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## The Case of the Sanctioned Strata Corporation

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The case of *Mitchell v. The Owners, Strata Plan KAS 1202*<sup>1</sup>, a recent decision of the British Columbia Supreme Court, resulted in an unusual order requiring the strata corporation to prepare a communication to the owners acknowledging errors in matters of finance and governance.

Beginning in 2009, the Petitioner challenged a number of spending decisions made by the strata council and special levy and bylaw resolutions approved by the owners.

### Special Levy

Specifically the Petitioner complained that the resolutions for special levies in 2010, 2011 and 2012 did not contain specific information with respect to the purpose of the levy and that the 2010 resolution was amended during the meeting. The 2011 and 2012 resolutions specified that funds were "for the purposes of funding the depreciation report". It appears from the decision that the strata council may have intended to use the funds for capital expenditures identified in an existing depreciation report. The Judge found the stated purposes of the funds unclear.

Section 108(3) of the *Strata Property Act* (the "Act") requires that a resolution to approve a special levy must set out, among other things, the purpose of the levy.

The strata council refused to acknowledge the Petitioner's concerns and sent a letter to her in 2011 stating:

Council feels it has spent enough time on this issue. It will not respond to any further inquiries on your part regarding

the levy or any other resolution passed by the ownership at general meetings.

However, after the Petition was filed, the strata council held a special general meeting to ratify the special levy resolutions from 2010, 2011 and 2012.

The Judge found that the strata corporation was not compliant with the Act and had no justification for the noncompliance. The Judge noted that although the practices had been modified, the change was reluctant and only occurred as a result of the Petitioner's action.

### Unapproved Expenditures

The Petitioner identified a number of unapproved expenditures that she claimed were not permitted by sections 98(3) and (5) of the Act such as expenditures for doors, windows, roof repairs and removing and replacing shrubs.

Section 98(3) of the Act permits an expenditure out of the operating or contingency reserve fund "if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage whether physical or otherwise".

Subsection (5) provides that such an expenditure must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

The Judge noted that to determine whether the expenditures were in compliance with the Act, it was necessary to know whether the expenditures exceeded the minimum amount needed. As this information was

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<sup>1</sup> 2015 BCSC 2153

not provided, the Judge was unable to make a decision on this issue. However, the Judge concluded that the strata council did not engage in any analysis with respect to whether only the minimum amount was spent, but, rather, viewed the amounts spent as minor and simply made decisions to spend the money because it was expedient. The Judge also concluded that the strata council was unduly dismissive of the Petitioner's concerns.

### **2010 Bylaw Amendment Process**

The Petitioner complained that the bylaw amendments put forward at the 2012 AGM were amended without compliance with section 50(2) of the Act which provides that a 3/4 vote resolution may only be amended if the amendment does not substantially change the resolution and the amendment is approved by a 3/4 vote. The Petitioner also complained that the certificate registering the bylaws was flawed. In 2015, new bylaws were approved and properly filed. The Judge noted that the corrections to the bylaws occurred only after the Petition was filed.

### **Request for Documents**

Requests for documents were made beginning in December 2013 with several follow ups. However, the requests were not met until October 2014 and after. The Judge found that the strata corporation had fallen short in its obligation to provide documents as required by sections 35 and 36 of the Act.

### **Treatment of the Petitioner**

The Petitioner described the strata council's response to her concerns as intimidating and harassing and that by distributing only her correspondence to the other owners, the Petitioner was seen in a negative light by other owners. The Petitioner had demanded an apology from the strata manager which she received and had indicated would suffice. The Judge found that the strata corporation's pattern of an apparent lack of willingness to listen to the Petitioner was a current problem that needed to be addressed. However, the Judge stated it would not be appropriate to order the strata corporation to cease its unfair treatment of the Petitioner. Instead the Judge noted that unless the other owners knew of the mistakes that the strata

council had made, there is likely to be continuing confusion about how the business of the strata corporation is to be conducted.

### **Conclusion**

Because of the treatment of the Petitioner, the fact that the complaints had merit and resulted in the strata council amending its practices, albeit, in most cases only after the Petitioner initiated legal action, the Judge ordered that the strata corporation prepare a communication to the owners indicating it was prepared by order of the Court and was prepared as a result of the strata corporation's acknowledged errors. The Judge required that the communication include certain paragraphs of the judgment including the following:

Individual owners need to be able to trust and rely on their councils to operate within that legislative scheme. Reasonable and appropriate inquiries from owners should not be viewed as a nuisance and there is no room for arrogance in the fulfillment of those volunteer roles no matter what the title. There must also be recognition that some owners can become unreasonable and an impossible drain on the patience and time of those who do volunteer.

The communication was required to set out the errors that were made in the special levy, set out the legislation that governs special levies and emergency spending, explain obligations for disclosure of documents and include a synopsis of the requirements for notice of resolutions for special levies and bylaw amendments as well as the process for amendment of such resolutions.

The *Mitchell* decision provides an excellent template against which strata councils can measure their conduct and decisions with respect to compliance with the Act and with respect to the way owners who raise concerns are treated.