

Headline: The Case of the Unauthorized Alteration

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A decision to alter common property without the approval of the Strata Corporation proved costly for a strata lot owner.

In the case of *Sidhu v. The Owners, Strata Plan VR 1886*, an owner sued the Strata Corporation for allegedly withdrawing its approval of alterations to the common property which the owner claimed it had received.

The Strata Corporation counter-claimed against the owner on the basis that no approval for the alterations had been given.

VR 1886 is a mixed use strata corporation comprised of residential and commercial strata lots. Mr. Sidhu owned a strata lot from which he operated a drop off service for drycleaning and laundry. Mr. Sidhu intended to expand his business to provide cleaning services on site and applied to the Strata Council for permission to proceed with renovations of his strata lot. Although Mr. Sidhu claimed that at the Strata Council meeting in 2004 the Strata Council gave him permission to proceed with renovations, the Strata Council insisted that the approval was only approval in principle. At the Strata Council meeting, the Strata Council indicated that the owner must provide professional drawings as well as copies of all of the permits required for the renovations.

Despite the fact that the owner had not provided the Strata Corporation with drawings, the owner proceeded to carry out renovations to the interior of the strata lot as well to the electrical, gas and plumbing systems. In addition the owner cored six holes through the exterior concrete wall adjacent to his strata lot to permit venting of steam and other emissions for his new drycleaning plant. The holes were directly below a residential balcony.

To determine whether the owners would accept the significant changes that had been made to the common property the Strata Council put forward a $\frac{3}{4}$ vote resolution at a general meeting of the Strata Corporation. The owners defeated the resolution.

In an attempt to resolve the issue of the alterations the Strata Council proposed that the owner and the Strata Council enter into a "testing protocol" which would permit the owner to operate the equipment in order for the Strata Corporation to determine the extent of the emissions from the vents. The owner refused.

When it became apparent to the owners that the matter could not be resolved, the owners approved a $\frac{3}{4}$ vote resolution to bring legal action to have the alterations removed. At the same time, Mr. Sidhu sued the Strata Corporation for damages.

Although the evidence provided by the owner conflicted with the evidence of the Strata Council members, the Judge accepted that the owner had attended only one Strata Council meeting and at that time had provided only a preliminary drawing of the proposed alterations. The preliminary drawing did not include

any indication that holes would be cored in the concrete wall. The Judge concluded that the owner had been advised at the Strata Council meeting that the approval was in principle and that he was required to obtain professional drawings and permits before he could proceed.

The Judge concluded that even though there was no objective evidence about the emissions from the vents, the appearance of the vents and the nature of their function, which was to expel emissions from the drycleaning plant were sufficient to constitute a significant change in the use and appearance of common property. The Judge agreed with the Strata Council that a $\frac{3}{4}$ vote of the owners was required before such a significant change in the use or appearance of common property could occur.

The Judge found that Mr. Sidhu had breached the Strata Property Act and the bylaws of the Strata Corporation by making alterations that required the approval of the Strata Council and the owners.

The Judge ordered Mr. Sidhu to provide detailed drawings showing the state of the alterations that had been made to the electrical, gas and plumbing systems within the strata lot and the common property. The Judge permitted the Strata Corporation to inspect the systems and, if the drawings were not done or were not consistent with their inspection, the Strata Corporation could obtain new documents at the owner's cost. The Judge also ordered that the Strata Corporation was at liberty to restore the exterior outside wall of the development at the sole cost of the owner. The owner was also required to pay for the cost of restoring the common property as well as reimbursing the Strata Corporation for engineering expenses and the legal expenses that the Strata Corporation had incurred prior to the beginning of the litigation.

The Judge granted a permanent injunction preventing the owner from altering common property in the future without the consent of the Strata Council or owners depending on the nature of the alteration and ordered that the owner be prevented from dealing with the strata lots by selling or encumbering them until the common property, including the exterior vents, were restored.

The Judge ordered the owner to pay the Strata Corporation's costs of the litigation at Scale B.

The *Sidhu* decision emphasizes the importance for owners to obtain the permission of the Strata Council and a $\frac{3}{4}$ vote of the owners within the Strata Corporation if the alteration to common property represents a significant change in use or appearance. A failure to do so can prove to be very costly.

Although the Judge did not specifically comment on the immediate response of the Strata Council, once the unauthorized alterations were observed, it is possible that had the Strata Council delayed in taking action, the Judge may not have been as willing to order the removal of all of the alterations. If a Strata Corporation wishes to be successful in having unauthorized alterations removed, the Strata Corporation should be able to demonstrate that they acted quickly in advising the owner that the alterations were unauthorized. Confirmation that the alterations would not be approved by the owners is also likely a significant factor for the Judge who is being asked to make an order that the alterations be removed.