

**Headline: The Case of the Noisy Neighbour**

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Resolving complaints about a disruptive owner who continually contravenes the bylaws and interferes with others' use and enjoyment of their strata lot and common property is difficult for every strata council. Often strata councils feel that they are powerless to enforce bylaws particularly if the owner ignores the fines that have been levied.

The recent case of *Strata Plan LMS 2768 v. Jordison* considered whether the Court can order an owner to sell their strata lot.

In *Jordison* the Judge considered the Jordisons' conduct in relation to the strata corporation's bylaws that prohibited owners from creating a nuisance, causing unreasonable noise and interfering with others' use and enjoyment of a strata lot or common property. The Judge concluded that the conduct of the Jordisons, which included obscene language and gestures, interference with the activities of others, spitting at other residents and unacceptably loud and unnecessary noise, was in breach of the bylaws and caused a nuisance, unreasonable noise and unreasonably interfered with the rights of others who are entitled to enjoy peace in their strata lots and on common property.

The Judge noted that repeated financial penalties assessed by the strata corporation over several years had been ineffective in modifying the continuing disruptive behaviour. The Judge relied on section 173(c) of the *Strata Property Act* (the "Act") which provides that the Supreme Court may:

- (c) make any other orders it can considers necessary to give effect to an order under paragraph (a) or (b)

The Judge ordered Ms. Jordison to list her strata lot for sale. Additionally, the Judge ordered that while in possession of the strata lot prior to the sale, Ms. Jordison and her son must abide by the Act and the bylaws of the strata corporation and that they were specifically restrained from making loud noises, such as was described in the Affidavits supporting the Petition, making obscene gestures or uttering any abusive or obscene comments directed at any member of the strata corporation or their families.

Ms. Jordison appealed the Judge's order.

The Court of Appeal considered whether the provisions of the Act gave the Court the authority to order an owner to sell their strata lot.

The Court of Appeal concluded that the relevant section of the Act was section 173. Section 173 provides:

On application by the strata corporation, the Supreme Court may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

The Court of Appeal concluded that section 173(a) and (b) of the Act authorized the Court to make mandatory or prohibitive orders concerning obligations imposed by the Act or a strata corporation's bylaws. In other words, the order of the Court must either require a person to comply with the Act and bylaws or prohibit a person from contravening the Act and bylaws of a strata corporation. The Court of Appeal found that section 173(c) which permits a Court to make other orders to give effect to a mandatory or prohibitive order could only be used to enhance the effectiveness of the mandatory or prohibitive orders. The ability to make "any other order" could not be considered as an authority that was independent from the authority to order compliance or prohibit a breach of the Act and bylaws of a strata corporation.

The Court of Appeal overturned the portion of the Judge's decision ordering Ms. Jordison to sell her strata lot.

The Court of Appeal did uphold the Judge's order that Ms. Jordison and her son abide by the Act and strata corporation's bylaws. The Court of Appeal also commented that a failure to observe such an order may be the basis for a future application seeking an order to sell the strata lot thereby creating the possibility that such an order may be granted if an owner refused to abide by the original Court order to comply with the strata corporation's bylaws.

Even though the Court of Appeal refused to uphold the order that Ms. Jordison sell her strata lot the Court of Appeal's decision does hold out hope that such an order may be available in limited circumstances.

The Court of Appeal left open the possibility that, if an owner fails to comply with an order of the Court to cease contravening the Act or bylaws, the Court may order the owner to sell the strata lot as a means of enforcing the previously made order.

What this means however is that a strata corporation must firstly apply to the Court to obtain an order for compliance with the Act or bylaws or an order prohibiting the contravention of the Act and bylaws before an application requiring an owner to sell their strata lot may be made. Although owners are often reluctant to consider applying to the Court to enforce a strata corporation's bylaws, owners must recognize that such an application is an important step in obtaining compliance and will be absolutely necessary if the owners believe that an order to sell a strata lot is the only solution to the continued breach of the strata corporation's bylaws.