

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 1245 v.
Linden,*
2016 BCSC 619

Date: 20160408
Docket: S1510496
Registry: Vancouver

Between:

The Owners, Strata Plan NW 1245

Petitioner

And

Barry Linden and Ronald Thibodeau

Respondents

Before: The Honourable Mr. Justice Ehrcke

Reasons for Judgment

Counsel for the Petitioner:

A.J. Chang

Appearing on his own behalf and on behalf of
B. Linden:

R. Thibodeau

Place and Date of Hearing:

Vancouver, B.C.
March 10, 2016

Place and Date of Judgment:

Vancouver, B.C.
April 8, 2016

INTRODUCTION

[1] The respondents, Ronald Thibodeau and Barry Linden reside in unit 109 of the Parkcrest Apartments, which is a strata complex located at 5932 Patterson Avenue, Burnaby, British Columbia, comprising 95 residential units. Ronald Thibodeau is the registered owner of unit 109, which is strata lot 9.

[2] The petitioner, Strata Plan NW 1245, is the strata corporation of the Parkcrest

[3] This petition, which is brought pursuant to a resolution passed by a majority vote at a Special General Meeting of the strata corporation on February 3, 2015, seeks injunctive relief to enforce the Bylaws against the respondents and to collect unpaid fines and costs.

THE RELIEF SOUGHT

[4] The petition seeks the following relief:

1. A DECLARATION THAT the Respondents have contravened the bylaws (the "Bylaws") of the Owners, Strata Plan NW 1245 (the "Strata Corporation") established pursuant to ss. 119 and 120 of the *Strata Property Act* (the "Act"), including Bylaws 4.1, 4.2, 5.8, 5.9, 8, 9 36.1, and 44.6.
2. AN ORDER THAT the Respondents stop contravening the Bylaws of the Strata Corporation, and are specifically restrained from engaging in further abusive or disruptive behaviour of the kind described in the affidavits supporting the petition filed herein, including:
 - a communicating with or visiting members of Strata Corporation, as well as their families and guests, that have given affidavit evidence in support of the Strata Corporation's Petition or such other members of the Strata Corporation that have asked the Respondents to refrain from having contact with them;
 - b uttering any abusive, obscene, or threatening comments or making obscene gestures directed at any member of Strata Corporation, their families or their guests;
 - c intentionally listening into other strata lots in the Strata Corporation;
 - d vandalizing common property, limited common property or other strata lots of the Strata Corporation;

- e slamming or pounding on the doors in their strata lot or anywhere else in the Strata Corporation;
 - f allowing or encouraging their dog to bark incessantly in their strata lot or on the common property of the Strata Corporation;
 - g leaving dog feces anywhere on the common property of the Strata Corporation;
 - h yelling, screaming, singing or otherwise raising their voice on the common property of the Strata Corporation or on the outside deck of their strata lot; and
 - i yelling, screaming, singing or otherwise raising their voice in their strata lot in a manner that constitutes a nuisance between 8:00 pm and 8:00 am;
3. AN ORDER that the Respondents provide proof of insurance for any vehicle they have currently stored at the Strata Corporation property and that they remove any uninsured vehicles that they have currently stored at the Strata Corporation;
 4. AN ORDER that the Respondents are specifically restrained from altering common property or aspects of their strata lot without permission from the strata council, pursuant to Bylaws 7 and 8.
 5. AN ORDER that if the Respondents alter the common property or aspects of their strata lot without permission from the strata council, the Respondents must pay the cost of restoring the property to its original condition and that the parties have leave to apply to the court for direction if they cannot agree on the reasonable cost of the same;
 6. AN ORDER that the Petitioner is granted leave to apply for the sale of the Respondents' strata lot, in the event that the Respondents are unable or unwilling to comply with the above Orders;
 7. AN ORDER for judgment for the Petitioner in the amounts of \$3,400.00 for fines levied against the Respondents;
 8. AN ORDER THAT the Respondents pay all reasonable costs incurred by the Strata Corporation to remedy the contraventions of the Bylaws pursuant to s. 133 of the Act;
 9. AN ORDER for costs payable on Scale C by the Respondents to the Petitioner; and
 10. SUCH OTHER relief as this Honourable Court deems just.

THE EVIDENCE

[5] The evidence consists of the affidavits of several residents of the Parkcrest Apartments, including:

Affidavit #1 of Gary Knodel sworn November 20, 2015;

Affidavit #1 of Sandra Watling sworn November 30, 2015;

Affidavit #1 of Lorea Aelbers sworn November 30, 2015;

Affidavit #1 of Carla Castellani sworn November 30, 2015;

Affidavit #1 of Dorothy Lenaghan sworn November 30, 2015;

Affidavit #1 of Clayton Aelbers sworn November 30, 2015;

Affidavit #1 of Penelope Ann McNair Johnston sworn December 2, 2015;

Affidavit #1 of Ronald Johnston sworn December 8, 2015;

Affidavit #1 of Sarah Lutz sworn December 8, 2015;

Affidavit #1 of Nikki Rioux sworn December 11, 2015;

Affidavit #2 of Nikki Rioux sworn December 11, 2015;

Affidavit #1 of Michelle Klokeid sworn December 17, 2015;

Affidavit #3 of Nikki Rioux sworn February 3 2016; and

Affidavit #4 of Nikki Rioux sworn March 10, 2016.

[6] The respondents have not filed any evidence, although Mr. Thibodeau appeared on the hearing of the petition and made submissions, which included his version of many of the events described in the other affidavits. He submits that the residents who swore affidavits complaining about his conduct and that of Mr. Linden are not credible. He submits that he and Mr. Linden are well-liked by other residents of the Parkcrest Apartments who have not filed affidavits.

[7] Even if it may be true the respondents are liked by some residents of the Parkcrest Apartments, that would not detract from the credibility or seriousness of the allegations made in the affidavits that have been filed on behalf of the petitioner.

In any event, although I have given consideration to the submissions made by Mr. Thibodeau, I cannot ignore the fact that the respondents have not put any sworn evidence before the court.

PRELIMINARY ISSUE - QUORUM

[8] As a preliminary issue, Mr. Thibodeau submits that this petition should be dismissed because, in his view, the meeting at which the resolution was passed authorizing the petition did not have a quorum.

[9] There is no substance to this allegation. As set out in Affidavit #3 of Nikki Rioux, the resolution authorizing this litigation passed 27 to 2 at a Special General meeting called by the strata council on April 2, 2015. When that meeting was called to order at 6:00 p.m., a quorum of the eligible voters had not been reached. The Special General meeting was recalled to order 30 minutes later, at which time the number of persons present constituted a quorum pursuant to Bylaw 28.2, which provides:

28.2 Notwithstanding section 48(3) of the Act, if within one-half (1/2) hour from the time appointed for an annual or special general meeting a quorum is not present, the meeting shall be terminated if the meeting was convened upon the requisition of members; but in any other case, the meeting shall proceed and the eligible voters present in person or by proxy shall constitute a quorum.

[10] In any event, s. 173.1 of the *Strata Property Act*, S.B.C. 1998, c. 43, provides that the failure to obtain an authorization does not affect the strata corporation's capacity to commence a suit that is otherwise undertaken in accordance with the *Act*.

THE ACT AND THE BYLAWS

[11] Section 26 of the *Act* provides:

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.

[12] Section 119 deals with bylaws:

119 (1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

[13] Section 129 sets out the enforcement options for the bylaws and s. 130 deals with the power to impose fines:

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.

[14] Section 173 sets out the powers of the Court

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).

[15] The Bylaws of the Parkcrest Strata Corporation regulate the affairs of the owners and residents. Bylaw 4.1 prohibits the improper use of property, particularly

that which causes a nuisance, causes unreasonable noise, or interferes with the rights of others to enjoy the property:

- 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, odour or pollutes or deteriorates the quality of the environment on any common property or in any other owner's unit,
 - (c) unreasonably interferes with the rights of other persons to use and enjoy the Common Property, common assets or another Strata Lot,
 - (d) is illegal, or
 - (e) is contrary to a purpose for which the Strata Lot or common property is intended as shown expressly or by necessary implication on or by the Strata Plan

[16] Bylaw 26.1 provides for the imposition of fines:

- 2.6.1 Except where specifically stated to be otherwise in these bylaws, the strata corporation may fine an owner or tenant a maximum of:
- (a) \$100 for each contravention of a bylaw; and
 - (b) \$50 for each contravention of a rule.

NOISE AND HARASSMENT

[17] As set out in the affidavit evidence that has been filed, the strata corporation has received numerous complaints over many years concerning the conduct of Mr. Thibodeau and Mr. Linden. In response, the strata corporation has written letters and issued fines to the respondents for their breaches of the Bylaws, but this has not had any lasting effect.

[18] Seven residents have sworn affidavits describing incidents where the respondents caused excessive noise by yelling, screaming, singing, playing loud music, slamming doors, and allowing their dog to bark not only in their unit, but also outside and in the common areas. They also describe abusive conduct and damage to property. I shall not recite here all of what is contained in those affidavits, but simply summarize a sample of the complaints they document.

[19] Penelope Ann Johnston, who lives one floor up and one unit over from the respondents, describes numerous incidents from 2003 to the present of excessive noise and abusive behaviour that she says has made living near the respondents stressful and even nightmarish. She says that she has “lost many full nights of sleep because of them yelling, screaming, swearing, singing, their dog barking and other loud noises caused by Mr. Linden and Mr. Thibodeau.”

[20] This is confirmed by Ron Johnston. He deposed as well that the respondents threatened in an email to contact his employer, Vancouver Community College, to say he is homophobic and discriminatory against non-indigenous persons. Mr. Johnston is a member of the Squamish First Nation and has been a director of indigenous education at VCC and SFU. Mr. Linden has called Mrs. Johnston a “hatemonger” and a “squaw”.

[21] Sandra Watling, who lives a few doors down the hall from the respondents and who is the president of the strata council, says she has been awoken numerous times by the respondents’ noise. She deposed that the respondents have repeatedly called her such derogatory names as “slut”, “whore”, “cunt” and “fucking bitch”. She says they often sit near the entrance to the building and call her these things as she returns home from work. At an Annual General Meeting in 2014, Mr. Linden handed out leaflets to the owners stating “Sandy is a Whore”. The respondents have accused her of stealing from her former employer. This harassing conduct has necessitated her taking anti-anxiety medication. She says that she has considered selling her unit just to get away from Mr. Thibodeau and Mr. Linden.

[22] Lorea Aelbers has also been the victim of crude and sexist taunts from the respondents. They have called her “whore” and “bitch” and have taunted her for not being able to have children. She attached as an exhibit to her affidavit a recording made on September 11, 2015, on which one can hear Mr. Thibodeau yelling that Ms. Watling was fired from the Royal Bank for stealing money and that he wants her to be investigated. Both Mr. and Mrs. Aelbers say that Mr. Thibodeau and Mr. Linden have made them feel like prisoners in their own home.

[23] Mr. Linden has been fined for smearing dog feces on the carpet outside the entrance to the North Wing of the building. This was captured on the strata's security camera.

[24] Various residents have described vandalism to their patios and doors which they ascribe to the respondents, although the evidence of their involvement is circumstantial. Some residents who share a common hallway with the respondents have found their doors smeared with dog feces, garbage, hair, spit, food, and various other substances.

[25] Dorothy Lenaghan deposed that on July 24, 2015, she heard a loud bang on her door, and when she opened it, she discovered a sticky substance smeared over it. About a half hour later, she saw Mr. Thibodeau and Mr. Linden in the hallway. They seemed extremely inebriated. She asked Mr. Thibodeau if he had smeared something on her door. He responded by screaming and lunging towards her. Ms. Watling recorded the respondents' screaming from down the hall. The police were called.

[26] This harassment is not limited to the residents. In June 2011, Mr. Linden followed the former caretaker, Gary Knodel, around with a camera while he was working and called him a "pervert" and "a fucker". A few days later, Mr. Knodel was in his office when the respondents surrounded the office, yelling obscenities and demanding that he speak to them. Mr. Linden began kicking the door and Mr. Thibodeau went outside and pounded on the office window. The police had to be called to respond to the incident.

[27] I am satisfied that the extensive affidavit evidence supports the conclusion that the respondents have frequently caused excessive noise and engaged in harassing conduct that has unreasonably interfered with the rights of their neighbours to quiet enjoyment of their own units. This conduct is contrary to the Bylaws. Although the respondents have repeatedly been fined, their conduct remains unacceptable.

[28] I am satisfied that there should be an order enjoining the respondents from such conduct.

[29] Specifically, the respondents are ordered to restrain from:

- (a) communicating with or visiting members of Strata Corporation, as well as their families and guests, that have given affidavit evidence in support of the Strata Corporation's Petition or such other members of the Strata Corporation that have asked the Respondents to refrain from having contact with them;
- (b) uttering any abusive, obscene, or threatening comments or making obscene gestures directed at any member of Strata Corporation, their families or their guests;
- (c) intentionally listening into other strata lots in the Strata Corporation;
- (d) vandalizing common property, limited common property or other strata lots of the Strata Corporation;
- (e) slamming or pounding on the doors in their strata lot or anywhere else in the Strata Corporation;
- (f) allowing or encouraging their dog to bark incessantly in their strata lot or on the common property of the Strata Corporation;
- (g) leaving dog feces anywhere on the common property of the Strata Corporation;
- (h) yelling, screaming, singing or otherwise raising their voice on the common property of the Strata Corporation or on the outside deck of their strata lot; and
- (i) yelling, screaming, singing or otherwise raising their voice in their strata lot in a manner that constitutes a nuisance between 8:00 pm and 8:00 am.

THE AIR CONDITIONER

[30] The respondents want to install an air conditioner in their unit. This would involve putting holes in an outside wall, which is common property. The strata corporation has refused permission to do so, unless the respondents first provide, among other things, plans from a building envelope professional. The respondents have refused to do so and have indicated that they intend to proceed with the installation without first obtaining permission to put holes in the common wall.

[31] Bylaw 8 provides that common property may not be altered without the written approval of the strata corporation:

8 Obtain approval before altering common property

- 8.1 An owner must obtain the written approval of the strata corporation before making or authorizing an alteration to common property, including limited common property, or common assets.
- 8.2 The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration and to provide, at the request of the strata corporation, evidence of appropriate insurance coverage relating to the alteration.
- 8.3 An owner, as part of its application to the strata corporation for permission to alter common property, limited common property or common assets, must
 - (a) submit, in writing, detailed plans and description of the intended alteration;
 - (b) obtain all applicable permits, licenses and approvals from the appropriate governmental authorities and provide copies to the strata council; and
 - (c) obtain the consent of the owners by written approval of the strata council under bylaw 8.1.

[32] I am satisfied that there is a reasonable apprehension that the respondents intend to contravene Bylaw 8, and accordingly, there will be an order, as sought by the petitioner, that the respondents are specifically restrained from altering common property without prior written permission from the strata council, pursuant to Bylaw 8.

INSURANCE FOR STORED VEHICLE

[33] Bylaw 37 of the strata corporation requires that a resident storing a vehicle must provide proof of insurance:

37 Bicycles, storage and parking

...

- 37.3 A resident must use parking stalls only for the parking of licensed and insured motor vehicles, trailers, motorcycles or bicycles, and not for the parking of any other type of vehicle or the storage of any other item, unless otherwise approved in writing by the council.

...

37.7 An owner/resident storing a vehicle must provide proof of insurance to the strata corporation on the commencement date of the storage.

[34] On October 9, 2012, Sarah Lutz, who was the property manager for the building from March 2012 until approximately July 2014, wrote to Mr. Thibodeau about his storage of an uninsured vehicle on common property in contravention of Bylaw 37.

[35] Indeed, the strata corporation has sent three requests to the respondents to provide proof of insurance of the vehicle being stored, but none has been forthcoming.

[36] I am satisfied that there should be an order that the respondents must within seven days provide the strata corporation with proof of insurance for any vehicle they have stored on common property, and they must remove any vehicle if they fail to do so.

ORDER TO PAY FINES

[37] Over the years, the strata corporation has imposed numerous fines on the respondents for breaches of the strata corporation's Bylaws. The strata corporation provided the respondents with notice of the complaints and fines imposed on them in accordance with s. 135 of the *Strata Property Act*. Dozens of letters from the property managers were sent between February 11, 2011 and November 20, 2015 regarding complaints of bylaw infractions. Each letter gave reasonable detail of the complaint and gave the respondents an opportunity to respond and have a hearing in accordance with s. 135.

[38] The strata managers have sworn that any written responses from the respondents to complaints have been put to the strata council before fines were imposed.

[39] In each case, the respondents were informed of the fines after they were imposed. Some of the fines imposed while Ms. Rioux was property manager were

initially in the amount of \$200 per occurrence. This was in error, because Bylaw 26.1 only allows for a maximum fine of \$100. The strata corporation has adjusted all the \$200 fines down to \$100.

[40] In her Affidavit #4, Ms. Rioux has deposed that the current amount of outstanding unpaid fines owing by the respondents is \$3,400. This is after adjustment of the \$200 fines down to \$100.

[41] No basis has been shown for reducing or cancelling the fines. The \$100 per occurrence quantum of fines is reasonable, being only one-half of what would otherwise be the maximum under the *Act*. Moreover, the severity and the persistence of the respondents' behaviour makes the quantum of the fines reasonable.

[42] It is apparent that the respondents have not been deterred by the imposition of fines, and have refused or neglected to pay them.

[43] I am satisfied that the respondents have repeatedly breached the Bylaws and that there should be an order granting the petitioner judgment in the amount of \$3,400.00 for the unpaid fines levied against the respondents for their Bylaw infractions.

ADDITIONAL ORDERS SOUGHT

[44] In addition to the orders I have granted, the petitioner also sought certain additional orders, such as an order that the respondents pay the cost of restoring the property to its original condition if they install the air conditioner without permission, and an order that the petitioner may apply for sale of the respondents' unit if they do not comply with the other orders.

[45] I am not prepared to make the additional orders at this time, as they anticipate that the respondents will ignore the orders for injunctive relief that I have granted. In my view, the petitioner must proceed on the assumption that the

respondents will govern their conduct in accordance with the orders that I have made. In the event that they do not, it will be open to the petitioner then to apply for the appropriate relief.

COSTS

[46] The petitioner is entitled to its costs of this petition on scale B.

The Honourable Mr. Justice W.F. Ehrcke