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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Shaw Cablesystems v. Concord Pacific
Group et al.,***
2007 BCSC 1711

Date: 20070809
Docket: S067486
Registry: Vancouver

Between:

Shaw Cablesystems Limited

Plaintiff

And:

Concord Pacific Group Inc. and Novus Entertainment Inc.

Defendants

Before: The Honourable Mr. Justice Leask

Oral Reasons for Judgment

In Chambers
August 9, 2007

Counsel for Plaintiff

J.L. Carpick

Counsel for Defendants

B. Cramer

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** Shaw Cablesystems is suing Concord Pacific Group alleging that Concord Pacific has "adopted and enforced a policy of refusing to allow Shaw to install its telecommunications infrastructure in residential multiple dwelling unit buildings Concord develops in Vancouver or to access the infrastructure installed by others."

[2] Shaw asserts that Concord's policy violates Section 69(1)(b) of the **Strata Property Act**. At an earlier hearing, I directed that a hearing be set down for the determination of a point of law under Rule 34. My order of June 12, 2007 is attached as "Schedule A."

[3] Section 69(1)(b) provides:

There exists an easement in favour of each strata lot in the strata plan and the owner of each strata lot for the passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems and other services, including telephone, radio and television, through or by means of any pipes, wires, cables, shoots, ducts or other facilities existing in the common property or another strata lot to the extent those systems or services are capable of being and intended to be used in connection with the enjoyment of the strata lot.

[4] Shaw alleges that if the occupant of a strata unit wants to buy cable television or Internet or any other service from Shaw or any other service provider, that occupant has an absolute right to have the service provider install, on the strata corporation's common property, the infrastructure necessary to connect that occupant so the occupant can enjoy the service.

[5] The defendant's position is that s. 69(1)(b) simply confirms that each strata lot has a right to benefit from the service provider selected by the strata council on behalf of the strata corporation, not a right to decide which service providers will have access to the common property.

[6] Both counsel agree that there are no cases on point and that this is a case of first impression. In analyzing the point of law for decision, I have been assisted by

the analysis set forth by the Nova Scotia Court of Appeal in **2475813 Nova Scotia Ltd. v. Rodger**, 2002 NSCA 59: :

From a more purely legal perspective, a modern condominium is created pursuant to detailed legislative provisions such as in Nova Scotia, the **Condominium Act**. A condominium is therefore a creature of statute, but condominium legislation reflects the combination of several legal concepts and relies on and to a degree incorporates by reference principles drawn from several different areas of law. The law relating to individual ownership of real property is, of course, central because the owners of the individual units are, subject to certain limits, entitled to exclusive ownership and use of their units. The law relating to joint ownership is significant because the owners are tenants in common with respect to the common elements. The law relating to easements and covenants is relevant because the unit owners have rights to compliance by the others with the provisions governing a condominium and certain easements, by statute, pertinent to each unit. The law relating to corporations is also of importance because the condominium is administered by the condominium corporation in which the unit holders are in a position analogous to shareholders. While the **Condominium Act** enables and to a degree regulates the legal aspects of condominium ownership, it does so against a vast background of general legal principles which will frequently be relevant to the interpretation and application of the **Act**. As has been said:

In its legal structure, the condominium first combines elements of several concepts and then seeks to delineate separate privileges and responsibilities on the one hand from common privileges and responsibilities on the other.

[7] The plaintiff's submission fundamentally relies on the law of easements. Counsel submits that s. 69(1)(b) gives each owner a right that cannot be modified by the strata corporation (that is, the owners collectively), or the strata council (the elected representative of the owners). The defendant's submissions primarily rely on the governance provisions of the **Strata Property Act**. Counsel relies on sections 3 and 4 of the **Act** which provide that the strata corporation is responsible for managing and maintaining the common property and common assets "for the

benefit of the owners," and that the powers and duties of the corporation must be exercised by the council.

[8] This lawsuit arises partly because s. 5 of the **Act** provides that the owner/developer "must exercise the powers and perform the duties of a council" from the time the strata corporation is established until a council is elected at the strata corporation's first annual general meeting. Both counsel agree that there cannot be different legal interpretations of s. 69(1)(b) of the **Act** for the period when the owner/developer exercises the powers of the council and the subsequent period when an elected council exists. The defendant's submissions summarize the provisions relating to the governance of strata corporations and conclude:

the **Strata Property Act** ensures the strata council never truly has the final word - there are democratic remedies and, if it involves a "significantly unfair" matter, judicial remedies.

[9] Not directly relevant to this application but perhaps significant for the larger dispute between the parties, is s. 6(1)(a) of the **Act**, which provides:

In exercising powers and performing the duties of a council, the owner/developer must act honestly and in good faith with a view to the best interests of the strata corporation.

[10] In answering the two questions posed on this Rule 34 application, I am persuaded that the defendant's position is correct. Owning a strata lot and sharing ownership of the common property in a condominium development is a new system of owning property and has required the development of new mechanisms and procedures. Living in a strata development, as the Nova Scotia Court of Appeal stated, combines many previously developed legal relationships. It is also

something new. It may resemble living in a small community in earlier times. The council meeting of a strata corporation, while similar in some respects to a corporate annual general meeting, also resembles the town hall meeting of a small community. Stratas are small communities, with all the benefits and the potential problems that go with living in close collaboration with former strangers. In the circumstances, I believe the court should be slow to find absolute rights in individual owners that cannot be modified by the considered view of the majority of owners, controlled by judicial supervision where appropriate.

[11] These principles lead me to a negative answer to both questions posed in this application. I would also answer the first question in the negative for a narrower reason - the reference in s. 69(1)(b) to the language "facilities existing," and I emphasize existing, "in the common property," which I interpret to mean that the individual owner does not have a right to have someone "install" new facilities. I reach this conclusion bearing in mind the provision of s. 69(3)(e).

[12] In the result, the defendant is successful on this application and is entitled to costs on Scale B.

Leask J.

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