass her.

[21] Ms. Gifford wrote again to the Strata on August 26, 2009, noting that on seven of the days between August 3 and 25, 2009, there was noise of stomping from room-to-room, loud banging, and loud pounding from the Jordisons' unit, describing one of the loud bangs as sounding as if someone had dropped a bowling ball. Ms. Gifford also noted that on August 18 and 19, 2009, she slept at her brother's home because she was so tired, inferring I gather that her condition was the result of her sleep being disrupted by the noise created by the Jordisons.

[22] Ms. Gifford, on August 28, 2009, advised the Strata council that when leaving for work on the evening of August 27, 2009, that the Jordisons' actions, their harassment and their rude comments all directed against her were such that she concluded they were trying to intimidate her.

[23] Between October 6, 2009 and August 8, 2011, Ms. Gifford wrote a further fifteen letters to the Strata complaining that on 277 of the days in that period she had been subjected to disturbances as earlier described from the Jordisons' unit. Over time, Ms. Gifford noted that nails started to loosen in her ceiling and there was also some water leakage in her ceiling, apparently the result of the pounding and stomping by those in the Jordisons' unit.

[24] Ms. Gifford, in her January 4, 2010 letter to the Strata, referred to the Jordisons passing her in the parking lot with Jordy Jordison making sounds like a pig which she concluded were directed at her. She also noted in a letter that on July 25, 2010, one of her neighbours was visiting and Jordy Jordison referred to her as an "(expletive) fat cow," and a few days later when the same neighbour was visiting again, Jordy Jordison "gave her the finger".

[25] Lynn Varnes, who owns and resides in the unit adjacent to that of Ms. Gifford, deposed that she too heard banging in her residence coming from the Jordisons' unit and that she had been present in Ms. Gifford's unit and heard the constant noise created by the Jordisons. Ms. Varnes stated that on two occasions she had seen and heard Jordy Jordison verbally or physically attack someone. Ms. Varnes wrote that when returning a chair to Ms. Gifford's patio, Jordy Jordison appeared on his patio and called her a "(expletive) fat pig". At another time when with Ms. Gifford on the latter's patio, she saw Jordy Jordison spit at Ms. Gifford. Ms. Varnes also wrote that on another occasion when walking outside, she saw Jordy Jordison on his patio stick his middle finger at her. Ms. Varnes deposed that she was now fearful about going into the Strata's parking lot as she does not know what would happen if she met either of the Jordisons, stating that she feels deeply intimidated and bullied in her own home.

[26] Birgit Tuckwood, whose unit is located down the hall from that of the Jordisons, provided a lengthy affidavit describing the interaction with the Jordisons which led her to write fifteen letters to the Strata between March 12, 2008 and July 16, 2011, complaining that the Jordisons had caused excessive noise and taken action which harassed and intimidated her. In her letters she describes in detail the dates and times of the approximately 257 encounters she has had with the Jordisons. Ms. Tuckwood stated that she found the level of animosity displayed by the Jordisons towards her and others deeply troubling and directly interfering with the quality of her day-to-day life.

[27] A continuing complaint from Ms. Tuckwood in her many letters to the Strata is that when passing the Jordisons' front door, one of the unit's occupants, whom she believed to be Jordy Jordison, made a loud noise by banging on the Jordisons' front door. Another regular complaint she expresses is the abusive and obscene language directed at her by Jordy Jordison when they encounter each other in the strata complex.

[28] On April 19, 2008, the Jordisons were driving by her in the parking lot when Jordy Jordison, through his open window, called out to her "you f.....g bitch, f... off," and later the same day describing him as giving her the finger. The following day when she again encountered the Jordisons, Jordy called her a "whore", a "f.....g bitch" and a "ho for a show". In her letters of complaint she describes other instances when the Jordisons gave her the finger and also that Jordy, to her face, often called her a "c..t" and a "f.....g c..t".

[29] Ms. Tuckwood deposed that on August 23, 2009, when she walked past the Jordisons, Jordy said "What is that stench walking by?". She also wrote that on occasion, Jordy took what she perceived to be an aggressive stance towards her which concerned her, although nothing physical actually transpired between her and the Jordisons. She did note that on October 15, 2009 she was in the elevator and the Jordisons blocked the exit.

[30] Ms. Tuckwood also deposed that because of some of the actions by the Jordisons she contacted the RCMP in the spring of 2008, and again in July 2008 and January 7, 2010. On April 14, 2010, she telephoned the police after Jordy Jordison opened the door of his unit and threw water at her. Ms. Tuckwood deposed that on June 12, 2010, Jordy threw water on her again when she was passing the Jordisons' door. The police attended the strata complex from time to time over this period, but appeared reluctant to become involved in the difficulties Ms. Tuckwood and others were having with the Jordisons.

[31] Amber Hunter, another strata owner, deposed that on April 7, 2010, when walking with Ms. Tuckwood and her son, Justin, past the Jordisons' door she was startled when somebody thumped loudly on the door from the inside. Ms. Hunter said she had never before heard such thumping, but since then the thumping had occurred to her about six times when walking past the Jordisons' door and that she found the experiences unnerving and scary at night.

[32] Beverley Powell is a strata owner and currently a member of the Strata council. She said her residence was located along the hall from the Jordisons' unit

and deposed that the Jordisons had spent years taunting and harassing her neighbours, including Birgit Tuckwood and her husband Courtenay Tuckwood.

[33] On July 5, 2010, Ms. Powell described sitting on her patio and observed the Tuckwoods and their son sitting on their patio while the Jordisons played badminton immediately below the Tuckwoods. She heard Jordy make offensive remarks about the weight of the Tuckwoods' son, calling him "Tubby Wubby" and that the balcony was going to break because of his weight. She also heard Jordy make comments about the Tuckwoods calling them "a bunch of retards". Ms. Powell said that when Ms. Jordison saw her on her patio she called Jordy over and a few minutes later the two left with Jordy raising his middle finger to the Tuckwood family as they departed.

[34] Paul Schofield, another strata member whose unit was located along the hall from the Jordisons' unit, said he had witnessed both Jordisons try to intimidate Birgit Tuckwood and had repeatedly heard Jordy Jordison call Ms. Tuckwood obscene names and direct obscene gestures towards her. Mr. Schofield also deposed that he had repeatedly walked with one or the other of the Tuckwoods past the door to the Jordisons' unit and heard considerable banging on the inside of the door.

[35] Another strata member, Serena Caine, whose unit is along the hall from that of the Jordisons deposed that in February 2010, when walking past the Jordisons' door with Ms. Tuckwood, someone started banging on the inside of the door. Ms. Caine said this had never occurred to her before, but since that first incident the banging of the Jordisons' door has happened to her even when she was alone.

[36] Shirley Dorsett, yet another strata member, has been a member of the Strata council and also employed as a cleaner by the Strata. She recalled on one occasion, when on her hands and knees cleaning stains in the carpet outside the Jordisons' unit, that without warning and with nobody else present, someone hit and thumped on the inside of the Jordisons' door with a ferocity that it made her cry out, get up and recoil backwards. She left the scene immediately. Ms. Dorsett said she had little interaction with the Jordisons as she lived in another strata building and there was

no reason why they should have any animosity towards her or, equally, there was no reason for her to have animosity against them.

[37] Sonia Hrybko, a strata owner whose residence was located along the hall from that of the Jordisons described the Jordisons as having spent years taunting and harassing her neighbours, particularly Birgit Tuckwood and Teresa Gifford. After meeting the Jordisons, she found them to be unpredictable and aggressive, taking the role of victim in many circumstances. Ms. Hrybko deposed that most of the interactions with the Jordisons she observed involved Ms. Tuckwood, although she also observed interactions between the Jordisons and Ms. Gifford as well as others.

[38] Ms. Hrybko said that she and Ms. Tuckwood were not able to pass the Jordisons in the halls, the common grounds or the sidewalks without some derogatory comments directed at them, which she and Ms. Tuckwood ignored even while the comments became more offensive. Ms. Hrybko said that Jordy Jordison called them "bitches", "sluts" and "f.....g c...ts", while she said Ms. Jordison encouraged her son's behaviour.

[39] Viriliza Ogilvie was a strata member from February 2007 to December 2009, and her unit was located across the hall from the Jordisons' residence. She deposed that she observed the Jordisons taunting and harassing her neighbours, particularly Ms. Tuckwood. Ms. Ogilvie wrote that she heard Jordy Jordison calling Ms. Tuckwood obscene names and making obscene gestures towards her. She too heard banging on the door of the Jordisons' unit. Ms. Ogilvie deposed that the Jordisons' behaviour largely motivated her move from the Strata.

[40] Courtney Tuckwood, husband and co-owner of a unit in the Strata with Birgit Tuckwood, is the president of the Strata's council and described the Jordisons as having become an uncontrollable problem both for his family and the Strata. As president, he attested to the numerous and frequent complaints the council had received regarding the Jordisons.

[41] Mr. Tuckwood wrote of loud bangs frequently coming from inside the door to the Jordisons' unit as he walked by alone or accompanied by members of his family. He referred specifically to an incident on January 23, 2010, which, when he and his wife passed the Jordisons' door, loud banging occurred from inside the unit which led to an altercation which I took to be oral. As a result, the Tuckwoods called the police. An RCMP officer attended the Strata and spoke to the Tuckwoods, but according to Mr. Tuckwood there was no response when the officer knocked at the Jordisons' door.

[42] Mr. Tuckwood said that on April 6, 2010, he and his wife encountered banging from the inside of the door to the Jordisons' unit and Jordy yelled "you f.....g bitch" or something to that effect, followed, said Mr. Tuckwood on April 11, 2010, with more banging on the inside door as he walked by during which Jordy yelled out "coward, f..k head". Some hours later Mr. Tuckwood encountered the Jordisons in the Strata's parking lot at which time he observed Jordy raising his middle finger towards him and that other encounters of a similar nature involving the Tuckwoods and the Jordisons occurred subsequently.

The Legislative Provisions Relied on by the Strata

[43] I turn next to the legal provisions upon which the Strata relies to pursue the relief sought, specifically the sale of the unit in the Strata owned by Ms. Jordison and the removal of the Jordisons from the strata complex.

[44] The statutory basis upon which the Strata brings this application is found in the *Act* and the Bylaws. Section 3 of the *Act* states:

3 Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

[45] Section 4 of the *Act* states:

4 The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.

[46] The Bylaws provide in s. 1.1 that:

All residents and visitors must comply strictly with the bylaws and rules of the strata corporation adopted from time to time.

[47] Section 4 of the Bylaws states:

4.1 A resident or visitor must not use a strata lot, the common property or common assets in a way that

- (a) causes a nuisance or hazard to another person,
- (b) causes unreasonable noise,
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

...

4.2 A resident or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under s. 149 of the Act.

[48] Sections 45.2 and 45.3 of the Bylaws address the responsibility for a resident with respect to children in their residence. The Strata asserts these provisions are applicable as Jordy Jordison is the son of Ms. Jordison and he resides in her residence. The Bylaws state:

45.2 Residents are responsible for the conduct of children residing in their strata lot, including ensuring that noise is kept at a level, in the sole determination of a majority of the council that will not disturb the rights of quiet enjoyment of others.

45.3 Residents are responsible to assume liability for and properly supervise activities of children including, but not exhaustively, bicycling, skateboarding and hockey and including use by children of common property amenities.

[49] As referred to earlier in these reasons, s. 26 the *Act* imposes an obligation upon the Strata's council to enforce its Bylaws, stating:

26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

[50] It is this obligation which leads the Strata to bring this petition against the Jordisons in response to the complaints the Strata council has received from residents and owners in the Strata's condominium complex. Prior to commencing the petition, the Strata's council relied on fining Ms. Jordison for the breaches of the Bylaws both by herself and by her son.

[51] Sections 129 and 130 of the *Act* authorize the Strata council to impose under its Bylaws a fine of \$100 against Ms. Jordison for each of the breaches of the Bylaws, stating:

129 (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

- (a) impose a fine under section 130;
- (b) remedy a contravention under section 133;
- (c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

130 (1) The strata corporation may fine an owner if a bylaw or rule is contravened by

- (a) the owner,
- (b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not rented by the owner to a tenant.

(2) The strata corporation may fine a tenant if a bylaw or rule is contravened by

- (a) the tenant,
- (b) a person who is visiting the tenant or was admitted to the premises by the tenant for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not sublet by the tenant to a subtenant.

[52] The Strata's imposition of fines upon Ms. Jordison in the four years since 2007 has apparently not changed the Jordisons' behaviour with respect to other residents of the strata complex. As a result, the Strata brought this petition to force

the Jordisons to move from the Strata complex, relying on ss. 170, 171 and 173 of the Act which state as follows:

170 The strata corporation may sue an owner.

171 (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:

- (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
- (b) the common property or common assets;
- (c) the use or enjoyment of a strata lot;
- (d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.

(2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.

(3) For the purposes of the 3/4 vote referred to in subsection (2), a person being sued is not an eligible voter.

(4) The authorization referred to in subsection (2) is not required for a proceeding under the *Small Claims Act* against an owner or other person to collect money owing to the strata corporation, including money owing as a fine, if the strata corporation has passed a bylaw dispensing with the need for authorization, and the terms and conditions of that bylaw are met.

(5) All owners, except any being sued, must contribute to the expense of suing under this section.

(6) A strata lot's share of the total contribution to the expense of suing is calculated in accordance with section 99 (2) or 100 (1) except that

- (a) an owner who is being sued is not required to contribute, and
- (b) the unit entitlement of a strata lot owned by an owner who is being sued is not used in the calculations.

...

173 On application by the strata corporation, the Supreme Court may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[53] The Bylaws and rules are created to establish acceptable standards of behaviour which are applicable to all members of the Strata, thereby enabling the members to live in peaceful accord with their respective neighbours absent harassment and abuse or activities contrary to the Bylaws and rules.

[54] In *Sterling Village Condominium, Inc. v. Breitenbach* (1971), 251 So. 2d 685, the District Court of Appeal of Florida, Fourth District addressed a situation in which the owners of a condominium made changes to their residence contrary to the rules of the condominium development. The Court wrote of the long history of condominium property development and the need to strictly interpret the rules governing condominium developments. Judge Driver, for the court, wrote:

Daily in this state thousands of citizens are investing millions of dollars in condominium property. Chapter 711, F.S.A., 1967, the Florida Condominium Act, and the Articles or Declarations of Condominiums provided for thereunder ought to be construed strictly to assure these investors that what the buyer sees the buyer gets. Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be.

[55] In *Sterling Village*, the appeal court ordered the owners to return their unit to its original state. The reasoning of the appellate court's decision is applicable in the instant case in that the Jordisons have acted in a manner contrary to the Bylaws and rules and that cannot continue. The Jordisons cannot live in their unit as they please. Their conduct is subject to the Bylaws and rules where ownership is in common or cooperation with other Strata owners, that being a cost to their enjoying the benefits of strata living and ownership.

[56] The Jordisons cannot be permitted, through their harassment and abuse of fellow strata members, to disrupt the integrity of the common scheme offered by the Strata. The Bylaws and rules of the Strata, when properly constituted, form a framework of behavioural decency accepted by the Strata's members, breaches of

which can lead to action by the Strata to enforce adherence by strata members to the provisions of the *Act*, its regulations, the Bylaws and the rules.

[57] The *Act*, the Bylaws and rules can be enforced by the Strata to ensure that breaches by the Jordisons, such as those described in the affidavits referred to above, can lead to a remedy enabling strata members to live in peace in their respective units and the common property absent harassment and abuse. I conclude on the affidavit material that the Jordisons' conduct breached the Bylaws, particularly the following:

4.1 A resident or visitor must not use a strata lot, the common property or common assets in a way that

- (a) causes a nuisance or hazard to another person,
- (b) causes unreasonable noise,
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

[58] I specifically conclude from the evidence that the Jordisons' conduct including their obscene language and gestures, their interference with the activities of others, their spitting at other residents, the unacceptable loud and unnecessary noise they in their unit created have unreasonably interfered with the rights of others who are entitled to enjoy in peace the common property, the common assets and their own strata lots.

[59] I conclude that the Strata has established on a balance of probabilities that the Jordisons' actions are contrary to Bylaw 4.1(a)(b) and (c) and that they have caused a nuisance or hazard to other persons in the Strata, that they have caused unreasonable noise, and that they have unreasonably interfered with the rights of other persons to use and enjoy the Strata's common property and common assets and their strata lots. The Jordisons' actions amount to an assault upon those residents of the Strata who have been for some years subjected to the Jordisons' misbehaviour in all its varied forms. The Strata's affidavits are detailed and compelling, corroborating each other in many instances and supported by contemporaneous documentation included in the affidavits.

[60] I find Ms. Jordison responsible not just for her own actions and breaches of the Bylaws, but also for her condoning of the breaches of the Bylaws by her son, Jordy, contrary to Bylaws 45.2 and 45.3. The affidavits filed by the Strata confirm that Ms. Jordison was present and appeared to condone her son's behaviour. Further, the letters to her from the Strata informed her of the complaints from Strata residents about the actions of both she and her son.

The Remedy: Fines, Forced Sale, Injunction

[61] The Strata has already imposed financial penalties of some \$20,000 or more upon Ms. Jordison for breaches of the Bylaws and rules. There is, as counsel for the Strata acknowledges, a limit on the financial penalties imposed on a strata owner who continues to breach Bylaws.

[62] Counsel referred to *Wilson v. Highlands Strata Corp.*, [1999] B.C.J. No. 2637 (S.C.), a decision of Madam Justice Stromberg-Stein involving a dispute between a strata corporation and the owners of one of the strata units. In that case, the strata corporation had imposed fines totalling \$10,000 upon the owners, and Stromberg-Stein J. stated at para. 28:

Accumulating fines in the amount of \$10,000 is a form of punishment, not an enforcement of its Bylaws, and is unreasonable. The Strata Council should have taken steps to enforce the Bylaw. Until this petition was filed, the Strata Council did not seek to enforce Bylaw 136 by obtaining an injunction.

[63] A similar conclusion could be reached with respect to the Strata's response against Ms. Jordison. In the instant case, the Strata council has imposed fines in excess of \$20,000, a penalty or punishment which appears to have done little or nothing to modify the Jordisons' antagonistic and anti-social behaviour toward their neighbours in the Strata's complex. The Strata has not pursued injunctive relief, taking the position that it is not practical given the Jordisons' apparent inability or refusal to comprehend that their behaviour is inappropriate in a strata corporation. However, if sought and if granted, an injunction would have put a court order into effect with the expectation that its presence would have curbed the breaches of the Bylaws by the Jordisons. If the Jordisons, either jointly or separately, failed or

refused to comply with the terms of such an injunction, the Strata could apply for a finding that one or both of the Jordisons were in contempt or, alternatively, the Strata could then have brought an application for an order that Ms. Jordison sell her unit.

[64] Rather than proceed at this time with an injunction application against the Jordisons, the Strata seeks an order forcing Ms. Jordison to sell her unit and to move from the Strata's complex. This is, as noted by Perell J. in *York Condominium Corporation No. 136 v. Roth*, [2006] O.J. No. 3417 (S.C.J.), a draconian form of relief. The Strata's application to force Ms. Jordison to sell her unit raises two questions, the first being whether this Court has the authority to order Ms. Jordison to sell her unit, and the second being whether the circumstances are such that an order for sale ought to be made. To put the latter question another way, is an order forcing Ms. Jordison to sell her unit proportionate to the damage that she and her son have caused other residents in the Strata or is it an extreme measure that is not justified at this time?

[65] Addressing first whether this Court has the authority to order Ms. Jordison to sell her unit, counsel for the Strata advises that he has been unable to locate any British Columbia decision in which this Court has made an order for sale such as is sought here. However, counsel submits that in spite of the lack of precedent in this province, the authority to order the sale of Ms. Jordison's unit is found in s. 173 of the *Act* which I referred to earlier and which I will repeat. It states:

173 On application by the strata corporation, the Supreme Court may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[66] The *Act* provides the Court with the authority in s. 173 (a) and (b) to order that an owner perform a duty required to be performed under the *Act*, the Bylaws or the

rules as well as to make an order that the owner stop contravening the *Act*, the regulations, the Bylaws, or the rules, followed by the provision that the Court can make “any other orders it considers necessary to give effect to an order under paragraph (a) or (b).”

[67] Although the language does not specifically state that the Court can order an owner to sell his or her unit, I construe that the wording in s. 173(c) is sufficiently wide to provide the Court with the authority to make an order for sale against Ms. Jordison where such an order is necessary to stop further contraventions of the *Act*, the regulations, Bylaws or rules.

[68] In *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448, M.A., Code J. granted the order sought by the applicant Condominium Corporation (the “Corporation”) directing Ms. Korolekh, the owner of a unit in the Corporation to sell and vacate her unit. Code, J. concluded that the unusual circumstances in that case provided the basis for making the order that Mr. Korolekh sell her unit. The Corporation established that Ms. Korolekh’s conduct included breaches of s. 117 of the *Condominium Act*, 1998, S.O. 1998, c. 19, and the Corporation’s declarations, bylaws and rules.

[69] The breaches involved physical assaults on other unit owners, acts of mischief against their property, racist and homophobic slurs and threats made repeatedly against other unit holders, playing extremely loud music at night, watching and besetting other unit holders and using her large and aggressive dog, described as a 150 pound Rottweiler, to frighten and intimidate other unit holders and their children, as well as failing to clean up the dog’s faeces.

[70] Ms. Korolekh, in her response, denied the allegations upon which the Corporation made its application, but as Code J. noted, Ms. Korolekh did not address the many specific incidents addressed in the affidavit material provided by the Corporation. Justice Code concluded that the Corporation established on a balance of probabilities that by her misconduct Ms. Korolekh breached the provisions of s. 117 of the *Condominium Act*, as well as the Corporation’s

declarations, bylaws and rules. Code J. further concluded that although s. 134 of the *Condominium Act*, the compliance section of the act, did not specifically state that Ontario's Superior Court of Justice could order an owner to sell his or her condominium unit, the Court had such authority as the provision provided that the court could make "... an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules".

[71] Although s. 173 of the *Act* and s. 134 of Ontario's *Condominium Act* are not identical, I conclude that they are comparable in that the sections noted both provide their respective courts with the discretion to order the sale of a unit when a unit holder's misconduct required such a sanction.

[72] I am satisfied that s. 173 of the *Act* provides this Court with the authority to order Ms. Jordison to sell her strata unit.

[73] The question then becomes whether the circumstances in the instant case are such as to warrant the making of an order that Ms. Jordison sell her unit in the Strata, and that both she and her son vacate the unit, or should relief in the form of an injunction be ordered directing the Jordisons to adhere to the provisions of the *Act*, and the Bylaws and rules?

[74] An order in the form of an injunction requiring the Jordisons to conduct themselves in accord with the *Act* and the Bylaws and rules would be ideal were there any indication in any form from the Jordisons that they would be prepared to comply with the terms of an injunction. The Jordisons unfortunately have failed to show their preparedness to live within the framework of rules required to ensure peace within the strata community in which they reside.

[75] The Strata, between March 22, 2007 and August 4, 2011, sent twenty-five letters to Ms. Jordison with respect to complaints received by the Strata about the Jordisons' breaches of the *Act*, Bylaws and rules relating to balcony use, obscene and abusive language, gestures made in an intimidating and harassing manner, extremely loud noises, and other actions which harassed other owners. These

letters, including those forwarded to the Jordisons by the Strata's legal counsel, had no effect on the Jordisons; their misconduct continued apparently unabated throughout the past four years in spite of the Strata's letters and the more than \$20,000 in fines imposed by the Strata upon Ms. Jordison. As Code J. noted about Ms. Korolekh in para. 87 of his Reasons:

She has been given opportunities, since May, 2009, to reform her ways or even to offer to reform her ways. There is no sign from her that she is willing or able to change.

[76] The same holds true for the Jordisons.

[77] Ms. Jordison forwarded some correspondence to the Strata, but in it she generally denied any of the actions about which the Strata complained and said the imposition of fines upon her was illegal. She appears to be in denial of the misconduct by both herself and her son.

[78] The Jordisons' failure to respond to the Strata's petition is a further troubling indicator of their seeming inability to accept the seriousness of their actions and the deleterious impact their actions have had on the lives of others around them. Nor do they seem able to address the complaints about their misconduct as described by thirteen affiants who are either present or past unit owners. The Strata's petition and supporting affidavits clearly delineate the Strata's concerns about the Jordisons' conduct to which the Jordisons responded with total silence. I construe their silence to be a denial of any wrongdoing on their part and their unwillingness to respond to the petition to be a harbinger of continuing difficulties should the Jordisons remain in their unit.

[79] As noted by Michael Kim in "Involuntary Sale: Banishing an Owner from the Condominium Community", (1997-1998) 31 J. Marshall L. Rev. 429 at p. 442:

Ultimately, the fundament of the involuntary sale remedy is the basic right (and duty) of the community to uphold its covenants and codes, with majoritarian principles overriding a misplaced assertion of rugged individualism. ...

As is well established in statutory and case law, the governing board has a fiduciary duty to enhance the cooperative aspects of the community. This obligation is accompanied by the right to employ appropriate means of enforcement against persons and conditions which threaten or obstruct those objectives. If extraordinary situations arise, extraordinary responses are wholly justifiable.

[80] Justice Code, at para. 88 of his reasons in *Korolekh*, stated:

People join condominium corporations voluntarily on the basis that they agree to share certain collective property and to abide by a set of rules and obligations that protect the collectivity. There is no right to continue membership in this corporation or this community, once a clear intention to harm it and a persistent refusal to abide by its rules have been exhibited in the extreme ways seen in this case.

[81] While the Jordisons' acts are not as extreme as those of Ms. Korolekh, I find their behaviour shows a clear intention on their part to harm the Strata and their persistent refusal over four years to abide by its rules are seen in their abuse of other members of the Strata. In *Waterloo North Condominium Corp. No. 168 v. Webb*, 2011 ONSC 2365, Parayeski J., on the question of forcing a condominium owner to vacate or sell their unit, wrote at para. 10:

I appreciate, as does the applicant, that forcing the respondent to vacate and sell his unit is drastic. As such, that relief should not be granted where other remedies appear to be likely to succeed. Unfortunately, I do not see any such other remedies at hand. The other occupants of the building are entitled to basic security and the quiet enjoyment of their properties. The respondent prevents both. He has done so for years, and it is unlikely that he is going to stop voluntarily.

[82] I conclude that the relief sought by the Strata in its petition, draconian as it may be, will be allowed as providing the means whereby harmony may be reinstated within the Strata.

[83] The terms of my order will include the following:

- 1) Ms. Jordison within 30 days of personal service upon her of a copy of this order shall list her unit in Strata Plan LMS 2768 for sale with a licensed real estate firm or agent with the price and terms of the sale and the distribution of the proceeds of the sale to be subject to the approval of the court;

- 2) Ms. Jordison will have the conduct of the sale of her unit for a period of 90 days after the listing of her unit for sale and if a sale does not take place within that 90-day period, the petitioner may apply to assume the conduct of the sale of the unit;
- 3) Any person in possession of Ms. Jordison's unit must permit any duly authorized agent of the listing real estate firm or agent to show the unit to any prospective purchaser on any day between 09:00 and 19:00 hours except on Sundays and holidays;
- 4) Failing such sale within the 90-day period, or if the Jordisons breach any term of this order, the petitioner may apply for an order for possession of Ms. Jordison's unit;
- 5) Neither Ms. Jordison or her son, Jordy Jordison, shall purchase, lease, rent or reside in any other unit of Strata Plan LMS 2768;
- 6) While in possession of the unit, Ms. Jordison and her son, Jordy Jordison, shall abide by the *Strata Property Act*, its regulations and the Bylaws and rules of Strata Plan LMS 2768, and they are specifically restrained from making loud noises such as has been described in the affidavits supporting the petition filed herein, making obscene gestures or uttering any abusive or obscene comments directed at any member of Strata Plan LMS 2768 or their families;
- 7) Should either Ms. Jordison or Jordy Jordison fail to comply with any term of this order, the petitioner may move to enforce it on 48 hours notice or as allowed by the Court;
- 8) The petitioner will attend to having Ms. Jordison served personally with a copy of this order forthwith upon it being entered;
- 9) The petitioner will attend to having Jordy Jordison served with a copy of this order forthwith upon it being entered, and service may be effected pursuant to the order for substitutional service made herein on October 25, 2011;
- 10) That the petitioner is entitled to register a certificate of pending litigation against Ms. Jordison's unit;
- 11) An order that all necessary accounts, directions and inquiries be taken;
- 12) The petitioner will have its costs of this application; and

13) The parties have liberty to seek further direction or clarification of the terms of this order.

"R.M. Blair J."

BLAIR J.