IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Weir v. Owners, Strata Plan NW 17,*
2010 BCSC 784

Date: 20100604
Docket: S094999
Registry: Vancouver

Between:

James William Weir, Rosane Joy Weir,
Rodney James McWilliams,
Lisa Marie McWilliams, Daniel Thomas Quick,
Wendy Darlene Quick and Maria Chona Bulalaque

Petitioners

And

The Owners, Strata Plan NW 17

Respondent

Before: The Honourable Mr. Justice Josephson

Reasons for Judgment

Counsel for Petitioners: G. S. Hamilton

Counsel for Respondent: S. M. Smith

Place and Date of Hearing: Vancouver, B.C.
May 21, 2010

Place and Date of Judgment: Vancouver, B.C.
June 4, 2010

[1] The respondent is a strata corporation comprised of 28 townhouse-style residential strata lots in four separate buildings. The petitioners are owners of strata lots in one of those buildings, Block D.

[2] The petitioners are not satisfied with the manner in which the respondent has been dealing with settling, leakage and drainage problems in their block. They allege the respondent is in breach of their fundamental duty to act reasonably in repairing and maintaining common property per to s. 72 of the *Strata Property Act*, S.B.C. 1998, c. 43 [the *Act*].

[3] The petitioners seek an order pursuant to s. 165 of the *Act* requiring the strata council to investigate and repair the settling, leakage and drainage problems. Alternatively, they seek the appointment of an administrator under s. 174 of the *Act* to replace the respondent and make decisions relevant to the issues raised in this litigation.

[4] The respondent replies that it has acted reasonably throughout.

The Evidence

[5] The affidavit material sets out the problems experienced by the petitioners regarding settling, drainage and the occasional flooding in Block D.

[6] At the annual general meeting of December 5, 2007, the respondent passed a resolution to raise $5,800 by way of a special levy to retain Levelton Consultants Ltd. to conduct a Building Envelope Condition Assessment. The resulting report noted that the electrical room attached to Block D had settled, leaving a gap between the electrical room and the exterior wall. The report recommended retaining a geotechnical engineer to review that issue. The respondent did not act on that recommendation, viewing it as having a low priority. They did not view it as practical or necessary at that time.

[7] In August 2008, Unit 26 of Block D experienced flooding in the basement. This was reported to the respondent's president, Mr. Abbot. In response, the respondent retained Global Pacific Concepts Inc. ("Global") to investigate.

[8] The petitioners complain that Global is without the requisite expertise to deal with geotechnical or building envelope matters. The respondent replies that it did its due diligence and determined, after consideration, that Global was sufficiently qualified.

[9] On September 15, 2008, the respondent received a preliminary report from Global regarding the drainage problems affecting Block D. That report, amongst other things, noted that:

- there had been water entry along the floor and cupboards of Unit 26, along with mould build-up;
- the water entry had been occurring for a substantial period of time;
- the water should have dissipated through the flood drain;
- Unit 26 had a crack substantial enough to go completely through the wall;
- there had been numerous repairs and patches to the tile drain system;
- there were many defects in the tile drainage system; and
- the electrical room was pulling away from the wall of Block D.

[10] Global made extensive recommendations to the respondent as set out in the affidavit of Mr. Weir at Tab 7, para. 28 and Exhibit G, attached at page 99.

[11] Before funding to act on these recommendations had been arranged by the respondent, by letter dated February of 2009, the petitioners expressed concern about the adequacy of the Global report and demanded that the respondent retain an engineer to inspect Block D. The respondent, by letter of March 9, 2009, declined to do so. As a result, the petitioners did so on their own, retaining a geotechnical engineer, Davies Geotechnical Inc. ("DGI"). DGI reviewed the two existing reports,

visited the site and made a number of recommendations to the effect that there should be further investigations by various qualified professionals.

[12] The petitioners also brought in municipal officials to inspect the property. They also made a number of recommendations, including implementation of the recommendations in the two existing reports.

[13] That municipal official also invited the respondent to "consider":

- placing a concrete foundation with footing below the electrical room;
- installing a new drainage system with a separate pipe system from the roof to the municipal storm drainage system and
- inspecting the sump pump at the front of Block D.

[14] At a special general meeting held on April 21, 2009, the petitioners presented the DGI report and the recommendations of the Corporation of Delta to the respondent. After rescinding the December 8, 2008 resolution, the respondent passed a replacement resolution funding drainage repairs in the amount of $66,700.

[15] At the same meeting, the only two members of the strata council residing in Block D were removed.

[16] In May 2009, the petitioners retained H. Reed Consulting Ltd., professional engineers specializing in hydrology. Their report of June 1, 2009, concluded that it was highly unlikely that repairs done to perimeter drains would be "completely effective" unless the storm water drainage was disconnected from the perimeter drain system and instead connected to the municipal system.

[17] It also reported as follows:

> While we generally concur with the Global Pacific's Scope of Work, we are not optimistic that the perimeter drains will become entirely effective until these have been completely replaced in accordance with current construction standards.

[18] The respondent decided to proceed according to the Global report recommendations, which do not, at least initially, include separation of storm from perimeter drains nor a complete replacement of the entire drainage system.

[19] These differing views by the parties have given rise to rancour and suspicion, which I need not detail. Each side blames the other for this unhappy situation.

[20] The respondent, in affidavit evidence, sets out why it believes it has acted entirely reasonably throughout and why the complaints of the petitioners are overstated.

Primary Issues Between the Parties

[21] The two primary issues are whether an engineer should be retained now and whether the respondent should immediately proceed to separate the storm drain from the perimeter drain. The petitioners submit that both are required if the respondent is to fulfill its duty.

[22] The respondent's approach is to proceed with the implementation of Global's recommendations and retain an engineer to attend when the drainage systems are exposed. The respondent says that if that engineer is of the opinion that further work is required, then it will undertake that further work.

The Law

[23] There is little issue regarding the law. The respondent has a fundamental duty to repair and maintain its common property: s. 72 of the *Act*; *Royal Bank of Canada v. Holden*, 7 R.P.R. (3d) 80, [1996] B.C.J. No. 2360 (S.C.). In performing that duty, the respondent must act reasonably in the circumstances: *Wright v. Strata Plan No. 205*, 20 B.C.L.R. (3d) 343, [1996] B.C.J. No. 381 (S.C.), aff'd (1998), 103 B.C.A.C. 249, 43 B.C.L.R. (3d) 1032. Furthermore, the starting point for the analysis should be deference to the decision made by the strata council as approved by the owners: *Browne v. Strata Plan 582*, 2007 BCSC 206, 70 B.C.L.R. (4th) 102.

[24] Where the court determines that the strata council has breached its duty under s. 72 of the *Act*, the court may grant a mandatory injunction pursuant to s. 165 or appoint an administrator to perform the role of the strata council pursuant to s. 174.

Conclusion

[25] The petitioners have failed to meet the onus of establishing a failure by the respondent to carry out their duty to repair and maintain common property such that the court should intervene.

[26] While there was reference to some settling in the affidavit material filed by the petitioners, the evidence is far short of establishing that the respondent has failed to act reasonably in dealing with this issue.

[27] With respect to drainage and water ingress problems, the respondent has chosen a more cautious approach to resolving the issue than the petitioners believe is appropriate or reasonable. While the petitioners' position is certainly not unreasonable, neither is that of the respondent.

[28] In resolving problems of this nature, there can be "good, better or best" solutions available. Choosing an approach to resolution involves consideration of the cost of each approach and its impact on the owners, of which there is no evidence before the court. Choosing a "good" solution rather than the "best" solution does not render that approach unreasonable such that judicial intervention is warranted.

[29] In carrying out its duty, the respondent must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities: *Sterloff v. Strata Corp. of Strata Plan No. VR 2613*, 38 R.P.R. (3d) 102, [1994] B.C.J. No. 445 and *Browne*.

[30] The course of action chosen by the respondent may or may not resolve the problems. If it does not, further remedial work, including separation of the two

drainage systems, may be required. The respondent acknowledges that it will undertake that remedial work if it proves reasonably necessary.

[31] It may even prove to be the case that the approach of the petitioner is the wiser and preferable course of action. Again, that does not render the approach of the respondent unreasonable.

[32] Disagreements between strata councils and some owners are not infrequent. However, courts should be cautious before inserting itself into the process, particularly where, as here, the issue is the manner in which necessary repairs are to be effected.

Summary

[33] I decline to grant the relief claimed in the petition. The respondent will have its costs, with leave to apply.

"Josephson J."