COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 971 v. Daniels,* 2010 BCCA 584

Date: 20101220
Docket: CA037549

Between:

The Owners, Strata Plan NW 971

Respondent
(Petitioner)

And

Bella Daniels

Appellant
(Respondent)

Before: The Honourable Mr. Justice K. Smith
The Honourable Madam Justice Kirkpatrick
The Honourable Madam Justice D. Smith

On appeal from: Supreme Court of British Columbia, September 10, 2009
(*The Owners, Strata Plan NW971 v. Daniels,* 2009 BCSC 1235,
Vancouver Docket No. S092989)

Counsel for the Appellant:	G. Douvelos
Counsel for the Respondent:	V. Franco
Place and Date of Hearing:	Vancouver, British Columbia November 5, 2010
Place and Date of Judgment:	Vancouver, British Columbia December 20, 2010

Written Reasons by:
The Honourable Madam Justice D. Smith

Concurred in by:
The Honourable Mr. Justice K. Smith
The Honourable Madam Justice Kirkpatrick

Reasons for Judgment of the Honourable Madam Justice D. Smith:

[1] The central issue in this appeal relates to the validity of the procedure adopted by the respondent strata corporation (the "Strata Corporation") at a special general meeting. The purpose of the meeting was to pass a special resolution to increase the Strata Corporation's budget and to approve the expenditure of $390,000 on remediation work to the residential townhouse complex. At the time of the meeting the appellant, Bella Daniels, owned five strata lots in the complex.

A. BACKGROUND

1. The Special General Meetings

[2] The special general meeting was held on April 16, 2007 (the "April 16th Meeting"). Formal notice under the *Strata Property Act,* S.B.C. 1998, c. 43 [*SPA*], was issued for that meeting. The quorum of eligible voters (in person and by proxy) was present. However, the special resolution failed to obtain the requisite three-quarters majority vote.

[3] Only 78 percent of the eligible voters (95 of 122 actual or proxy voters) were present at the April 16th Meeting. The three-quarters threshold vote to pass the special resolution required 72 votes. The actual vote was 69 in favour, 25 opposed; one vote was incorrectly cast and not counted. Therefore, those who voted against the resolution represented only 20 percent of the eligible voters.

[4] A retired lawyer and parliamentarian who had been retained by the Strata Corporation as a consultant for the meeting recommended the adoption of the procedure in *Robert's Rules of Order* (*Robert's Rules*) to reconsider the vote before the vote had been recorded in the minutes. That procedure requires a member of the minority that succeeded in defeating the resolution to make a motion to reconsider the vote. The form of the motion is "to reconsider and enter on the minutes" and must be voted on at another date in order to avoid the same voters simply repeating their vote (the "Reconsideration Motion").

[5] To that end, the secretary who had voted against the special resolution made the Reconsideration Motion. The chair entered the motion "on the minutes" and indicated that Reconsideration Motion would be taken up as business on a subsequent date. The chair then moved to adjourn the meeting for one week, at the same place and time, and that motion was carried.

[6] A greater number of eligible voters attended the second meeting on April 23, 2007 (the "April 23rd Meeting"). About 87 percent of the eligible voters (109 of the 124 eligible voters) were in attendance (apparently two or more owners paid their outstanding strata fees and thereby became eligible voters). The minutes recorded the April 23rd Meeting as "a continuation of the [first] meeting".

[7] At the outset, a point of order was raised as to the authority under the *SPA* to constitute the meeting since the *SPA* contains no provision for an adjourned meeting. The appellant seconded the motion. The chair ruled against the point of order, and was sustained on a subsequent challenge. After some further discussion, the Reconsideration Motion was successfully passed by a three-quarters threshold vote (the "2007 Special Assessment"). The three-quarter threshold vote required 82 votes in favour of the resolution. The actual vote was 83 in favour, 24 opposed, with two voters not casting their ballot. Those who voted against the resolution represented about 22 percent of the eligible voters.

[8] As a result of the vote at the April 23rd Meeting, the 2007 Special Assessment was collected and the repairs to the complex undertaken.

[9] The appellant was present at both meetings.

[10] Section 45 of the *SPA* requires that those entitled to formal notice of a special general meeting be given written notice 14 days in advance of the meeting.

[11] Section 47 of the *SPA* provides the only exception to the formal notice requirement under s. 45 of the *SPA*: Where there has been a failure to meet the requirements for formal notice of a special general meeting, a subsequent vote will

not be rendered invalid if the strata corporation has made a reasonable attempt to give the notice in accordance with s. 45.

[12] Formal notice under the *SPA* of the special general meeting was issued for the April 16th Meeting. However, the Strata Corporation acknowledges that it made no attempt to comply with the formal notice requirements of s. 45 of the *SPA* for the April 23rd Meeting. It is also common ground that there are no applicable provisions in the *SPA* or the bylaws of the Strata Corporation for a vote to reconsider an unsuccessful vote on a special resolution that has not been recorded in the minutes.

[13] The appellant has refused to pay her share of the 2007 Special Assessment. She has also not paid in full a special levy that was authorized to be collected by the Strata Corporation in 2003 (the "2003 Special Levy").

2. The Litigation History

[14] The current dispute between the appellant and the Strata Corporation arose in the context of a petition filed by the Strata Corporation seeking: (i) a declaration that the appellant was in default of her obligation to pay the 2003 Special Levy and the 2007 Special Assessment; (ii) judgment in favour of the Strata Corporation for amounts owing under the certificate of liens filed against each of the appellant's strata lots for her share of those assessments; and (iii) an order for sale of those strata lots if the judgments were not paid within 30 days of the order (the "Petition").

[15] After the Petition was filed, the appellant commenced an action by Writ and Statement of Claim against the Strata Corporation and the property management company for the townhouse complex, in which she alleged a plethora of misconduct (including bad faith, bias, and malice) regarding the maintenance of the common property and the imposition of the 2007 Special Assessment. The appellant has taken no further steps in this action.

[16] At the hearing of the Petition, the relief sought by the Strata Corporation included an immediate order for sale of the appellant's strata lots. The appellant responded by seeking an order to postpone the sale of the strata lots for a period of

six months on the basis that the April 23, 2007 reconsideration vote that passed the 2007 Special Assessment was invalid because the Strata Corporation had failed to comply with the formal notice requirements of the *SPA.*

[17] The chambers judge held that the successful vote on the Reconsideration Motion at the April 23rd Meeting was valid and that the procedure adopted under *Robert's Rules* was fair and reasonable. In the result, she granted the respondent's application for an immediate order for sale of four of the appellant's strata lots for amounts she found were owed by the appellant in regard to strata fees, the balance of the appellant's share of the 2003 Special Levy, and the appellant's share of the 2007 Special Assessment, interest relating to the outstanding amounts, and costs: *The Owners, Strata Plan NW971 v. Daniels,* 2009 BCSC 1235.

[18] On appeal, the appellant submits that the chambers judge erred in finding that the successful vote on the Reconsideration Motion was valid. She contends that the lack of formal notice for the April 23rd Meeting affects the jurisdiction of that meeting to pass the special resolution and in particular the 2007 Special Assessment. She characterizes the April 23rd Meeting as a new meeting that was constituted to vote on a new special resolution to reconsider the unsuccessful vote from the April 16th Meeting. Therefore, she submits, the respondent was required to comply with the formal notice requirements of s. 45 of the *SPA*. Since they did not comply with s. 45, nor did they come within the exception under s. 47 of the *SPA* (which the respondent admits it does not), the successful vote to reconsider was invalid leaving the 2007 Special Assessment null and void.

[19] The respondent submits that the April 23rd Meeting was an adjourned meeting to continue and complete the business of the April 16th Meeting and therefore formal notice of the second meeting was not required under the *SPA.* The Strata Corporation relies on the fact that no record of the unsuccessful vote from the first meeting was entered into the minutes. The motion to reconsider the unsuccessful vote was moved, recorded in the minutes, and the meeting then adjourned to a new date to vote on that motion. This procedure was adopted from

Robert's Rules as the *SPA* and the bylaws of the Strata Corporation are silent on the procedure to be followed for adjourned meetings.

[20] In the alternative, the respondent submits that the chambers judge correctly found that if the reconsideration vote on the 2007 Special Assessment was null and void because of the lack of formal notice, the prejudice to the Strata Corporation outweighs any prejudice to the appellant if the re-vote is considered invalid (paras. 51 - 55).

B. DISCUSSION

[21] The appellant raises the following grounds of appeal:

1. The chambers judge erred in upholding the validity of the 2007 Special Assessment where notice of the April 23rd Meeting was not provided in accordance with s. 45 of the *SPA*;

2. The chambers judge erred in upholding the use of *Robert's Rules* in order to permit a re-vote on the special assessment at the April 23rd Meeting; and

3. The chambers judge erred by finding, on balance, that the prejudice to the Strata Corporation outweighed the prejudice to the appellant in determining whether to uphold the 2007 Special Assessment.

1. Did the chambers judge err in finding the April 23rd Meeting was properly constituted in the absence of formal notice having been given under the *SPA*?

[22] The *SPA* and bylaws of the Strata Corporation are silent on what constitutes an adjourned meeting or the procedure to be followed on a motion to reconsider a vote. Academic commentary and the common law, however, offer some guidance in this area. Both indicate that an adjourned meeting is deemed to be a continuation of the original meeting and no further notice is required provided no new business is transacted at the adjourned meeting. The only business that may be conducted at the adjourned meeting is unfinished business from the original meeting, for which notice was properly given at first instance: L.C.B. Gower, *Modern Company Law*, 4 ed. (London: Stevens & Sons, 1979) at 549.

(i) *The English case law*

[23] English authorities provide that if the business of the adjourned meeting relates to the same agenda and resolution as the initial meeting then notice of the adjourned meeting need not be reissued. If, however, the business of the adjourned meeting is new and distinct from that of the initial meeting then notice of the adjourned meeting is required. In this regard, see *Reg. v. T. Grimshaw* (1847), 11 Jur. 965 at 966-67, 10 Q.B. 747 where Lord Denman, C.J. held:

> It is essential that due notice should be given of the business to be transacted, and at an adjournment of the quarterly meeting, nothing but business actually commenced, or at least understood to be in the routine business of that meeting, ought to be done without notice.

Patteson J., concurring with Lord Denman, C.J. held at 967:

> With regard to the meetings of 9th and 16th of November, they were held legally; but the adjourned meeting on the latter day was not duly held for the purpose of electing a coroner, without notice, on the former day...[I]f we were to hold that such an act might be done without notice...we should soon find that constant attempts would be made to snatch advantages and commit injustice, by the device of adjournments.

[24] Similarly, in *Scadding v. Lorant* (1851), 3 H.L. Cas. 418, the House of Lords considered whether an adjourned meeting is to be considered a continuation of the original meeting for the purpose of giving notice in the context of an action arising out of a decision at an adjourned vestry meeting. The headnote at 418 reads:

> Where notice of the purpose of a vestry meeting has been duly given, and that meeting has begun but not completed a certain business, and the meeting is regularly adjourned, such business may lawfully be completed at the adjourned meeting, though the notice for summoning such adjourned meeting does not state the purpose for which it is summoned.

[25] Lord Chief Baron delivered the unanimous decision of the judges at para. 446:

> ...[W]e are unanimously of opinion that the rate was not rendered invalid by reason of the alleged defect in the notices of the adjourned meeting. We think it was sufficient to give notice on the church door of the purpose for which the first meeting was to assemble, and that that notice extended to all the adjourned meetings, such adjourned meetings being for the purpose of

> completing the unfinished business of the previous meetings, and being in continuation of the first meeting.

[26] In *Wills v. Murray* (1850), 4 Exch. 843, all three judges concurred that notice was not required for an adjourned meeting. At 862-63, Pollock C.B. offered the view:

> It appears to me, upon the evidence, that the meeting was not an extraordinary meeting, but that it was clearly an adjourned meeting; which indeed, was admitted. It was convened by the directors themselves. It is, I think, perfectly clear that it is unnecessary to send a distinct notice to every member for an adjourned meeting. That observation disposes of the effect of the notice, which, it must be admitted, did not summon every director. But if every director was summoned to an adjourned meeting, it does not follow as a matter of inference that the meeting must have been an extraordinary one.

[27] See also *McLaren v. Thomson*, [1917] 2 Ch. 261at 264-266; *Neuschild v. British Equitorial Oil Company Limited*, [1925] Ch. 346 at 348-50; and *Spencer v. Kennedy*, [1926] Ch. 125 at 135.

(ii) *The Canadian authorities*

[28] The Canadian decisions appear to adopt a similar reasoning to the English authorities.

[29] In *Cannon v. Toronto Corn Exchange* (1880), 5 O.A.R. 268, [1880] O.J. No. 67 at 289-290 (Galt J.), the Ontario Court of Appeal found that new business cannot be properly considered at an adjourned meeting. Later, in *Christopher v. Noxon* (1883), 4 O.R. 672 at 686-87, Proudfoot J. cited the reasoning in *Cannon* to hold that any attempt to consider new business at an adjourned meeting will be found invalid.

[30] The principles espoused by the English courts were also adopted in this province by Mr. Justice Spencer in *Klein v. James* (1986), 36 B.L.R. 42, [1986] B.C.J. No. 997 (S.C.), where in the context of an adjourned society meeting he observed:

> [9] Instead, they continued with the company's business and then voted to adjourn and continue the meeting on April 19th, 1984. Notice of the continuation was sent to the other members, but not all of them appear to

> have received it. That does not invalidate proceedings at the continued meeting for no notice of a continuation need be given. See *Wills v. Murray* (1850), 4 Exch. 843, and *Scadding v. Lorant***,** [1851] III H.L.C. 418, at 446. The proposition is accepted in The Principles of Modern Company Law by L.C.B. Gower, third edition (1969), at p. 495. In my opinion the principles are equally applicable to the meeting of a society.

[31] Similarly, in *Financial Network Guaranty Ltd. v. Terra Nova Energy Inc.*, [1987] B.C.J. No. 2646, 1987 CarswellBC 1585 (B.C.S.C.) Mr. Justice Tyrwhitt-Drake found at para. 15 that an "adjourned meeting was a continuation of the original meeting, and not a separate one."

(iii) *The circumstances of this case*

[32] The business of the April 16th Meeting was to vote on a special resolution that included the 2007 Special Assessment. A vote is only final when it has been recorded in the minutes. The unsuccessful vote was never recorded in the minutes of that meeting. Therefore, the business of that meeting was not completed when the motion to adjourn the meeting to April 23rd Meeting was carried for the purpose of voting on the Reconsideration Motion.

[33] The minutes of the April 23rd Meeting indicate that the business of that meeting was a continuation of the April 16th Meeting, that being the Reconsideration Motion. The business of both meetings was the same special resolution and therefore everyone who received formal notice of the special resolution for the April 16th Meeting had knowledge of the content of the resolution on the vote on the Reconsideration Motion.

[34] In my view, the April 23rd Meeting was not a new meeting, as contended by the appellant, but a continuation of the April 16th Meeting. Accordingly, formal notice under the *SPA* of the adjourned meeting was not required.

2. Did the chambers judge err in finding that the procedure under *Robert's Rules* could be adopted for determining the conduct of the special general meeting?

[35] The *SPA* and bylaws of the Strata Corporation are silent on the procedure to be followed at a special general meeting. This gap in the legislation gives rise to the issue in this case of whether there is any authority for a Reconsideration Motion at a special general meeting.

[36] The appellant submits the *SPA* is a complete code, and that in the absence of any statutory provision authorizing a vote to reconsider an unsuccessful vote on a special resolution, the subsequent successful vote to reconsider the failed vote is invalid. In support of her position, the appellant relies on the comments of Mr. Justice Hinds in *Mueller, Re* (1986), 62 C.B.R. (N.S.) 194 (B.C.S.C.), on the issue of whether *Robert's Rules* may be used to govern a creditors' meeting for consideration of a proposal under the *Bankruptcy Act,* R.S.C. 1970, c. B-3. At page 198, Hinds J. observed:

> *Robert's Rules of Order* is a recognized authority on the conduct of meetings but it is not necessarily determinative of the interpretation of a statute.

[37] *Mueller,* however, involved the statutory interpretation of the words "the meeting" within s. 87(1) of the *Bankruptcy Act.* Hinds J. interpreted those words as meaning a meeting of creditors, which he found included a meeting of creditors resulting from an adjourned meeting. He therefore did not need to turn to *Robert's Rules* for assistance as the *Bankruptcy Act,* properly interpreted, provided him with how "the meeting" should be conducted. In this case, there is no provision in the *SPA* or bylaws of the Strata Corporation that governs the procedure for a special general meeting. Therefore, the question is whether a procedure such as *Robert's Rules*, which, as Hinds J. stated at 198, is "a recognized authority on the conduct of meetings", could be adopted by the Strata Corporation to address the issue that was created by the successful vote at the April 16th Meeting.

[38] In this case, a minority of eligible voters were attempting to block the wishes of a true majority of voters who wanted to proceed with repairs to the complex. The

Reconsideration Motion was to permit the true majority to attend the adjourned meeting on April 23, 2007, in order to record their vote on the Reconsideration Motion. *Robert's Rules* indicates at 323 that this motion is valid in these circumstances, and is equally applicable to both affirmative and negative votes. The purpose of a motion "to reconsider and enter on the minutes" is described at 322:

> ... [T]o prevent a temporary majority from taking advantage of an unrepresentative attendance at a meeting to vote an action that is opposed by a majority of [the] membership.

[39] In the absence of any provisions in the *SPA* or bylaws of the Strata Corporation, the procedure adopted must not be unfair to the minority members. *Robert's Rules* allowed for the reconsideration of the unsuccessful vote garnered by the "temporary majority" at the unrepresentative first meeting of the eligible voters. In my view, the procedure adopted by the Strata Corporation from *Robert's Rules* to protect the wishes of the true majority was not unfair to the appellant or other minority members as the vote on the Reconsideration Motion was more democratic and more reflective of the will of the majority of eligible voters.

[40] Accordingly, I would not accede to the submission that the chambers judge erred in finding that the procedure under *Robert's Rules* could be adopted for determining the conduct of the special general meeting.

3. Did the chambers judge err in finding that the prejudice to the respondent outweighed the prejudice to the appellant?

[41] The appellant raised this ground of appeal in the event this Court found that the chambers judge erred in dismissing the appellant's contention that the 2007 Special Assessment passed on April 23, 2007 was null and void. The effect of such a declaration would have left the Strata Corporation with having expended $390,000 on repairs in the absence of any authority to do so. The chambers judge found that in such circumstances the prejudice to the respondent would have outweighed any prejudice to the appellant, and therefore a declaration that the 2007 Special Assessment was null and void should be granted in those circumstances.

[42] I find it unnecessary to address this ground of appeal in view of my finding that the chambers judge was correct in upholding the validity of the April 23, 2007 vote on the special resolution. However, with respect, I would also note that counsel has not referred to any authority that would give a court the "inherent jurisdiction" to make orders with respect to the internal management of a private organization in the circumstances of this case.

C. SUMMARY AND CONCLUSION

[43] In my view, the April 16th Meeting was adjourned to April 23, 2007, for continuation of the business of the first meeting. That business was to vote on the special resolution for which formal notice under the *SPA* had already been given for the April 16, 2007 Meeting. A second formal notice for the April 23, 2007 Meeting was not required in these circumstances.

[44] In the absence of any provisions in the *SPA* and bylaws of the Strata Corporation for the conduct of a special general meeting, the procedure adopted by the Strata Corporation under *Robert's Rules* to reconsider the April 16, 2007 vote (which had not been entered in the minutes) was not unfair to the minority members of the Strata Corporation, protected the wishes of the true majority, and therefore was more reflective of the will of the majority of the eligible voters.

[45] In the result, I would dismiss the appeal.

"The Honourable Madam Justice D. Smith"

I AGREE:

"The Honourable Mr. Justice K. Smith"

I AGREE:

"The Honourable Madam Justice Kirkpatrick"