

Headline: The Case of the Noisy Neighbour - Again

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In the Fall 2012 issue of the Journal, we considered a case about a disruptive owner and the attempt by the strata corporation to obtain a Court order requiring the owner to sell her strata lot.¹ In November 2011, the strata corporation applied to the Court for an order that the owner sell her strata lot because of a continuing failure by the owner and her son to abide by the strata corporation's bylaws. The Judge found that the conduct of the owner and her son which included obscene language and gestures, spitting at other owners, and unacceptably loud and unnecessary noise was in breach of the strata corporation's bylaws, caused a nuisance and unreasonably interfered with the use and enjoyment of strata lots and common property by others. After noting that repeated financial penalties had been ineffective in convincing the owner and her son to modify their behaviour, on January 12, 2012, the Judge ordered the owner to list her strata lot for sale. The Judge also ordered the owner and her son to abide by the *Strata Property Act* (the "Act") and the strata corporation's bylaws.

The Court of Appeal overturned the portion of the Judge's decision ordering the owner to sell her strata lot for the reason that the Act limited the Court's authority to that of either requiring a person to comply with the Act and bylaws or requiring that a person refrain from contravening the Act and bylaws. Other orders, such as an order to sell a strata lot, could only be made in order to give effect to or enhance an order to either comply with or refrain from contravening the Act and bylaws. The Court of Appeal commented that if the owner failed to comply with the Judge's orders to abide by the Act and bylaws, such a failure may be the basis for a future application to sell the strata lot.

Following the January 2012 order, the owner and her son's conduct did not change. The strata corporation returned to Court in March 2013 seeking a declaration that the owner and her son had breached the January 2012 order and requesting that the strata lot be sold. The Judge considered evidence that established that the conduct of the owner and her son had remained similar to that which led to the initial order and that the owner and her son had breached the January 2012 injunction to comply with the Act and refrain from making loud noises, obscene gestures and uttering abusive or obscene comments to others in the development. The Court concluded that the owner and her son intentionally, willfully and in a blameworthy fashion disobeyed the order of the Court and that their behaviour constituted contempt.

The Judge noted that the usual penalty for contempt was either a financial penalty or incarceration or both. The Judge considered that the owner would likely not pay any fines imposed by the Court and that in any event the imposition of a financial penalty would not necessarily resolve or terminate the ongoing breaches. The Judge also considered that incarceration would likely only stop the breaches for the period of time the owner and her son were incarcerated and more importantly that the behaviour, although reprehensible, was not serious enough to warrant incarceration. The Judge then considered an order that the strata lot be sold and concluded that such an order could be made in order to give effect to the injunction previously ordered.

¹ *The Owners, Strata Plan LMS 2768 v. Jordison*, 2012 BCSC 31

The Court ordered the immediate sale of the strata lot and that the owner and her son give up vacant possession within 30 days of the order.

The owner subsequently applied to the Court to stay the order pending an appeal. A stay was not ordered and a further appeal of that decision to the Court of Appeal was unsuccessful.

The Judge's decision in this case² is significant. The case establishes that an order for vacant possession can be obtained provided that an owner is in contempt of a previous Court order. Some strata corporations may be disappointed that in order to require a disruptive owner to vacate a strata lot and force the sale of the strata lot, the strata corporation must already have obtained an order from the Court and further the owner must be in contempt of the Court by failing to comply with the orders' terms. However, in view of the seriousness of requiring an owner to vacate and sell a strata lot, it is not unreasonable that every effort be made to convince the owner to comply with the strata corporation's bylaws before the owner is forced to vacate and sell their strata lot.

A further significant element of the *Jordison* case is that it confirms the importance of the strata corporation documenting breaches and taking all means of bylaw enforcement action in advance of initiating legal action. The Judge referred to 25 affidavits that documented the conduct of the owner and her son, many which corroborated the evidence of other owners. Additionally, the Judge recognized that the enforcement efforts of the strata corporation were unsuccessful. Strata corporations that are dealing with disruptive owners and owners who fail to comply with the strata corporation's bylaws should ensure that other owners and the strata council accurately record the various incidents of the disruptive behaviour and that the strata council makes every effort to modify the behaviour through the levying of fines in compliance with the Act. In the event such enforcement action proves unsuccessful, the strata corporation should apply to Court for an order that the owner abide by the Act and bylaws. If an owner is still unwilling to modify their behaviour, it is very possible that a Court may order the owner to vacate the strata lot. Knowing such a possibility exists may be sufficient to convince owners that compliance with the Act and bylaws is appropriate.

² *The Owners, Strata Plan LMS 2768 v. Jordison*, 2013 BCSC 487