
The Case of the Flawed Fine Bylaw

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A recent court decision has held that a bylaw that attempts to apply strata fees received from an owner to fines is unenforceable.¹

In approximately 2012, the strata corporation had levied various fines against Ms. P's account. A total of approximately \$3,000 in fines was levied by the strata corporation. Ms. P refused to pay the fines. During this time however, Ms. P regularly paid her strata fees by way of preauthorized payment from her bank account.

In 2014, the owners in BCS 3648 approved a bylaw that provided that:

(9) Monies received by the strata corporation from an owner on or behalf of the owner shall be applied against the account relating to that owner's strata lot in the following order of priority:

(a) the oldest charge on the strata lot account followed by the next oldest charge and any other charges based on chronological order of original entry of those charges.

After the 2014 bylaw was approved the strata corporation applied the strata fee payment to the fines outstanding from 2012. As a consequence the strata corporation claimed that Ms. P was in arrears of strata fees. The strata corporation proceeded to file a lien against the title to Ms. P's strata lot and to then apply to the court for an order that the strata lot be sold. Ms. P argued that the strata corporation could not use the bylaw to convert unpaid fines into unpaid strata fees.

The Judge noted the distinction between the remedy available to a strata corporation to collect unpaid fines and the remedy available to collect unpaid strata fees. The Judge stated that a strata corporation may register a lien against an owner's strata lot for unpaid strata fees and specifically noted that pursuant to section 116(3)(c) of the *Strata Property Act* a strata corporation may not register a lien in respect of fines.

The Judge found that the ordinary remedy for unpaid fines is to start an action against the owner usually in Provincial Court and if judgment is obtained, the strata corporation may execute against any property of the owner including the strata lot. The Judge commented that although an action in Provincial Court would probably have been the more common way to proceed, the Judge noted that the Civil Resolution Tribunal now has jurisdiction over such matters.

At the hearing, the strata corporation argued that the procedures to collect the fines are cumbersome and expensive. It argued that the lien procedure for unpaid strata fees was more efficient.

The Judge considered the terms of the preauthorization payment form which stated as follows:

By signing this form I/We hereby authorize [management company] on behalf of the strata corporation to debit my/our account monthly, covering monthly strata fees due to the strata corporation.

¹ *The Owners, Strata Plan BCS 3648 v. Podwinski*, 2016 BCSC 2253

The strata corporation argued that regardless of the interpretation given to the preauthorization payment form, the owner is bound by the bylaws. The Judge held that the effect of the strata corporation's argument was to preclude owners from contesting or refusing to pay fines while continuing to pay strata fees. The Judge also found that to give effect to the strata corporation's interpretation would render the bylaw contrary to the intent of the *Strata Property Act*. The Judge emphasized that the strata corporation may not register a lien for fines and that an owner may choose to contest fines.

The Judge held that the bylaw was unenforceable to the extent that it precluded an owner from stipulating that strata fees were being paid and fines were not. The Judge held that no strata fees were outstanding and dismissed the strata corporation's application for an order to sell the strata lot. Costs were awarded to Ms. P.

The Judge stated that the bylaw was unenforceable to the extent that it prevented an owner from stipulating how payments should be applied and that the bylaw should be read down to avoid the result of allocating strata fee payments to fines. Thus a bylaw that applies payments to the oldest amount first is not automatically unenforceable. It cannot be used to pay fines with funds intended to be used for the payment of strata fees. However, based on the decision, such a bylaw could arguably be relied on to apply strata fees to the oldest strata fees rather than the month in which the strata fee was received or special levies owing on the account.

For strata corporations that have a bylaw similar to the bylaw in BCS 3648, the strata corporation should obtain legal advice if it has questions in respect of how the bylaw should be applied.