

CANADA / JUDGMENT

Dubas v. The Owners of Strata Plan VR. 92

2018 BCCA 243

COURT

British Columbia Court of Appeal

DECIDED

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2018 BCCA 243 Dubas v. The Owners of Strata Plan VR. 92 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Dubas v. The Owners of Strata Plan VR. 92, 2018 BCCA 243 Date: 20180523 Docket: CA45286 Between: Jonas Gary Dubas Appellant (Petitioner) And Mary Maxey Buckerfield, Gregory Neil Carlisle, Patrick John Malpas, Paulo Alexandre Martins, Gwendolyn Joan Boilevin, Elizabeth Krassnig, Sandra Gail McCrone, Aini Marjatta Kajaan, Brendan McCabe, Shirley Kathleen Knight, Karen Lynne Balshaw, Barrie Edward Balshaw, Joseph Zoltan Bako Respondents (Petitioners) And The Owners of Strata Plan VR. 92, The Members of the Strata Council of Strata Plan VR. 92 Respondents (Respondents) Before: The Honourable Madam Justice Fenlon (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated May 11, 2018 (Buckerfield v. The Owners of Strata Plan VR. 92, 2018 BCSC 839, Vancouver Docket No. S184934). Oral Reasons for Judgment The Appellant, appearing in person: J.G. Dubas Counsel for the Respondents The Owners of Strata Plan VR. 92, The Members of the Strata Council of Strata Plan VR.92: M. Jhaj Place and Date of Hearing: Vancouver, British Columbia May 23, 2018 Place and Date of Judgment: Vancouver, British Columbia May 23, 2018 Summary: Mr. Dubas applies for an interim injunction preventing the Strata Council from holding a meeting to vote on listing the entire strata property for sale. He also applies for substituted service. Held: application for injunction dismissed; application for substituted service granted. It is not in the interests of justice to grant the injunction. Any alleged harm in holding the vote before the appeal is not irreparable. Some of the concerns raised can be addressed at the proposed meeting, and in any event, even if the owners of the strata vote in favour of listing the property, protections are in place to ensure the views of opponents to the sale will be considered before a final sale.

[1] FENLON J.A.: This is an application for an interim injunction pending the hearing of the appeal. The underlying appeal is from the dismissal of an application to enjoin the respondent Strata Council from holding a meeting on May 28, 2018, to vote on listing the entire strata property for sale.

[2] The application is brought today by Mr. Dubas, an owner of one of the strata units, on his own behalf and on behalf of other owners who oppose a sale.

- [3] In the court below, the chambers judge, in addition to refusing to grant the injunction sought, refused to make a declaration that the Strata Property Act, S.B.C. 1998, c. 43, requires any vote to list the property for sale to pass by a super-majority of 75-80%. The judge held that a simple majority sufficed. That decision, too, is the subject of the underlying appeal.
- [4] Initially, at the outset of this hearing, I expressed concern that the relief sought on this application -- an injunction preventing the vote from proceeding, except in accordance with a 75-80% majority -- amounted to granting the substantive relief sought on the appeal, something a single justice in chambers does not have the authority to do. However, I need not decide that issue as I have concluded that the application can be determined on the basis of the test for the granting of an interlocutory injunction.
- [5] The parties agree on the well-settled three-part test. First, I conclude that there is an arguable question here. In other words, there is some merit to the appeal and whether the Strata Property Act requires a 75-80% majority vote before a strata property as a whole can be listed for sale. Second, in terms of irreparable harm, Mr. Dubas submits that the strata property known as Granville West is not in distress in any way, that the property is located in a desirable neighbourhood, and that nothing will be lost if the vote is postponed. He submits that irreparable harm will result if the vote is allowed to proceed before the appeal is heard because that would essentially render the appeal hollow or moot. He says that if the vote proceeds and the property is listed, there will not be much point in proceeding to an appeal to prevent the vote from occurring. However, in my view the action of the Strata Council could be found to be taken without authorization if Mr. Dubas' interpretation of the Strata Property Act is correct and a 75-80% vote is a mandatory prerequisite. In other words, there could be remedies available in that situation to return the Strata to a "list-free situation".
- [6] The second irreparable harm relied on by Mr. Dubas is the fact that having the property listed for sale is extremely upsetting for those owners who oppose the property being sold. He says those owners will unnecessarily experience the stress of the property being listed when that could be avoided entirely if the vote is held off, the appeal is heard, and the appellants are successful.
- [7] I accept that the vote and potential listing of the property for sale is distressing for those who view the property as their home, and have lived there for many years, some of whom are elderly and would much prefer to stay where they are. I take that all into account. However, it is noteworthy that this is not a matter of the status of the property itself changing in any legal sense, nor is it a matter of those owners' units being altered or changed in some irreparable way. Their legal position in terms of their ownership of their units and their control over their property is not irreparably altered by the listing of the property.
- [8] The third harm Mr. Dubas identifies is that once the listing occurs it is going to be harder for the individual owners to sell their units because it creates uncertainties. He submits buyers who are looking for a long term place to live do not want to buy into a strata if within a year

or two their unit could be sold out from under them by a majority vote. As I noted during the submissions, for those opponents who want to stay where they are, an impediment to selling on their own unit is not a real harm in the short term. In any event, if they did want to sell, that uncertainty and the effect that it has on potential buyers is already in place. That is so because the potential for selling all of the units together to a developer has been discussed for approximately a year, according to the affidavits before me, and would be expressed and recorded in the minutes of the Strata meetings which are open to all prospective buyers.

- [9] The fourth harm identified is that the owners opposed to the listing do not want people coming into their units to view the property which is currently a right granted to the realtor in the draft listing agreement. In my view, it is unlikely that individual viewings of the units owned by those opposed to the sale will be necessary given that the intention is to market the property for its land value for redevelopment at higher density. In any event, the draft listing agreement is to be reviewed at the meeting on May 28, 2018, and those concerns can be raised and presumably addressed at that meeting.
- [10] The fifth item raised in terms of irreparable harm is the legal fees that are being incurred to proceed with the listing. So far \$1,400 has been spent for legal advice on a potential sale. A retainer of \$3,500 has been provided. There is the prospect of a further \$4,000 being required to take things to the point where the Strata might actually be voting on an offer. As I understand from the materials, that \$4,000 would be taken out of next fiscal year's legal budget.
- [11] Whether or not this is a correct description of the amount of legal fees and when and from which budget they will be paid, the fees are in my view a matter of dollars and cents. If the appeal is successful and the owners opposed to listing the Strata property for sale are subject to paying legal costs, that could be addressed through a monetary award. The fees are not, therefore, an indicia of irreparable harm.
- [12] As for the Strata, it raises the prospect that an injunction preventing the vote from occurring until the appeal is heard could defer that decision by five to seven months -- assuming an appeal is heard in early September of 2018. That delay creates the harm of uncertainty for those who want to sell. They will not know whether this deal is actually going to occur, and will not even get to the preliminary stage of deciding whether there is sufficient interest to list the property to solicit interest from developers, and to figure out what price might be offered. It also creates the potential for the Strata to have to do some maintenance and incur fees to do so which might be unnecessary if the property is to be sold. I note that I do not consider this factor a particularly strong one, given that we are talking about a five to seven month delay and the evidence did not suggest that there were any immediate urgent repairs or maintenance that needed to be done.
- [13] In short, there is some harm identified on each side -- for Mr. Dubas and others opposing the listing, and for the Strata Council and those supporting the listing.

- [14] I turn now to the balance of convenience. In my view, looking at the harm each side has raised, the harm relied on by Mr. Dubas does not amount to the kind of irreparable harm that suggests that it would be an injustice not to grant an injunction at this stage. There are further factors that favour denying the injunction.
- [15] First, the vote has yet to occur. The material filed by Mr. Dubas in support of his application contains an affidavit by one of the opponents saying that the potential legal costs of the proceeding, which were identified, had caused some owners to say that they now do not want to sell. There is, accordingly, the potential that the 50% threshold identified by the judge in chambers below might not be met -- although Mr. Dubas candidly stated in his submissions that he did not think they would be able to achieve that. If fewer than 50% vote in favour, the listing agreement will not be entered into. If that is the case, there presumably will not be any further need for the appeal. If more than 75% vote in favour, then I take it Mr. Dubas would not object to the property being listed.
- [16] The second factor I consider is the listing agreement which is currently in draft form. Revisions to the agreement may address some of the concerns raised by the opponents on this application about the showing of their units.
- [17] The third factor I consider is that the property cannot be sold without 80% of the owners voting in favour of that occurring once an offer has been received. Even then, the court must approve the sale and consider the objections of those not in favour. The listing agreement as drafted makes that clear.
- [18] For all of these reasons, I am not satisfied that the interests of justice require an injunction to be granted pending the appeal. I will make the order sought for substituted service. I order that service on the Strata and the property owners may be effected by serving counsel for the Strata corporation on this application today. That order goes by consent.
- [19] In my view the costs of this application should be in the cause. "The Honourable Madam Justice Fenlon"

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