COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Ward v. The Owners, Strata Plan VIS #6115,* 2011 BCCA 512

Date: 20111215
Docket: CA039399

Between:

Christopher Myron Ward

Appellant
(Petitioner)

And:

The Owners, Strata Plan VIS #6115 and Geoff Kearney

Respondents
(Respondents)

Before: The Honourable Madam Justice Huddart
(In Chambers)

On appeal from: Supreme Court of British Columbia, September 6, 2011
(*Ward v. The Owners, Strata Plan VIS #6115,* Victoria Docket No. 10 4036)

Appellant appearing on his own behalf:	C. M. Ward
Counsel for the Respondent:	J. Hanson
Place and Date of Hearing:	Victoria, British Columbia October 17, November 21and 22, 2011
Place and Date of Judgment:	Vancouver, British Columbia December 15, 2011

Reasons for Judgment of the Honourable Madam Justice Huddart:

[1] This application is for an order under Rule 56 of the *Court of Appeal Rules*, B.C. Reg. 297/2001 for indigent status and orders under the *Court of Appeal Act,* R.S.B.C. 1996, c. 77 for an extension of time to file a notice of appeal (s. 10(2)(d)) and a stay of execution of the order for costs (s. 18). It raises a myriad of issues flowing from errors in fact and law alleged to have been made by the chambers judge who dismissed the applicant's petition for 16 of 17 different orders and declarations sought in the Supreme Court as a result of a dispute between a unit owner and the Strata Corporation of which he is a member.

[2] The chambers judge granted a declaration that the applicant was not in violation of any law or bylaw of the Strata Corporation when he removed recyclable material from the Wave's garbage bins. He also ordered that a transcript of his reasons be provided to both parties and that the applicant, Mr. Ward, would have 30 days to make an argument why he should not pay costs, failing which the Strata Corporation would get its costs on Scale B.

[3] Mr. Ward filed this application on 11 October 2011, returnable on 17 October for the hearing of the indigent status and extension applications. The respondents obtained a copy of the transcript on 13 October, the applicant on 17 October. After hearing Mr. Ward's allegations of errors of fact, the application was adjourned to 21 November to give him an opportunity to address the errors of law he was alleging and counsel an opportunity to respond to his submissions.

[4] The applicant is a 52-year old full-time university student who suffers from significant physical, emotional and cognitive disabilities. These disabilities, which significantly affect Mr. Ward's employability and social functioning, result from his battle with cancer. For income, he relies on student loans and the rent he receives from his parking space at the Wave, a strata building in which he owns and occupies a unit. The respondents are the Strata Corporation and Geoffrey Kearney, the representative of Cornerstone Properties Ltd. ("Cornerstone"), the property manager responsible for the Wave. Until Cornerstone took over management of the Wave, on

1 September 2009, Mr. Ward says he earned $30 to $40 a week recycling materials thrown into the garbage by other residents of the building, and that he did so with appreciation rather than complaint. Those recycling efforts seem to be at the root of what has become a long and very unpleasant dispute between Mr. Ward on one side and members of the Strata Council and Mr. Kearney on the other.

[5] While understanding a new trial is not the best solution for his problems with the respondents, Mr. Ward considers a new trial to be the only order this Court can make which will ensure his concerns are properly addressed. Those concerns are of mismanagement and misconduct on the part of the property manager and what he refers to as “group bullying” by members of the Strata Council and their group of supporters. In recognition that an order for the appointment of an administrator would not bring the peace he would like in the building where he makes his home, he is abandoning his appeal of the dismissal of his claim for that remedy.

[6] Mr. Ward wishes to present his case for a new trial to a division of this Court because he says the chambers judge misunderstood the evidence and his submissions. He views this misunderstanding as having made the hearing unfair. This unfairness is reflected in errors of fact, misstatements about some of Mr. Ward’s submissions, and the failure of the chambers judge to discuss authorities Mr. Ward cited to him. Mr. Ward says this may be the result of the chambers judge’s role as a sessional lecturer at the University of Victoria Law School where he taught counsel for the respondents and two of his partners. At that new trial he would be seeking remedies which he agrees can be reduced to six orders or declarations in addition to the one granted by the chambers judge.

[7] Informed by Mr. Ward’s submissions, I would summarize the relief he would be seeking at a new trial this way:

1. a declaration Mr. Ward did not require approval from the Strata Council to install a floating hardwood floor in his unit;

2. a declaration that the entry by a representative of the Strata Council to his unit on 11 March 2010 was unlawful;

3. an order requiring the Strata Corporation to pay the costs for repair or replacement of the lock on the entry door to his unit, estimated at $70.00;

4. a declaration that Mr. Ward's use of multiple storage lockers on common property was not contrary to any bylaw or rule of the Strata Corporation;

5. an order directing the Strata Corporation to repay $408.26 wrongfully required to be paid by him and paid by Mr. Ward's mortgagee, subsequently added to the amount outstanding on his mortgage;

6. an order that the Strata Corporation produce documents for review and copying as permitted by section 36 of the *Strata Property Act*; and

7. special costs.

[8] The respondents take no position on the application for indigent status. They oppose the applications for a stay order and extension of time for appeal, essentially because the appeal lacks merit. They also argue that the existence of a continuing lawsuit with its corresponding costs will diminish the marketability and value of units and thus constitute prejudice to unit owners.

[9] For the reasons that follow, I would grant the application for indigent status and dismiss the application to extend the time to file an appeal, the order not to be entered until the Strata Corporation pays $408.26 to Mr. Ward by way of credit on his outstanding arrears, thereby removing the only error that would justify granting the extension.

Background Facts

[10] The Wave is a strata building located at 845 Yates Street in Victoria. It has two floors of limited common property below ground, including resident and guest parking, storage locker and utility rooms, one commercial floor, and 13 residential floors.

[11] The dispute arose after a series of complaints to the Wave's Strata Council about activities of Mr. Ward in the spring of 2010. The complaints concerned his gathering of recyclables from the communal bins, occupation of lockers not assigned to him for the purpose of woodworking, failure to pay strata fees on time, running a power saw in his unit at inappropriate times, and possibly making unauthorized modifications to his unit with that saw. This last complaint caused the property manager to give notice of entry by letter and a notice posted on the door to Mr. Ward's unit and to hire a locksmith.

[12] The posted notice included this statement: "Police may be present to keep the peace." Although Mr. Ward called Mr. Kearney to challenge the claimed right of entry, Mr. Kearney attended as the notice had said he would having, apparently, advised the police of a potential problem. He was accompanied by Aaron Usatch, another employee of Cornerstone and Mr. Cook, the building caretaker. When Mr. Ward refused them entry, the locksmith appeared and began to pick the lock. Mr. Ward persisted in his efforts to block their entry and called 911. Police appeared in response. Mr. Ward decided to allow one person to enter his unit if the police remained to "keep the peace". Mr. Usatch went into the unit, walked around briefly and, as the chambers judge found – "apparently satisfied with the work that had been done", left. He would have noted that Mr. Ward had removed carpeting from his bedroom floor and installed a floating hardwood floor. Mr. Ward's evidence was that the deadbolt and latch were damaged during the "forced entry" and a screwdriver left a gash in the door. He estimates the costs of repair at $70.00.

[13] The respondents cite their Bylaw s. 7 to justify their request for entry and inspection by a strata council representative. Section 7(c) of this Bylaw allows entry

to ensure nothing is done to the units which would affect the Wave's obligation to insure the property under s. 149(1)(d) of the *Strata Property Act.*

[14] This entry was the trigger for Mr. Ward's petition and his unsuccessful attempt to prosecute Mr. Kearney and others privately. He considered the entry then, as he does now, both unauthorized and forcible and the complaint giving rise to it as vexatious as the others which began shortly after Cornerstone took over management of the Wave from Brown Bros. Agencies Ltd.

Reasons of the Chambers Judge

[15] Reasons were given orally on 6 September 2011 in Victoria. They have not been published, nor has the order been entered.

[16] The chambers judge dismissed the claims related to the unauthorized entry, finding that while the notice was "ill-advised and premature", it was not unlawful. He found Mr. Ward was not entitled to use a locker other than the one allotted to him, nor was he entitled to salvage recyclables after the Strata Council posted notice of its decision in February 2010 to forbid that activity and dismissed applications for declarations regarding those activities. He dismissed the applications concerning the Strata Council's failure to produce documents because Mr. Ward had not taken advantage of the property manager's invitation to inspect them. He settled the fees owed by Mr. Ward to include the legal fees but not the locksmith charge. He refused to appoint an administrator under s. 174 of the *Strata Property Act*, finding nothing to justify such an extraordinary step and related expenses.

Discussion

[17] Because the merits of the appeal are common to all three applications, I will begin with a consideration of the proposed grounds of appeal. The test for sufficient merit in any ground of an appeal, so that time can be extended to perfect the appeal, was set down in *Davies v C.I.B.C*. (1987), 15 B.C.L.R. (2d) 256 at 259-260 and 262 and requires only that it not be "bound to fail." If this requirement is met, then the overriding factor to be considered is whether it is in the interests of justice to grant

the extension so that the issue might be considered. In this case, neither the delay nor the alleged prejudice would preclude that result. Because the reasons are available to the parties, if not to other readers, and the errors of fact were discussed at the hearing, I will limit my references to those reasons and the underlying record to those useful to a consideration of the alleged legal errors and that ultimate question.

[18] The alleged legal errors are four: finding the entry to Mr. Ward's unit to be lawful; finding the Strata Council had created a rule prohibiting the removal of recycled materials from the garbage bins and another allotting one locker to each resident; finding the Strata Council was entitled to claim legal fees incurred in collecting late fees and assessments; and finally, failing to order the Strata Council to make available for inspection documents it is required to maintain by s. 35 of the *Strata Property Act*, as required by s. 36.

[19] Additionally, Mr. Ward claims an apprehension of bias on the part of the chambers judge. He provides no evidence to support his allegation beyond the agreed past student/teacher relationship between respondent's counsel and the chambers judge. Neither that fact nor the reasons could or would suggest bias on the part of the chambers judge in favour of the respondents or their counsel to a reasonable and objective reader. I need consider it no further.

[20] I begin with the alleged errors of fact which can be dealt with summarily because the evidence supports the trial judge's findings or they are immaterial to the issues on this application.

[21] The reference (at para. 11) to Mr. Ward's power washer being removed from the electrical room, where the property manager had placed it after removing it from another resident's locker where Mr. Ward had placed it, is agreed to be an error. In fact, the Wave's caretaker, Mr. Cook, had put Mr. Ward's dolly in the electrical room, where Mr. Ward was able to retrieve it. This misstatement is immaterial to any issue on this application.

[22] So is the alleged misstatement (in para. 42) that Mr. Ward was not entitled to be compensated for "locks damaged and removed." While Mr. Ward's claim for compensation for "the cost for repair or replacement of any locks or latches damaged by the acts of the Strata Corporation or its agents" may have suggested a broader claim to the respondents and the chambers judge, Mr. Ward says that, at the hearing, he was clear the only claim he was making for a damaged lock was for the entry lock to his unit, said to have been damaged during the "forcible entry."

[23] The chambers judge also erred in referring (at para. 21) to a "threatening letter" Mr. Ward wrote to Mr. Kearney, "which Mr. Kearney has apparently turned over to the Victoria Police". The record contains two email exchanges. One was a message dated May 19, 2010, from Mr. Ward to Jason Middleton, the president of Cornerstone. The other began with an email from Mr. Kearney dated July 27, 2010 containing a report by Mr. Kearney to various other persons including Mr. Middleton, about a threatening phone call he had received which he believed to be from Mr. Ward. While these messages illustrate the attitudes of the correspondents, they do not include a "threatening letter" that could have been turned over to the police. The error is not material to the "unauthorized entry" which seems to have triggered the exchanges nor to any other legal issue dividing the parties.

[24] The chambers judge did not err (in para. 43) when he said that "an early complaint" of "dumpster diving" in the garbage room had been made by a resident. This was a colloquial summary of a complaint made by two residents on 23 February 2010 that one of them had seen the "owner of Unit 704 ... rummaging through the recycling bins in the trash room at approximately 10 am" that morning.

[25] The remaining errors of fact relate to and are intertwined with the legal issues Mr. Ward puts forward. I will consider them in conjunction with the parties' submissions on the law, to the extent necessary to determine whether there is merit in any of the grounds of appeal and whether the interests of justice require any of the orders Mr. Ward seeks on this application.

Recyclables Rule

[26] Mr. Ward's primary point on this issue is that the chambers judge erred in finding (in para. 46) that the Strata Corporation had created an enforceable rule forbidding the taking of recyclable articles from the garbage bins at the Strata Council's meeting on 16 February 2010 or at any other time. He acknowledges the minutes of that meeting report a decision with regard to recyclables and that a notice was posted about recyclables on 25 February 2010.

[27] The minutes state:

> **4.3 Bottle Rummaging**
>
> There have been a number of complaints again about a tenant rummaging through the garbage bins. Tenants may not remove items from common areas without permission of council, and this includes the garbage rooms. The tenant will be asked to desist.

[28] The notice, signed by the property manager, states in its relevant parts:

> **Re: Recycling**
>
> Please be advised that once recyclable items and garbage are disposed of in the appropriate containers, there is to be no removal of any items from the containers, this includes the removal of refundable items such as cans and bottles.
>
> The garbage and recycling area at the strata is considered private property and removing items from this area is considered theft.

[29] The making of rules by strata corporations is governed by s. 125 of the *Strata Property Act.* It provides, in the parts relevant to this application:

> 125 (1) The strata corporation may make rules governing the use, safety and condition of the common property and common assets.
>
> (2) A rule is not enforceable to the same extent that a bylaw is not enforceable under section 121 (1).
>
> (3) All rules, including those posted on signs, must be set out in a written document that is capable of being photocopied.
>
> (4) The strata corporation must inform owners and tenants of any new rules as soon as feasible.
>
> ...

> (6) A rule ceases to have effect at the first annual general meeting held after it is made, unless the rule is ratified by a resolution passed by a majority vote
>
> (a) at that annual general meeting, or
>
> (b) at a special general meeting held before that annual general meeting.

[30] The respondent agrees its creation of this rule was sloppy, but says the requirements of the *Act* were fulfilled and the property manager and caretaker were entitled to enforce it on instructions of the Strata Council. Their counsel also acknowledges this rule, if such it was, was not affirmed at a special general meeting or the next annual meeting (said to have been held on 7 February 2011).

[31] The chambers judge granted a declaration that Mr. Ward's removal of items from the garbage room before the decision was posted on 25 February 2010 was not illegal or a nuisance nor a violation of any rule or bylaw of the Strata Corporation. He explained why he had concluded it was a violation of a rule after that date at paras. 45 and 46:

> [45] While I do not propose to engage in an analysis of when items thrown away by their owners become the property of someone else, I do accept the strata council has the right to make reasonable rules for the regulation of its common property, including, perhaps especially, the garbage room. To that end, it was open to the strata council to make rules preventing residents from going through the bins to recover recyclable materials.
>
> [46] The strata council had not done so when Mr. Ward was doing the collecting and its attempt to assert ownership did not constitute an enforceable rule over the use of the common property at the initial stages. However, once that notice had been posted, any removal of the items from the garbage bins by Mr. Ward was not illegal, but it was in violation of the rules of the strata corporation, and he should have desisted doing so when he was told to. I dismiss any application for declarations or orders with respect to Mr. Ward's attempts to salvage recyclables.

[32] Mr. Ward continues to seek a general declaration that the removal of items from the garbage room is not illegal, a nuisance or a violation of any bylaw or rule of the Wave and submits the chambers judge erred in accepting a decision at a meeting of the Strata Council as a rule. In my view, this issue is moot. There is no longer any such rule, if there ever was, because it was not ratified as required by

s. 125(6) of the *Strata Property Act*. At this time, residents, like others, including guests, are governed only by the criminal and civil law until such time as the Strata Corporation chooses to implement a new rule.

Allotment of Lockers

[33] It is agreed that Mr. Ward was enjoying the use of more than one locker when Cornerstone took over management and began to implement a one owner, one locker policy. When Mr. Ward was advised of that policy, he objected, arguing there was no rule stating that fact, and as the lockers were empty and there was nothing to indicate he was not allowed to use other empty lockers if he chose, he was entitled to use them as part of his rights as an owner. Mr. Ward seeks a declaration that his use of storage lockers on common property was not contrary to any rule or bylaw of the Strata Corporation.

[34] The chambers judge explained why he was refusing that request at para. 41 of his reasons.

> The strata council was initially remiss in not adopting a system of locker allocation from the outset. However, as I have noted, steps are being taken to correct that since Cornerstone has been in place as manager. There should have been a register of lockers, and when one was assigned, a record should have been made. While there was no rule in existence, it must have been clearly understood and known by Mr. Ward that he was not entitled to have as many lockers as he wished. There are enough lockers for the individual residential strata lots and no more. Mr. Ward had a right to one locker and was not entitled to utilize the other lockers for his own purposes, even if they were not being used by others.

[35] Such a declaration is as unnecessary now as it was when the chambers judge was considering the issue. The allotment of lockers in the Wave is governed by s. 76 of the *Strata Property Act,* not by any rule or bylaw of the Strata Corporation. That section provides:

> (1) Subject to section 71, the strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property.
>
> (2) A permission or privilege under subsection (1) may be given for a period of not more than one year, and may be made subject to conditions.

> (3) The strata corporation may renew the permission or privilege and on renewal may change the period or conditions.
>
> (4) The permission or privilege given under subsection (1) may be cancelled by the strata corporation giving the owner or tenant reasonable notice of the cancellation.

[36] As the record makes clear, however many lockers Mr. Ward was using when Cornerstone took over management, he was using them under an informal arrangement authorized implicitly by the Strata Council's failure to have any written policy with regard to the use of lockers or any register of the permissions or privileges it or the predecessor owner-developer had granted to this common property. Any exclusive use permission granted by the owner-developer to one or more lockers had expired. The Strata Council was entitled to renew that permission, or cancel it on reasonable notice. Mr. Ward was obligated to respect that authority in the absence of a bylaw modifying s. 76, if such is possible.

[37] Mr. Ward suggests s. 71 precludes any "change of use" of a storage locker. That provision is directed to a different change of use, for example, a decision to remove the storage lockers from the room they occupy to turn the room into an exercise room; or to turn the space into limited common property. It is not designed as an exception to the very reason the provision was enacted – to provide for a system of allotting storage lockers in a strata building where they are not limited common property or a strata lot.

[38] In these circumstances any error of the trial judge is immaterial.

Unauthorized Claim for Legal Fees

[39] This claim has merit, as the respondent acknowledges. The statement (in para. 18) "that the property manager returned the cheque, as it was not the full amount it believed Mr. Ward owed" may be partially correct, because that may be what the property manager thought. If so, the property manager appears to have been mistaken. The copy of the cheque in the record clearly states that Mr. Ward was making payment for "Special Assessment + Fees June – Sept 2010" in

accordance with the invoice he received, for precisely what he correctly considers the *Strata Property Act* requires.

[40] In the absence of the authority of a bylaw, a demand letter from a solicitor cannot create an obligation on a member of a strata corporation to make payment to a solicitor, nor can it require the solicitors' fees be paid to a strata corporation. It may be that the Strata Council was attempting to avoid more expensive consequences of enforcement, to the Strata Corporation and ultimately Mr. Ward, by giving him an opportunity to avoid the legal fees the Strata Corporation would incur to register a lien for unpaid fees and assessments under s. 116. In that event, s. 118 permits "reasonable legal costs" and disbursements to be added to the lien.

[41] The parties agreed the Strata Corporation does not have a bylaw either permitting it to charge or requiring an owner to pay reasonable legal fees incurred in collecting amounts owing to it before recourse to these provisions. The respondents also agree they do not have the authority to require payment of the charges of a locksmith ($108.26) in the circumstances of this case and that s. 131 does not apply. This provision, on which the chambers judge relied, reads:

> (1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.
>
> (2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

Thus, the collection of $408.26 from Mr. Ward's mortgagee, Coast Capital Credit Union, was improper. The Strata Corporation should either pay that amount to Mr. Ward or credit that amount on his account, currently said to be in arrears and the subject of a registered lien. It has been added to the amount owing on his mortgage. To someone with Mr. Ward's limited personal and financial resources, this is a major error. It should be corrected, if not by agreement, then by a division of this Court.

Unauthorized Entry

[42] At para. 32, the chambers judge explained why the Strata Council had the right to enter and inspect Mr. Ward's unit:

> ... The work he was admittedly doing is within the scope of the strata council's obligations to insure the property under the *Strata Property Act*, and the regulations and bylaws of the strata council authorize inspections of an owner's unit.

[43] There was no error (in para. 34) when the chambers judge suggested Mr. Ward could have avoided the forced entry if he had accepted the advice of Strata Council, sought advice on the matter or done his own research, "as he has shown himself capable of doing." The record contains a letter from Mr. Kearney addressed to Mr. Ward dated 5 March 2010 in which he advised "on behalf of the Strata Council" that it had received notice of a written complaint that Mr. Ward had been "conducting renovations within your unit without the prior written consent of the Strata Council," that this activity was contrary to Bylaw #5(1) (which requires "written approval of the strata corporation before making an alteration to a strata lot that involves .... (g) those parts of the strata lot which the strata corporation must insure under section 149 of the *Act*"), and that he had 14 days within which to dispute the allegation in writing or to request a hearing, failing which the Strata Corporation would consider whether he had breached the bylaw and determine what consequence would follow. They advised those consequences could range from a warning letter to a fine of $200.00.

[44] Under s. 7(1) of the Strata Corporation's Bylaws, Registered at Victoria Land Titles:

> (1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot
>
> ...
>
> (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common
>
> (c) property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of the Act.

[45] By s. 7(2) of that provision, the notice "must include the date and approximate time of entry, and the reason for entry."

[46] Section 149 (1) of the *Act* requires a strata corporation to obtain and maintain insurance on

> (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

[47] The *Strata Property Regulation,* B.C. Reg. 43/2000, made under that *Act* includes in s. 9.1 a definition of "fixtures" that includes for the purposes of s. 149(1)(d) of the Act, "floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items."

[48] Mr. Ward does not agree this provision includes either carpet or paint in the expression "floor and wall coverings". He claims he removed the bedroom carpet, only minimally attached to the floor to prevent wrinkling, and replaced it with floating hardwood flooring with no attachment to the floor. He finds support for that interpretation in *Harvey v. Strata Plan NW 2489*, 2003 BCSC 1316, 18 B.C.L.R. (4th) 103.

[49] In Mr. Ward's view, the removal of carpeting and its replacement with floating hardwood is not a change to the sort of "fixture" for which s. 149 of the *Act* and s. 9.1 of the *Regulation* were enacted. It was, in his view, a decorating decision. If this is so, he submits, he is also entitled to the second declaration he seeks, that the entry was unlawful.

[50] I do not agree. A floating hardwood floor covering a concrete floor and underlay must be included in the common understanding of "floor covering." It may not fit within the common understanding of fixtures. That is, unarguably, the purpose of the extended definition – to bring all "floor coverings" into the term "fixtures" and require strata corporations to insure them. The request for entry and the ultimately permitted entry by Mr. Usatch was authorized. In other words, it was not unlawful in

the sense of “made without authority,” the sense in which the chambers judge seems to have used it.

[51] The chambers judge did not expressly address Mr. Ward’s alternative submission that the entry was unlawful, even if the Strata Council was entitled to make a lawful entry. Because the entry was made with the intent to use force, if necessary, the entry was “forcible” within the meaning of s. 72 of the *Criminal Code*. Why else, he asks, would the respondents have caused the presence of the locksmith, spoken in advance with the police, and advised Mr. Ward the police might be present “to keep the peace?”

[52] Counsel for the respondents answered that fair question with a claim that it is common practice among property managers of strata buildings to attend with a locksmith to gain entrance to units in the event the owner or other resident is not available to open the door to permit entry in an emergency or on notice. If that is so, such a practice would merit review by this Court in an appropriate case.

[53] This is not an appropriate case. The question Mr. Ward would have this Court answer by way of a declaration is whether the property manager’s entry on 11 March 2010 was “unlawful” – in the sense of contrary to the *Criminal Code*, in other words, a crime. Mr. Ward failed in his attempt to privately prosecute Mr. Kearney for that crime. It was Mr. Kearney who formed the intent to gain entrance by picking the lock, if necessary.

[54] Declaratory relief is always discretionary. I cannot envisage any division of this Court granting a declaration that Mr. Kearney or the Strata Corporation are guilty of the crime of “forcible entry” on the record of evidence in this case.

[55] The remaining issue under this heading is the claim for damage to the entry lock. A dispute over an estimated loss of $70 suffered on the attempt to force entry to Mr. Ward’s unit cannot justify the hearing of an appeal.

Production of Documents

[56] By an email dated 19 May 2010, Mr. Ward requested production from the president of the Strata Council of "all highlighted documents and records specified by Sec. 35 of the Strata Property Act as follows." He then states "Please refer to Sec. 36 of the Strata Property Act, **Access to records**, Below". [Emphasis in original.] Highlighted in s. 36 are these words from s. 36(3) "bylaws or rules, in which case the strata corporation must comply with the request within one week."

[57] The property manager responded that there would be a charge of $0.25 for each page copied. The response contains no suggestion he would make any documents available for inspection. It asks for the "date range" for documents. He seems to be treating Mr. Ward's clear request for access to the documents for inspection as a request for copies.

[58] Mr. Ward replied that he had asked that the "requisite documents" be made available for inspection and that he would make copies of any documents he needed. The "requisite documents" he mentions in this email appear to have been identified earlier in the email exchange as the "highlighted documents" mentioned above. Mr. Ward says he received no response.

[59] Mr. Ward continues to seek an order for access to all documents the Strata Corporation is required to maintain by s. 35 of the *Strata Property Act*, for his inspection and copying. The chambers judge dismissed his claim for that remedy, essentially because he had not taken up the Strata Council's invitation to inspect the documents, an invitation Mr. Ward denies having received.

[60] Counsel did not point me to any evidence to support the chambers judge's finding that anyone had invited Mr. Ward to inspect the documents he is clearly entitled to examine. A good start would have been to tell him the bylaws and rules would be made available within the required week at a specified location. While I accept this is an arguable error of fact, it does not give rise to an arguable ground of appeal. Mr. Ward remains entitled to production of documents listed in s. 35 of the

Strata Property Act and the Strata Council remains obliged to make them available for inspection.

Conclusion

[61] The ultimate question on this appeal is whether the interests of justice require the orders Mr. Ward seeks. On the evidence before me, I am satisfied Mr. Ward is indigent, as is evident from the fact I heard his application for an extension of the time to appeal without requiring him to pay the fee for filing that application. I am not persuaded, however, that it is in the interests of justice to either party to grant the requested extension order.

[62] At best, this Court would order production of documents for inspection Mr. Ward specifies in terms and on conditions capable of enforcement, and also payment of the $408.26 it agrees was collected without authority, probably by way of a credit on his current outstanding maintenance fees.

[63] Because of the major importance of even small amounts of money to Mr. Ward and the position taken by the respondents on these applications, I propose a practical solution. Mr. Ward's application for indigent status is granted, limited to that application and the application for extension of time. The extension application is dismissed, the order to be entered upon receipt by this Court of a copy of the order of the Supreme Court and proof of payment of $408.26 to Mr. Ward. Mr. Ward's application for special costs of this application is denied. In the circumstances of this application, I would require each party to pay their own costs.

"The Honourable Madam Justice Huddart"