

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Jiwan Dhillon & Co. Inc. v. Gosal*,
2010 BCCA 324

Date: 20100618
Docket: CA037893

Between:

**Jiwan Dhillon & Co. Inc., Gurdeep Bhanghu, Ravinder Singh Gill,
Disi Gill, Kuldip Singh Mangat, Eveline Investments Inc. and
Delta Family Eye Care & Contact Lens Centre Ltd.**

Respondents
(Petitioners)

And

Mohinder Singh Gosal

Appellant
(Respondent)

And

**The Owners, Strata Plan LMS4385,
Daud Quayum, Shahid Chaudry and Kauser Chaudry**

Respondents
(Respondents)

Before: The Honourable Madam Justice Saunders
The Honourable Madam Justice Kirkpatrick
The Honourable Mr. Justice Chiasson

On appeal from: British Columbia Supreme Court, January 20, 2010
(*Jiwan Dhillon & Co. Inc. v. Owners, Strata Plan LMS4385*, 2010 BCSC 254
New Westminster Registry S124034)

Oral Reasons for Judgment

Counsel for the Appellant: A.M. Gunn, Jr.

Counsel for the Respondents (Petitioners): A.M. Murray (via telephone)

Place and Date of Hearing: Vancouver, British Columbia
June 16, 2010

Place and Date of Judgment: Vancouver, British Columbia
June 18, 2010

[1] **SAUNDERS J.A.:** The petitioners, respondents in this appeal, are owners of commercial strata lots in Surrey, British Columbia. On January 20, 2010, Mr. Justice Verhoeven issued an order, relying for authority on s. 165 of the *Strata Property Act*, S.B.C. 1998, c. 43. The order has 10 terms addressing the highly unsatisfactory manner in which the strata corporation has been conducting its business.

[2] Mr. Gosal, the appellant, owns 25 of the 117 units of the strata corporation, and with weighted voting, is entitled to about 29% of the votes. In addition it is alleged he holds mortgages of a value of about \$1.8 million on other strata lots, giving him, it is said, influence over those owners in strata corporation elections and management. It is not known how many strata lots are affected by those mortgages.

[3] Until the order, Mr. Gosal was a member of the strata council, and was its president. The picture painted by the petition and evidence filed in support is one of Mr. Gosal using the strata corporation, through his position on the strata council, as his private preserve, causing the strata council to ignore its obligations owed at large to all the owners under the *Strata Property Act*, the bylaws of the strata corporation, and any rules passed. The deficiencies of the strata corporation in performance of its duties, as alleged in the petition, include failure of the strata corporation to comply with a previous court order requiring production of approved budgets and strata council minutes, inconsistencies between statements of accounts receivable, financial statements and revenue declared on GST returns, unexplained payments relating to strata lots in which Mr. Gosal has an interest, deficiencies in record keeping concerning a contingency reserve fund, failure to conduct meetings in accordance with the *Act* and bylaws, failure to conduct elections for the strata council as required, and disenfranchisement of certain owners through the device of levying charges against owners and thereby triggering a bylaw that prevented their voting. That bylaw was challenged in these proceedings.

[4] The judge found the evidence established deficiencies in management of the strata corporation. Those conclusions are not challenged on this appeal. It is clear the petitioners were, and are, entitled to court assistance to enforce their right to

information, and their right to competent and transparently honest management of their affairs. The strata corporation has a duty to provide that information, and to manage in accordance with the *Act*, the bylaws, and any rules. It does so through the device of a strata council.

[5] The order of Mr. Justice Verhoeven provided, and I paraphrase:

1. the strata corporation shall provide copies of cancelled cheques, bank statements, general ledgers and books of account;
2. the petitioners shall pay the copying costs of such documents;
3. the strata corporation shall call an annual general meeting (for 2009) to be held by March 31, 2010, and give the requisite notice and documents in advance as required by the *Act* and bylaws;
4. a person other than Mr. Gosal shall chair the meeting and keep minutes of the business transacted at the meeting;
5. the term of the current members of the strata council expire at the end of the 2009 annual general meeting;
6. the bylaw disenfranchising owners who are in arrears of assessments is *ultra vires* and unenforceable;
7. all owners are entitled to vote at the 2009 annual general meeting;
8. Mr. Gosal is prohibited from standing for election at the 2009 annual general meeting or the 2010 annual general meeting (the 2010 annual general meeting is required to take place before the end of August 2010);
9. the strata corporation is prohibited from entering into a further contract for strata management services with a named company controlled by Mr. Gosal; and
10. the strata corporation must account to the petitioners for all legal fees incurred defending this petition and another proceeding, and account to the petitioners for their share.

[6] Of all these orders, Mr. Gosal appeals only the one described as number 8 just recited, prohibiting him from standing for election.

[7] I should set out the scheme of the *Act*. Section 28 permits an owner to stand for election to the strata council, in these terms:

28 (1) The only persons who may be council members are the following:

- (a) owners;
- (b) individuals representing corporate owners;
- (c) tenants who, under section 147 or 148, have been assigned a landlord's right to stand for council.

(2) Despite subsection (1), the strata corporation may, by a bylaw passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be council members.

(3) Despite this section, a strata corporation may, by bylaw, provide that no person may stand for council or continue to be on council with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116(1).

[8] The petition was brought under s. 165 of the *Act*. Section 165 is found in Division 1 entitled "Suits Against the Strata Corporation" of Part 10 entitled "Legal Proceedings and Arbitration".

[9] Sections 163 to 165 of Division 1 are relevant:

163 (1) The strata corporation may be sued as representative of the owners with respect to any matter relating to the common property, common assets, bylaws or rules, or involving an act or omission of the strata corporation.

(2) An owner may sue the strata corporation.

164 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair

(a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or

(b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) For the purposes of subsection (1), the court may

(a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,

- (b) vary a transaction or resolution, and
- (c) regulate the conduct of the strata corporation's future affairs.

165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:

- (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
- (b) order the strata corporation 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).

[10] Division 2 of Part 1 concerns actions by a strata corporation. Division 3, entitled "Administrator of Strata Corporation" provides for court appointment of an administrator, taking management away from the strata council. The key provision is s. 174:

- 174 (1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.
- (2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.
- (3) The court may
- (a) appoint the administrator for an indefinite or set period,
 - (b) set the administrator's remuneration,
 - (c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and
 - (d) relieve the strata corporation of some or all of its powers and duties.
- (4) The remuneration and expenses of the administrator must be paid by the strata corporation.
- (5) The administrator may delegate a power.
- (6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.

[11] In making his order the judge first addressed s. 165:

[20] It is implicit in subsection (a) of s. 165 that some circumstances exist necessitating the exercise of the remedial power granted to the court to make an order requiring compliance by a strata corporation with its duties. Generally one would expect evidence that a strata corporation has either failed to perform a duty that it is required to perform under the *Act*, the bylaws of the rules, or that there is a real apprehension of such failure.

[21] Subsection (b) of s. 165 is more explicit, in that there must be a contravention by the strata corporation of the *Act*, the regulations, the bylaws or the rules.

[22] The power of the court to make orders under subsection (c) depends upon there being a basis for orders under subsections (a) or (b). The court's discretion under subsection (c) is broad, that is, to make any other orders it considers necessary to give effect to an order under subsections (a) or (b) of s. 165.

[12] The judge then considered each term sought. On the application for an order enjoining Mr. Gosal from membership on the strata council the judge said, and I will replicate his reasons on this aspect of his order in their entirety:

[106] The petitioners seek an order that Mr. Gosal is not entitled to stand for election to the strata council of the strata corporation at the 2009 AGM.

[107] Given the fact that the 2010 AGM would be required by the end of August 2010, the petitioners also seek to extend Mr. Gosal's disqualification to the next two AGM's: the overdue 2009 meeting, and the 2010 meeting.

[108] The petitioners point to a litany of misconduct and mismanagement on the part of Mr. Gosal to justify the exceptional order that is sought. I will refer only to a few highlights, some of which I have already referred to briefly. There is firstly the issue with respect to management fees which have been, on the financial statements, credited to Mr. Gosal's company since at least 2005. The management fee schedules prepared by Bouchard & Company references management fees for as late as 2009.

[109] Next, Mr. Gosal has denied that strata council meets only once per year. However, Mr. Gosal has failed to provide minutes of any additional meetings, thus it is argued, and I agree, that either Mr. Gosal's statement regarding the number of meetings per year is incorrect or his statement that he has produced all minutes of the strata council meetings is incorrect.

[110] It is argued, and I agree, that the financial accounting for the Strata Corporation is in shambles, and on the evidence, it has been Mr. Gosal that has been responsible for the keeping of such records.

[111] It is argued that the Strata Corporation may not have maintained a contingency reserve fund as required by s. 92(b) of the *Act*. That is not a matter that I need to decide for purposes of this petition.

[112] It is argued that Mr. Gosal in his capacity as president and strata manager was delinquent in filing the Strata Corporation's GST returns. That allegation was borne out on the evidence.

[113] Mr. Gosal has indicated throughout his evidence that problems have existed in the collection of strata fees within the Strata Corporation. The petitioners note that the *Act* provides a straightforward process for strata corporations to collect amounts owing. Sections 112 to 118 set out the process for a strata corporation to issue a demand letter, file a lien and apply to court for an order to sell a strata lot. Mr. Gosal has been responsible for ensuring timely payment of strata fees and has not taken appropriate steps to ensure that such fees are paid.

[114] On the evidence, Mr. Gosal has apparently charged owners for access to common property without authority.

[115] On the evidence, many of the contentions made by the petitioners are sound.

[116] In my view, the central problem faced by the Strata Corporation has been the extent of personal control exercised by Mr. Gosal, largely, if not completely, unsupervised by a functioning strata council and strata corporation or by professional property managers. In order to rectify matters, it is necessary that Mr. Gosal not be directly involved in the affairs of the Strata Corporation for a period of time. Although I recognize that the nature of the order is exceptional in these circumstances, in my judgment, it is justified. So there will be an order accordingly.

[13] Mr. Gosal contends the judge erred by interpreting s. 165(c) as conferring jurisdiction on the court to give relief against a party other than the strata corporation and independently of subsections (a) and (b) of s. 165. Alternatively he contends the judge erred in making the impugned order when the order was not necessary to give effect to the orders he had made under subsections (a) and (b).

[14] The appeal raises the correct construction of s. 165 of the *Act*. The standard of review we must apply is correctness; the question is whether the judge was correct, in this one term of his overall order, in concluding s. 165(c) permitted the order enjoining Mr. Gosal from standing for election to the strata council in the circumstances of the case.

[15] To our knowledge this case raises the construction of s. 165 for the first time. We are, accordingly, thrown back to basic principles of statutory interpretation. It is well known that the unifying principle of statutory interpretation, as approved by the

Supreme Court of Canada, is described in E.A. Driedger, *The Construction of Statutes* 2nd ed. Toronto: Buttersworths, 1983:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and intention of Parliament

See *Rizzo & Rizzo Shoes (Re)*, [1998] 1 S.C.R. 27; *Bell Express Vu v. Rex*, 2002 SCC 42, [2002] 25 L.R. 559.

[16] Bearing this principle in mind, I turn to the case at hand.

[17] Strata property ownership presents a distinct mix of legal principles derived from property law and law relating to collective governance. The framework is provided by a statute designed to facilitate management of common issues, providing an appropriate degree of individual autonomy through the device of democratic principles, and borrowing to some degree from concepts found in statutes regulating municipal and corporate governance.

[18] To that end, the *Strata Property Act* and bylaws passed under it, provide a code for governance of strata properties setting out mandatory requirements permitting participation of owners in the governance through election of the strata council, control over the strata corporation's bylaws, and control over certain management decisions that are considered so important to the enterprise as to require approval by the owners though the mechanism of a vote. Daily management is effected through the elected strata council, and the council has both powers and responsibilities.

[19] Recognizing that disputes sometimes arise, and that elected bodies sometimes perform inadequately, provision is made in the *Strata Property Act*, by Part 10, for resolution of issues. I have already referred to the main provisions. Sections 164 and 165 give authority to the Supreme Court of British Columbia, upon application including by an owner, to make certain orders against a strata corporation. It is not necessary for the purposes of this case to expound on s. 164,

but it is apparent it is directed to remedies for significantly unfair acts or threatened acts by a strata corporation or persons, or a significantly unfair exercise of voting rights by persons with more than 50% of the votes. Section 165, on the other hand, is more tightly focused, and empowers the court to make what may be described as a mandatory injunction compelling the strata corporation to perform duties required of it by the *Act*, bylaws or rules (s-s. (a)), or a simple injunction enjoining the strata corporation from contravening the *Act*, bylaws or rules (s-s. (b)).

[20] Subsection (c) is the provision in issue. I repeat its language: the court may “make any other orders it considers necessary to give effect to an order under paragraph (a) or (b)”. Looking at the grammatical and ordinary meaning of those words, two conclusions may be drawn. First, an order under s-s. (c) may not be freestanding, but rather must be tied to an order directed to the strata corporation’s actions or inactions, that is, an order under s-s. (c) may only be made when its purpose is to give effect to either a mandatory injunction under s-s. (a) or a simple injunction under s-s. (b) made against the strata corporation. Second, the court must consider that the order is necessary to give effect to the order under s-s. (a) or (b), that is, the court must consider that without the order under s-s. (c), the orders against the strata corporation under s-s. (a) or (b) will not be effective.

[21] In his factum Mr. Gosal contends that an order under s-s. (c) could not be made against an individual at all, although in oral submissions his counsel resiled somewhat from that bald proposition. I do not consider s-s. (c) is limited to orders against the strata corporation, and it seems to me that it permits an order against an individual where the criteria are met. For example, s-s. (c) would support an order that Mr. Gosal deliver to the strata council all strata corporation documents in his possession, or an order that all persons having knowledge of the order take such steps as are within their power to facilitate the strata corporation’s compliance with the order, or an order that all persons having knowledge of the order refrain from interfering with compliance with the order. Those orders would be consistent with the common law of injunctions, which easily accommodates orders against persons

having knowledge of the main order, so as to facilitate the remedy intended to be provided by the court.

[22] I accept, however, that s-s. (c) contemplates an ancillary order only, and so does not permit an order entirely independent of an order under s-s. (a) or (b). And, looking at the *Act* broadly, I do not consider the order appealed satisfies this criterion. The order is unconnected to any of the other orders made, and neither directs Mr. Gosal to assist in the strata corporation's compliance with the other terms of the order, or prohibits him from interfering with the strata corporation's compliance with the other terms. Instead it is directed to his status, and interferes with the democratic principles expressed elsewhere in the *Act* which permit any owner to stand for election, and owners to vote, presumably for a person of their choice. In my view, more explicit language than is set out in s. 165(c) is required to nullify an entitlement expressly provided by the *Act*.

[23] Thus, looking at the words of the statute, in their ordinary grammatical meaning, in the context of the *Act* as a whole, and paying heed to the balance struck in the *Act* and the expressions of democratic principles, I do not consider s.165(c) permits this order enjoining Mr. Gosal from standing for election to council.

[24] Further, and with respect, it appears to me that the judge has been overbroad in his consideration of the meaning of the word "necessary". It seems to me that disentitling Mr. Gosal from standing for election is of no consequence, legally, to the performance of the orders made, or enforcement of them in the event (to be hoped does not occur) the strata corporation does not comply. Even in the event Mr. Gosal would stand for election, be elected, and then wish to throw sand in the gears of compliance, Mr. Gosal would have at most only one vote, and he would be unable, in law, to effect any undesirable action. In the event of non-compliance the issue will be larger than Mr. Gosal, and engage either the court in enforcement proceedings or the even more drastic remedy of appointment of an administrator, as any noncompliance, i.e., ineffectiveness of the court order, would engage the other owners of strata units who are members of the strata council, and thus would require

a broader response. I remind the parties of s. 26 which requires all members of the strata council to perform the duties of the strata corporation set out in the *Act*, bylaws and rules.

[25] Last, I would observe that even in the event Mr. Gosal is not a member of the strata council, he has been president of it in the past and it appears that the remedy for the various deficiencies will require his participation. In the event he does not provide it freely, he may be ordered by the court to do such things as are necessary to ensure compliance of the orders of Mr. Justice Verhoeven, as I have earlier indicated is possible under s. 165(c).

[26] Counsel for the petitioners urged Mr. Justice Verhoeven to make the impugned order, and urge us to uphold it, saying they do not want to engage the more intrusive and expensive remedy of appointment of an administrator. The containment of disruption and costs is a laudable goal, but in my respectful view the particular order in issue before us is misconceived. While the potential is open for enforcement proceedings, including against Mr. Gosal ultimately, to ensure the strata council meets the duties it owes to each of the strata owners, I respectfully conclude the particular remedy in para. 8 of the order is not available.

[27] Mr. Gosal seeks an order setting the entirety of para. 8 aside. The annual general meeting for 2009 has been held, and the one for 2010 is looming. Given the present circumstances, it is appropriate to set aside the entire paragraph, but I would do so recognizing this does not invalidate the election of members of the present strata council at the 2009 annual general meeting, who shall continue in office until the 2010 annual general meeting is held this summer. I would allow the appeal and set aside para. 8 of the order of January 20, 2010.

[28] **KIRKPATRICK J.A.:** I agree.

[29] **CHIASSEON J.A.:** I agree.

[30] **SAUNDERS J.A.:** The appeal is allowed and para. 8 of the order is set aside as indicated.

(discussion with counsel re. costs)

[31] **SAUNDERS J.A.:** In this Court, the appellant has been successful and there is no reason the ordinary order ought not to issue. The matter of how hard the petitioners had to work to achieve their rights under the *Strata Property Act* is a matter properly before the Supreme Court of British Columbia and will be dealt with as to the petition, but in this Court, we are all agreed that the appellant is entitled to his costs.

“The Honourable Madam Justice Saunders”