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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kayne v. The Owners, Strata Plan LMS
2374,*
2007 BCSC 1610

Date: 20070726
Docket: S072740
Registry: Vancouver

Between:

Peter Kayne

Petitioner

And:

The Owners, Strata Plan LMS 2374

Respondents

Before: The Honourable Mr. Justice Smith

Oral Reasons for Judgment

In Chambers
July 26, 2007

Counsel for Petitioner

L.J. Grenier

Counsel for Respondents

A. Baker

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** The petitioner seeks an order that the strata corporation of which he is a member produce all documents that it is required to keep and make available pursuant to the *Strata Property Act*, S.B.C. 1998 c. 43. The petitioner also seeks an order that the corporation make reasonable efforts to recover documents in electronic form that have apparently been lost or deleted.

[2] There is a long history of dispute between the petitioner and the strata corporation going back to at least 2003 when the petitioner made a complaint to the Human Rights Tribunal alleging discrimination on the basis of disability. That complaint was settled, but there has been now a further complaint which is set for hearing before the tribunal on August 7th. The petitioner says he needs these documents for that hearing.

[3] The documents that a strata corporation must keep and make available to its members are set in from sections 35 and 36 of the ***Strata Property Act***. Some examples that are relevant to this application include minutes of annual and special general meetings, minutes of meetings of the strata council, including the results of any votes, books of account showing money received and spent and the reason for the receipt or expenditure, contracts to which the strata corporation is a party, budgets and financial statements, and correspondence sent or received by the strata corporation and council. Section 36 requires that those documents be made available to a member of the strata corporation within 14 days of a request.

[4] It is clear in this case that there have been incidents where the corporation has delayed the production of records far beyond the 14 days set out in the ***Act*** and where additional documents have turned up as a result of repeated requests by the petitioner. The petitioner, at least, has not been satisfied with the explanation as to why these documents were not produced initially.

[5] However, to the extent documents were eventually produced, the petitioner is not seeking any remedy for delayed production and I will not deal with those issues.

The question before me is whether, as of today's date, the corporation has failed to make available any documents that it is required by the **Act** to make available.

[6] It is important to keep in mind that this is not an application for documents pursuant to Rule 26 of the **Rules of Court**. In such an application, the question is whether there are documents that are or may be relevant to the issues in dispute between the parties or which may lead to the discovery of such documents. A document may be relevant and produceable no matter how it is described or the purpose for which it is prepared if it happens to contain relevant information.

[7] This is an application under the **Act** which sets out certain documents or categories of documents that must be kept and produced. The question of what relevance they have or do not have to any dispute between the petitioner and the corporation is really not relevant.

[8] The purpose of the **Act** is to ensure that members of the strata corporation are informed of the decisions taken and the money spent on their behalf. It mandates no particular form in which these documents are to be kept and no particular level of detail. For example, although it requires minutes, it does not, beyond stating that the minutes include the results of any votes, set out any degree of detail that must be contained in those minutes. Minutes must contain records of decisions taken by council, but may or may not report in detail the discussions leading to those decisions.

[9] Whatever difficulties the petitioner has had in the past with the corporation or the strata council in obtaining documents, it is clear from the affidavit material that since legal counsel has become involved, counsel has been diligent and conscientious in assembling and making available documents covered by the **Act**.

[10] An affidavit of Mr. Eli attaches a list of documents or more accurately a list of files contained in six boxes. The list is six and a half pages long, and the petitioner has apparently attended on three occasions to review those documents. The list identifies the broad categories of documents that the **Act** refers to, such as minutes, financial statements, correspondence, accounts paid, et cetera.

[11] The petitioner's position, as I understand it, is that the production is incomplete and the documents produced indicate the existence of other documents. In my view, the petitioner has misconceived the nature of the requirement under the **Act** and has approached this matter more as if it were a demand for production of documents in litigation.

[12] For example, the petitioner complains that he has not been provided with the general ledger. Section 35(1)(d) of the **Act** says:

The corporation must prepare books of account showing money received and spent and the reason for the receipt or expenditure.

[13] And section 35(2)(i) says that:

The strata corporation must retain the budget and financial statements for the current year and for previous years.

[14] I have been shown the monthly financial statements that have been made available. These include a balance sheet, budget comparisons, and a general ledger for each month. There has also been a production of bank reconciliations. As I understand counsel's argument, those monthly general ledgers may be excerpts from a larger document and there may be backup documents from which those numbers were derived.

[15] Again, the purpose of the **Act** is to provide information as to how money has been spent. It requires the corporation to keep books of account showing money received and spent. It does not require those documents to be prepared and kept in any particular form and does not require the production of every bill or receipt that may be reflected in those summary documents. In my view, the financial statements that I have been shown and that have apparently been provided to the petitioner meet the requirements set out in the **Act**.

[16] The petitioner also makes a demand for certain e-mail correspondence that took place between strata council members. Many such e-mails have been produced, although the petitioner has determined some appear to have been missing and there have also been some redactions by counsel on grounds of privilege. As I understand it, some of these e-mails may have been lost or deleted.

[17] Again, the **Act** refers at section 36(2)(k) to:

Correspondence sent or received by the strata corporation and council.

[18] Section 2 of the **Act** establishes the strata corporation and states that:

A strata corporation has the power and capacity of a natural person.

[19] Section 3 states:

The strata corporation is responsible for managing and maintaining common property and common assets of the strata corporation for the benefit of the owners.

[20] And section 4 states:

The powers and duties of the strata corporation must be exercised and performed by a council.

[21] It is important to note that the strata corporation is a different legal entity from the members of the corporation and the council is set up as a body that acts in the name of the corporation. The **Act** refers to correspondence to the council or by the council, which I take to mean correspondence by an officer that is authorized by council to be sent on behalf of council or by an officer who has been delegated by council the power to deal with a matter.

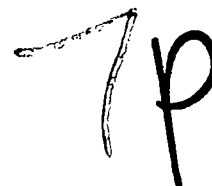
[22] In my view, it would be stretching the language of the **Act** far beyond what was intended to suggest that it includes all correspondence between individual members of council that may or may not relate to the business of the council. I gather these e-mails were sent by different members of council on their home or business computers and it would be unrealistic to interpret the **Act** such that it created a duty on the strata council to collect and maintain all correspondence of that nature. The production of e-mails that has been made, in my view, goes far beyond what is required by the **Act**, and I need not deal with the issue of recovery of

electronic data that may have been removed from these personal computers of council members.

[23] Similarly the petitioner complains of that there are no minutes of a meeting held on November 8th, 2005. The evidence is that this was not a meeting of the council as such but an informal gathering of some council members at which no minutes were kept. The **Act** requires minutes of meetings of the strata council at which decisions are taken. In any organization, there will be occasions when people who are members of a council or an executive will meet informally to discuss matters of relevance to the organization. Those are not meetings of the council and it would be unrealistic to expect minutes to be kept of such meetings. Of course no decision that may be taken at any such meeting has any validity unless and until it is taken or ratified by a properly constituted and minuted meeting of the council.

[24] In summary, I do not intend to deal with every example set out in the affidavit material, but having reviewed the affidavit material and in particular the list of files which counsel indicate has been prepared and inspected by the petitioner, I am simply not satisfied that there is any failure by the council to meet the requirements of document production and disclosure set out in the **Act** and I am not satisfied there is any need for any order requiring the strata corporation to comply with the requirements of the **Act**. The application is therefore dismissed.

Nathan H. Smith J.

A handwritten signature in black ink, appearing to be 'NHS' or similar initials, written in a cursive style.