
CANADA / JUDGMENT

Birchall v. The Owners, Strata Plan BCS61

2015 BCSC 1029

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 1029 Birchall v. The Owners, Strata Plan BCS61

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Birchall v. The Owners, Strata Plan BCS61,

2015 BCSC 1029

Date: 20150616

Docket: S137180

Registry: Vancouver

Between:

K. Joan Birchall

Plaintiff

And

The Owners, Strata Plan BCS61

Defendant

Before: Master Muir

Reasons for Judgment

Plaintiff appearing on her own behalf:

K. J. Birchall

Counsel for the Defendant:

S.M. Armstrong

Place and Date of Hearing:

Vancouver, B.C.

April 24, 2015

Place and Date of Judgment:

Vancouver, B.C.

June 16, 2015

I. introduction

- [1] This is an extensive application by Ms. Birchall for answers to outstanding requests from discovery, production of documents and various other orders.
- [2] I initially heard this matter on January 5, 2015 and directed counsel for the defendant to provide a response to a 24-page document setting out the plaintiff's position regarding the orders sought. That response, contained in a letter from counsel for the defendant of January 26, 2015, set out the defendant's position and provided additional documents and responses to some of the outstanding questions.
- [3] The defendant takes the position that all relevant matters have now been responded to.
- [4] The underlying action is a claim by Ms. Birchall that strata council, which represents the defendant, has acted in an oppressive fashion. There are numerous specific instances set out in the amended notice of civil claim, including mishandling of a parking spot application, improper allocation of fines, financial disarray, failing to carry out repairs to the common property in a timely manner, inaccurate recording of meetings, and breaches of the plaintiff's privacy rights. Ms. Birchall seeks orders that these actions be remedied and seeks the appointment of an administrator for the governance of the strata.
- [5] Many of the matters addressed by the plaintiff in her notice of application appear to me to stem from a misunderstanding of the function of examinations for discovery and the pre-trial document production process. It is understandable that a self-represented litigant would have such confusion. The defendant repeatedly took the position that many of the matters being pursued by Ms. Birchall were irrelevant, but decided to respond to many of them anyway, to try to avoid this application.
- [6] I have tried, both at the hearing and to a certain extent in these reasons, to explain to the plaintiff the difference between seeking facts and admissions at the discovery stage and seeking "truth" by using cross-examination at trial. I would recommend, however, that Ms. Birchall use the free legal resources that are available so that she can answer any remaining questions she may have about litigation practice. Some of those include:
 - a) The courthouse library at 800 Smithe Street,

- b) Justice Access Centre at 800 Hornby Street,
- c) www.supremecourtbc.ca, and
- d) www.clicklaw.ca

II. analysis

- [7] Many of the requests addressed in Ms. Birchall's notice of application were previously answered to her satisfaction, or were duplicates or repetitive of other requests. If the numbers referenced in the notice of application are not specifically addressed here, they were not pursued or were dealt with under another section. Any question or any matter not specifically dealt with herein is dismissed.

A. Paragraph 1 of the Notice of Application - Outstanding Requests from Examination for Discovery

- [8] Paragraph 1 of the notice of application seeks an order for responses to various outstanding requests from the examination for discovery of the defendant's representative, Ms. DesBrisay. I will use the same identification as was used by the plaintiff in her notice of application.

1. 1(a)(4)

- [9] This request was for Ms. DesBrisay to advise who informed her of a "cease and desist" order or letter issued to Ms. Birchall. The defendant's response was that Ms. DesBrisay does not recall. Ms. Birchall does not believe this and submits it is improbable.

- [10] Regardless, the question has been answered. Whether a witness is telling the truth is a matter that is to be addressed at trial. The application is dismissed.

2. 1(a)(8)

- [11] The next request is that the defendant identify when Larry Davidson ("Mr. Davidson") was asked to join council. The answer that has been provided is that he was asked to join strata council on February 8, 2012, when another member resigned due to illness.

- [12] Ms. Birchall's position is that the minutes of the strata council meeting of February 8, 2012 indicate that Mr. Davidson was asked to join strata council prior to this date. The defendant stands by its answer.

- [13] Again, it seems to me that the question having been answered, this amounts to an issue of credibility that is properly investigated at trial. The application is dismissed.

3. 1(a)(11)

- [14] The next request is to advise of the steps that had been taken by council to investigate the complaints about Ms. Birchall's use of the parkade gate.

- [15] The answer originally provided was that the members of strata council could not advise, as they were not on council at the time. Ms. Birchall says six out of seven of the present council members were on strata council at the time.
- [16] Further, Ms. Birchall is concerned that on discovery, Ms. DesBrisay said that the complaints were made verbally and now the defendant has produced two redacted emails with such complaints. She notes that one of these two emails was dated 2014, but that the relevant time period of the complaints was 2012.
- [17] She also questions which position is accurate - that the complaints were made verbally or that they were made by email. In any event, she points out that neither verbal nor email complaints are sufficient to allow a fine to be levied and that if written complaints were not provided, that proper procedures were not followed in her situation. She questions how a fine could properly have been levied when no written complaint was received.
- [18] Ms. Birchall also complains that the emails were heavily redacted.
- [19] First, as to the production of documents after the discovery, counsel for the defendant correctly points out that there is an ongoing obligation on the defendant regarding production of documents, and as such documents were located after the discovery, they were produced at that time. She says they were overlooked due to counsel error. Counsel also advised that the documents were redacted to remove the name of the complaining party.
- [20] Ms. Birchall wants to know which position the defendant relies on. That is, whether the complaints were made verbally or by email. Counsel advised that Ms. Birchall should look to the most recent information provided.
- [21] Ms. Birchall wants confirmation that there were no letters of complaint received. She says Mr. Davidson told her that he had reported her twice.
- [22] As it appears that the strata council members may largely be the same group of people then as now, I will require an answer to the question, "What steps were taken to investigate the complaints of Ms. Birchall's use of the parkade gate?"
- [23] As to the documents produced, counsel has advised that no other documents have been located. In my view, the issue of whether these verbal and/or email complaints were sufficient to allow a fine to be levied on Ms. Birchall is more properly argued at trial.
4. 1(a)(13)
- [24] This request is for production of documents, minutes or emails dealing with strata council obtaining information on an invoice for damage to the plaintiff's balcony. In response, the defendant has produced certain new documents and identified other documents that it says are relevant from its list of documents and states that, to the best of their knowledge, all documents relating to the alleged damage to the plaintiff's balcony have been produced.

- [25] In addition, the defendant says that Ms. Birchall has been completely compensated by the gutter cleaning company for the damage and fines paid by Ms. Birchall have been refunded, thus, the defendant's position is that this has been dealt with and is irrelevant.
- [26] Ms. Birchall complains that the documents that have been produced are not responsive to her request and do not indicate that an investigation was conducted. She points out that on discovery, Ms. DesBrisay said that an investigation would have been conducted. Ms. Birchall says that one of the answers given must have been a lie and she wants to know how to proceed.
- [27] As all documents the defendant can locate relating to this issue have been produced, this seems to me to be an issue of credibility. Credibility is not a matter for examinations for discovery. If Ms. Birchall believes that the lack of documentation is an indication that no such investigation was done, she can seek to cross-examine on this issue at the trial. Hence, the application is dismissed.
5. 1(b)
- [28] The next request is another question regarding the damages to Ms. Birchall's balcony in 2011. This question is specifically for production of correspondence that strata council had with Design Roofing regarding the damage to the balcony for the period from December 2011 for 6 or 7 months.
- [29] The initial response from the defendant indicated there were no such documents. As noted above, there was some production of documents after the initial request, and the defendant says that all documents relevant to the balcony issue have now been produced.
- [30] Ms. Burchall again insists that one of the responses is a lie. This is a topic for cross-examination at the trial. The application is denied.
6. 1(c)
- [31] This request is for production of emails or correspondence from strata council to Cheryle Pampu and Bruce Adanac to alter the time of Ms. Birchall's council hearing on November 29, 2012 from 7:30 to 7:00. Ms. Birchall said this hearing time change at the last minute caused her great inconvenience.
- [32] The defendant's answer is that there are no such documents. Ms. Birchall says this indicates that strata council was abdicating its responsibility to the property manager. This is an argument for trial. As no additional documents exist, the application is denied.
7. 1(d)

[33] Ms. Birchall reported being assaulted on the strata property on June 6, 2009 and seeks all documents related to that incident. This apparently had to do with a dispute over someone parking in her parking spot. She requested all documents concerning that incident. Ms. Birchall said that initially the defendant indicated a letter would be sent to the person in question, but then later on said they would not send such a letter.

[34] The defendant has produced some documents and says there are no other relevant documents. Ms. Birchall disputes this, saying there must have been communication about this among strata council members and she wants that produced.

[35] The defendant stands by the response that there are no such documents. There is no evidence that other documents exist, other than Ms. Birchall's conviction that, if the defendant is telling the truth, there must be something. This is an issue of credibility and the application is denied.

8. 1(f)

[36] The next request is for particulars of when Ms. Birchall was put on a "no response" list by strata council. She says this is evidenced by the fact that when she asked for a parking permit for her son when he came to visit, she got no response, but when a neighbour asked for such a permit she was provided with one. In addition, she says that two property managers told her she was on that list.

[37] The defendant's answer is that there are no documents relating to Ms. Birchall being on a "no response" list, and that no such list exists. One document was identified showing that for a specific hearing, the property manager asked that he be allowed to handle all dialogue with Ms. Birchall.

[38] Ms. Birchall submits that the answer given is not truthful. As there are no documents, this is a credibility issue. The application is denied.

9. 1(g)

[39] The request is for all documents that deal with keeping Ms. Birchall off of strata council. The answer is that there are none. Ms. Birchall says she has letters from strata council denying her a position. The defendant admits that Ms. DesBrisay did not want Ms. Birchall on strata council. Other than that, the defendant's position remains that there are no such documents. The application is therefore denied.

10. 1(h)

- [40] The request is for all emails and correspondence relating to the approval of expenses incurred over budget. Ms. Birchall's position is that extra drainage costs were incurred that were twice the contingency reserve allowance. She wants documentation of the decision to allow those extra expenditures without calling a special general meeting. She points to an email from the president to the property manager, asking if strata council can avoid a special general meeting. She wants all documents including the response to that email.
- [41] The answer from the defendant is that there are no such documents. Documentation regarding the financing of the work and the accounts to which it was charged has been provided, but the defendant says nothing else exists regarding the authorization. Again, as there are no documents, this is a credibility issue and the application is denied.
11. 1(i)
- [42] This is a request for all correspondence concerning the "secret garden" and fines relating to it, as well as whether remediation work was being done by the strata or by the owner of the unit in question. Ms. Birchall also seeks a list of the building by-laws broken by that owner.
- [43] The defendant's response was that as this is a matter to do with another unit, they cannot provide the information that Ms. Birchall sought. They do point to certain documents that have already been produced dealing with the "secret garden" and its remediation.
- [44] Ms. Birchall's point appears to be that: 1) she had to pay her own remediation work whereas someone else had the remediation work done at the expense of the strata, and 2) she was fined for infringing the building by-laws and someone else in the complex who infringed the building by-laws was not.
- [45] That the remediation work was done at the expense of the strata is not disputed. As Ms. Birchall's damage was completely compensated by the gutter cleaning company and her fines were revoked, this is of such marginal relevance that I see no need to infringe on the confidentiality of dealings with another owner. This application is denied.
12. 1(j)
- [46] This request is for all emails and strata council correspondence dealing with the decision not to help the plaintiff with the damages to her balcony caused by the gutter cleaners.
- [47] Although some documents have been produced, Ms. Birchall complains that none of those deals with the decision she says was made by strata council not to help her with this damage. She also points to the response from counsel for the defendant that directs Ms. Birchall to "refer to documents previously produced, including, but not necessarily limited to document #1.44". She says that counsel for the defendant has not spoken to all of the representatives that might have information. Ms. Birchall suggests that the defendant is intentionally withholding documents.

- [48] The defendant's response is that all documents relating to this matter have been produced. This is another instance where Ms. Birchall is assuming that documents must exist or a decision must have been made that was documented. There is no evidence that that is the case. There is no evidence that persuades me that the defendants are withholding documents. The application is dismissed.
13. 1(k)
- [49] Ms. Birchall seeks documents, particularly an engineering report, showing certain trees that were removed in 2013 needed to come down. She submits that none of the documents produced identify any need to either immediately remove the trees or remediate the drainage.
- [50] The defendant says that all documents have been produced and they have found no engineers report that identifies that the trees need to be removed. The matter is one for cross-examination at the trial of this matter. The application is denied.
14. 1(l)
- [51] The request is to advise how much was spent on drainage beyond the \$15,000 from the contingency fund. The defendant advised in its counsel's letter of January 26, 2015 that the amounts were \$29,358 in or about September 2013, and additional works approved in March 2014 in the amount of \$5,323.50. The defendant also advised from which budget line accounts the payments were made.
- [52] The plaintiff complains that this response differs from the one she received in 2014. She wants to know which response is correct. Counsel for the defendant advised that Ms. Birchall should assume the most recent response is the one the defendant will rely on.
- [53] The plaintiff also points out that Ms. DesBrisay's evidence was to the effect that budget line items were beefed up to allow these payments without requiring a special general meeting. Ms. Birchall questions whether this is legal. That is a question for argument at trial, not the discovery process. The application is denied.
15. 1(r)
- [54] As noted above, there were several duplicate requests or requests that were resolved with counsel's letter of January 26, 2015. The next request dealt with by Ms. Birchall in oral submissions was identified as request 1(r).
- [55] This request is for Ms. DesBrisay to use better efforts to remember dates that are said by Ms. Birchall to be proven and that she should admit receiving documents that Ms. Birchall says are proven to have been sent to her.
- [56] These are not the proper subject of examination for discovery and are therefore dismissed.
16. 1(s)

- [57] The request is for the document showing that strata council gave its permission for a letter to be sent to Ms. Birchall with respect to her liability for items on her balcony, rather than fining her. There are some emails relevant to this issue, but Ms. Birchall says she wants to see evidence that strata council made this decision rather than the president. She says there is an email where the president was telling strata council that she had instructed the property manager to send this letter.
- [58] The defendant's response is that all correspondence sent to her would have been through the property management company at the direction of strata council. The defendant says there are no other documents. This is a credibility issue and no further response is required.
17. 1(t)
- [59] This request is for documents and correspondence between strata council, the property manager and Ms. Birchall with respect to four letters Ms. Birchall wrote to strata council regarding an escrow account.
- [60] The defendant responded in a letter to Ms. Birchall that all such documents had already been produced in its list of documents. Ms. Birchall questioned that and document numbers have been provided, as well as a copy of a further letter from the property manager to Ms. Birchall dated November 30, 2012. Ms. Birchall says that none of these documents deal with the escrow account.
- [61] The defendant's position is that it has produced what it has and that it does not have any additional documents regarding the escrow account. There is no evidence that there are any additional documents and this application is denied.
18. 1(u)
- [62] Ms. Birchall seeks copies of letters from the property manager that certain minutes of strata council meetings indicate were to have been sent to her. Ms. Birchall says she did not receive these letters.
- [63] The defendant's response was that there were multiple decisions made in the minutes referred to and they did not specifically know what Ms. Birchall was seeking. Ms. Birchall has now identified this request with more specificity, and counsel for the defendant has consented to make inquiries to see what documents exist.
- [64] I therefore order the defendant to produce any correspondence from the property manager to Ms. Birchall stemming from the decisions documented in the minutes from strata council meetings of April 6, 2011, p. 3, bullet 10, June 16, 2011, p. 3, bullet 9 and August 17, 2011, p. 4, bullet 2.
19. 1(v)

- [65] The plaintiff seeks advice as to when the property management company, Crosby Property Management Ltd. ("Crosby"), first joined the Condominium Home Owners Association ("CHOA").
- [66] The September 5, 2014 response letter from counsel for the defendant says that according to CHOA records, Crosby's membership was approved on September 5, 2012 and its name was changed on the membership to First Service Residential in July 2013.
- [67] Ms. Birchall says the strata council minutes of May 15, 2012 say Crosby is a longstanding member of CHOA. She says the director of Crosby said the same thing at the March 2012 annual general meeting. She says she would appreciate an honest answer.
- [68] The defendant says the answer given in their letter of September 5, 2014 is the best they can do. The plaintiff says they have to do better. She says Crosby could not have been a longstanding member of CHOA if they are not on the list of members. Perhaps that is the answer.
- [69] This is another issue that is not going to be resolved by an order for a further response on discovery. Ms. Birchall can seek to pursue this on cross-examination at the trial of this matter.
20. 1(w)
- [70] The question said to have been left outstanding, as with many of these requests, does not appear to have been formally left on the record. The letters of Ms. Birchall on this point appear more as argument. She has now clarified that the requests that are the subject of this application are two:
- a) Were her guests considered when the hearing time referenced in 1(c) above was changed? and
 - b) Why did it take strata council from December 2012 to June 14, 2013 to respond to her letter about property damage and then levy a fine?
- [71] I have reviewed the discovery segments provided in evidence and I am of the view that both of these questions were answered. One of the answers that Ms. DesBrisay gave regarding guests was that "hearings don't involve guests". From that, I conclude that it can be inferred the answer to the first question is no. I do not believe further response is required.
- [72] As to the second question, the answer given was that the strata council did not impose a fine sooner because Ms. Birchall had commenced a small claims action against the strata and they were advised not to levy any fines against Ms. Birchall until the small claims action was settled. Again, this answer seems sufficient.
21. 1(y)

[73] This is a request for production of an email indicating strata council's consent for the parking spot for which Ms. Birchall was on the wait list to be given instead to Mr. Davidson.

[74] The defendant says they do not have this consent and question if they ever had it. The defendant's position is that the strata does not deal with the lease of parking stalls. Stalls are leased by the individual owner, not by the strata. The application is denied.

B. Paragraph 2 of the Notice of Application - Requests Made in Writing

1. 2(b)

[75] By letter of June 15, 2014 to counsel for the defendant, Ms. Birchall advised that she had learned that Ms. DesBrisay had spoken to strata council to summarize the examination for discovery for them.

[76] Ms. Birchall takes great issue with this. She is of the view that Ms. DesBrisay is attempting to influence strata council and spread disinformation.

[77] Ms. Birchall demands a copy of the address made by Ms. DesBrisay to strata council.

[78] Further, Ms. Birchall says that strata council breached its own policies by hearing Ms. DesBrisay on short notice and allowing her to speak to them for more than 5 minutes. She says strata council policy requires such a request be made in writing and made well before the meeting. Ms. Birchall says she had given notice to strata council of her intention to attend the same meeting, and thus argues that it was wrong for strata council to allow Ms. DesBrisay to attend that meeting.

[79] By letter of June 26, 2014, counsel for the defendant took the position, quite properly in my view, that Ms. Birchall was not entitled to any such summary. She said:

You are not entitled to receipt of a copy of Ms. DesBrisay's summary of the lawsuit. That information is subject to privilege given that you have commenced a lawsuit against the Strata Corporation and you examined Ms. DesBrisay as a representative of the Strata Corporation.

[80] Ms. DesBrisay was the representative put forward by the defendant to submit to examination for discovery in this lawsuit. Strata council represents the defendant for the purposes of instructing its lawyer to defend against Ms. Birchall's action. Those discussions, as between strata council and its representative (Ms. DesBrisay) for the purpose of gathering information about the lawsuit are privileged, and Ms. Birchall is not entitled to what she seeks. The application is dismissed.

[81] There was a confusion around whether Ms. Birchall was also seeking Ms. DesBrisay's address, which she was not. That has been resolved.

2. 2(c)

[82] Further, in the letter from counsel for the defendant to Ms. Birchall dated June 26, 2014, counsel took the position that Ms. DesBrisay was asked by strata council to speak about the discovery.

[83] Ms. Birchall wants to know who asked Ms. DesBrisay to speak to strata council.

[84] That, as it turns out, was an error. It was in fact Ms. DesBrisay who asked to attend the May 29, 2014 strata council meeting to summarize the examination for discovery for them. The defendants say this was not a formal request by an owner to address council, but was an informal reporting. This was not further pursued by Ms. Birchall at today's hearing and is therefore dismissed.

3. 2(d)(6)

[85] Ms. Birchall seeks documents evidencing discussion between strata council members regarding the decision to fine her \$200 per week for items on her balcony.

[86] The defendant says all documents relevant to that issue have been produced and there are no such documents evidencing discussions between council members. There is no evidence that such documents exist. This application is dismissed.

4. 2(d)(9)

[87] Ms. Birchall seeks strata council correspondence regarding what she asserts was the decision to ignore her complaint about Mr. Davidson harassing her by honking his car horn at her seven times.

[88] The defendant says that they have produced the complaint and, because of privacy legislation, cannot produce anything directed to another owner without their consent or a court order.

[89] I have reviewed the second amended notice of civil claim. I do not see that these documents would serve to prove or disprove a material fact. In my view, they are of marginal if any relevance, and I decline to order the production sought.

5. 2(d)(10)

[90] The request is for correspondence from strata council dealing with Ms. Birchall's cheque dated June 18, 2012 in the amount of \$1,000, which was for payment of fines.

[91] The response from the defendant directed Ms. Birchall to documents, "including but not limited to" three documents already listed, which Ms. Birchall says are not relevant to this request.

[92] Ms. Birchall submits that the suggestion in the phrasing used by counsel for the defendant is that there are other documents that are being intentionally withheld.

[93] The defendants say that all documents that exist have been produced. There is no evidence of any additional relevant documents. This application is dismissed.

6. 2(d)(11)

[94] Apparently, there was a mediation held in the Provincial Court between these parties on March 12, 2013. At that mediation, Mr. Davidson indicated he would survey the owners of the strata for their satisfaction with respect to management. I gather he has not done so.

[95] The position of the defendant is that the survey discussed was in the context of a mediation that did not result in an agreement. The mediation itself is confidential, and Mr. Davidson's "promise" to survey the owners is not binding in the circumstances.

[96] Ms. Birchall says she asked the mediator twice if Mr. Davidson would have to follow through on this "promise" to survey the owners if the mediation failed, and Ms. Birchall says she was told he would.

[97] There are many reasons why I cannot order Mr. Davidson to fulfill this promise. The most obvious is that mediations are without prejudice, "off the record" sessions so that parties can advance positions and inducements to attempt to come to a settlement. Such inducements will only be forthcoming if they can be made without repercussions if the litigation does not settle. That purpose would be undermined if such inducements were held to survive the mediation.

[98] The defendant advises there are no documents relevant to this issue. The application is dismissed.

7. 2(g)

[99] Similarly to 2(d)(6) Ms. Birchall seeks documents dealing with the fine levied against her in June 2012 of \$200 per week for material not removed from her balcony. She says there must have been correspondence between strata council members about this issue. She submits that a fine could not have been levied without discussion and documentation.

[100] The defendants say all relevant documents have been produced. There is no evidence that any such documents exist. This application is dismissed.

C. Paragraph 3 of the Notice of Application - The defendant is to comply with the Rules

[101] Ms. Birchall complains again in this paragraph about many of the issues raised in paragraphs 1 and 2 of her notice of application. Those are dealt with above.

- [102] In addition, Ms. Birchall complains in this paragraph of her notice of application about many other things, including alleged delays by the defendant, attempts she says were made by the defendant to derail the process, late production of materials, and failure to attend to the entry of orders. Many of the allegations are about the actions of counsel for the defendant.
- [103] I have not seen any evidence of misconduct on the part of counsel for the defendant. Ms. Birchall's expectations of how a lawsuit should be conducted are quite out of touch with the reality of litigation. That is understandable as she is not experienced in these matters, but it does appear to me that both the defendant and its counsel have been attempting to respond to Ms. Birchall's many requests as efficiently as they can - even though in many cases the requests are not contemplated by the Rules of Court or are beyond the bounds of the normal requirements for production of documents and responses to discovery questions.
- [104] These matters are all in the past and have been overridden by events. I will not make a general order for compliance with the Rules. All parties are required to comply with the Rules.

D. Paragraph 4 of the Notice of Application - The defendants are to make responses clear

- [105] Again, this section repeats many matters dealt with elsewhere in these reasons. The plaintiff also complains that the defendants have not cooperated in the discovery process, that the witness was evasive at the examination for discovery, that irrelevant answers were given at the discovery, that the witness and counsel acted inappropriately at the discovery by responding slowly and by smiling.
- [106] The defendant denies being uncooperative, says they have gone out of their way to answer requests, many of which are, in their view, irrelevant or marginally relevant.
- [107] There is one specific matter identified as 4(x) in the plaintiff's materials. This is a request of Ms. Birchall for proof that a letter of the defendant dated June 18, 2012 was sent to her by registered mail, courier or email. The defendant's response is that the strata council's notes indicate the property manager said she would mail, email and hand deliver the letter to Ms. Birchall, but they have no documentary evidence to confirm that the letter was sent. As there is no evidence, this application is dismissed.
- [108] I agree with Ms. Birchall that in response to a particular question, it can be confusing to simply be advised that the documents have been produced, or that the issue is answered by a certain group of documents, but not limited to that certain group. I am satisfied, however, that the defendants are trying to advance this lawsuit. I do not believe that there has been any intentional confusion of the issues. Accordingly, I will not make any order in this regard.

E. Paragraph 5 of the Notice of Application - The defendant is to number the documents in its list of documents

[109] I understand that an amended list of documents has been provided that deals with this issue. This application is dismissed.

F. Paragraph 6 of the Notice of Application - The defendant, particularly Janet DesBrisay, is to cease and desist efforts to influence owners and council

[110] Ms. Birchall complains that Ms. DesBrisay sat directly behind her at the annual general meeting ("AGM") and spoke three times, giving disinformation to the owners, despite being told to stop by the property manager.

[111] Ms. Birchall complains that at the AGM, Ms. DesBrisay said that Ms. Birchall was suing herself, that she was attacking strata council, and that Ms. DesBrisay complained about the amount of work that strata council had to do concerning the lawsuit brought by Ms. Birchall. Ms. Birchall says that all Ms. DesBrisay is doing is spreading disinformation and raising unnecessary concerns amongst the owners. Ms. Birchall cites many instances in support of this assertion.

[112] I made it clear to Ms. Birchall at the hearing in January in this matter and again when this came before me in April, that Ms. DesBrisay is not a party to this lawsuit and it is not appropriate to seek an order against her. Even if I had the jurisdiction to enjoin her, which I, as a Master, do not, I would not make an order preventing her from giving her opinions about the lawsuit to the other owners.

[113] As to the rest of this application, Ms. Birchall does not appear to understand that the group of strata owners is the defendant in this action, represented by strata council. It would be ridiculous to make an order that the owners could not influence themselves, or their elected representatives, about the lawsuit.

[114] Ms. DesBrisay, as one of those strata owners, has as much right to her opinion and her vote regarding the lawsuit as do the other owners. This application is dismissed.

G. Paragraph 7 of the Notice of Application - The defendant is to produce all documents requested, indicate clearly and precisely where they are located and not imply that there may be more documents not produced

[115] The specific document requests are dealt with above. This also refers to matters dealt with in paragraphs 3 and 4. As I explained to Ms. Birchall, there is an ongoing obligation on the defendant and counsel to produce additional relevant documents if any are located.

[116] I will order that the few responses I have ordered in these reasons be provided within 14 days and that the defendant is to provide an amended list of documents if necessary.

H. Paragraph 8 of the Notice of Application - The defendant is to refrain from stating they will consider whether requests are worthy of a response

[117] The defendant is well within its rights to refuse to respond to questions or demands for production of documents that they decide are irrelevant, privileged or otherwise not proper. Counsel is certainly allowed to consider whether requests will be responded to. This application is dismissed.

I. Paragraph 9 of the Notice of Application - The defendant is to state why requested documents are not being produced instead of ignoring the requests and/or they will consider if the request is germane to the lawsuit

[118] The specific questions addressed by Ms. Birchall in her affidavit have been responded to or Ms. Birchall has located the answer herself. The application is dismissed.

J. Paragraph 10 of the Notice of Application - The defendant is to make known the names from whom information is sourced when making decisions regarding strata issues, fines, and their decisions to influence other owners

[119] I was advised that the matters in this section have been dealt with. The application is dismissed.

K. Paragraph 11 of the Notice of Application - The defendants are to conduct themselves in a manner which indicates the solemnity of the lawsuit, including obtaining and signing orders made by Judges and Masters

[120] The plaintiff complains in paragraphs 11(a) - (c) of the notice of application that the defendant refused to accept documents on examination for discovery that had the plaintiff's notes on them. She says they advised her of this on the doorstep, when they could have said something sooner, and she believes they were trying to derail the discovery process.

[121] The defendant is within its rights to refuse to have documents marked as exhibits on discovery that have the plaintiff's notes on them. Since the defendant could not have known in advance that the plaintiff would seek to use such documents on discovery, I cannot fault them for not advising the plaintiff sooner. Even if she had produced such documents in her document production, I don't accept that this application has merit. The application is dismissed.

[122] In paragraph 11(c) the plaintiff wants an answer to the questions, "Why not mention it before today?" and "Were you trying to upset me at the Discovery before it began today?" These are not appropriate questions either for an examination for discovery or otherwise. This application is dismissed.

[123] In paragraph 11(d), the plaintiff wants the defendant to provide a response to her written complaint about an alleged episode of harassment by Mr. Davidson. This does not appear to be a request for an existing document, but rather for the defendant to respond to her complaint as they have refused or failed to do so. That is the function of strata council, it is not the function of the defendant herein. If there has not been any response, that failure is something the plaintiff can seek to raise in cross-examination or argument at the trial.

L. Paragraph 12 of the Notice of Application - The defendant is to produce orders from Judges and Masters and sign them as requested

[124] I gather that all orders made in this action have now been dealt with and entered.

[125] For Ms. Birchall's information, if there is a dispute about the terms of an order, or if a party fails to endorse an order, the proper application is to the Registrar to settle the terms of the order in accordance with Rule 13-1(11) of the Rules.

III. Conclusion

[126] I note that in dealing with many of the issues here I have suggested that they are issues for cross-examination. In doing so, I have not made any finding or even given consideration to whether those matters are appropriate for cross-examination in the sense that they are relevant to the issues. That is for the trial judge to determine and the scope of cross-examination will, of course, be determined by the judge at that time. The plaintiff should not take my comments as licence to pursue irrelevant matters at the trial. My intent herein was only to identify matters that are appropriate for the discovery process.

[127] The orders granted are:

- a) 1(c): An answer is to be provided to the question, "What steps were taken to investigate the complaints of Ms. Birchall's use of the parkade gate?"; and
- b) 1(u): The defendants will produce any correspondence from the property manager to Ms. Birchall stemming from the decisions documented in the minutes from strata council meetings of April 6, 2011, p. 3, bullet 10, June 16, 2011, p. 3, bullet 9 and August 17, 2011, p. 4, bullet 2.

[128] Those responses are to be provided within 14 days of these reasons and an amended list of documents produced if necessary.

[129] As will be evident from these reasons, this application was extensive, with significant duplication, and the plaintiff sought many irrelevant documents and responses. The positions taken by the plaintiff were often misguided. The material in support of the application consisted of four large binders.

[130] The extremely limited success of the plaintiff on this application is, to me, an indication of her lack of understanding of the litigation process. Regardless, in relentlessly pursuing the smallest and most marginally relevant and even irrelevant details, the plaintiff has required the defendant and its counsel (and the plaintiff herself) to expend enormous amounts of time and resources.

[131] It is the case that costs are granted to the side that has substantial success. Here the plaintiff has met with virtually no success and has pursued many things fruitlessly despite the fact that the defendant was clear in the responses provided before the application. The defendant will therefore have its costs of this application in any event of the cause.

"Master Muir"

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