

CANADA / JUDGMENT

Irvine v. The Owners, Strata Plan K451

2023 BCSC 2195

COURT

Supreme Court of British Columbia

DECIDED

14 December 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 2195 Irvine v. The Owners, Strata Plan K451

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Irvine v. The Owners, Strata Plan K451,

2023 BCSC 2195

Date: 20231214

Docket: S135659

Registry: Kelowna

Between:

William Irvine and Carla Irvine

Plaintiffs

And

The Owners, Strata Plan K451

Defendants

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Plaintiffs:

T.M. McCaffrey

Counsel for the Defendants:

M.D. Fischer

R. Raniga

Place and Date of Trial/Hearing:

Kelowna, B.C.

November 21, 2023

Place and Date of Judgment:

Kelowna, B.C.

December 14, 2023

Introduction

- [1] There are two applications before me. The first was filed by the plaintiffs on April 11, 2023, seeking orders against the defendant, The Owners, Strata Plan K451 ("Strata") and its individual council members, past and present, that they be found in contempt of court for failing to comply with the order of the Civil Resolution Tribunal ("CRT") on April 20, 2022 ("CRT Order"), requiring the Strata to replace three tempered glass panels ("Glass Panels") the plaintiffs had installed outside the entrance to their strata unit by October 20, 2022 ("Deadline"). The plaintiffs also say that contrary to the provisions of the Strata Property Act, S.B.C. 1998, c. 43 [SPA], the Strata engaged in contemptuous activity by improperly charging the cost of replacing the Glass Panels and legal fees associated with this action, to its contingency fund into which the plaintiffs were required to pay.
- [2] The Strata eventually replaced the Glass Panels on June 20, 2023. The plaintiffs say that the eight-month delay past the Deadline requires contempt sanctions by this Court because it was improper, intentional, and in deliberate defiance of the CRT Order.
- [3] The plaintiffs also seek special costs against the Strata on a full indemnity basis saying that they should never have had to take steps to enforce the CRT Order.
- [4] The Strata filed a notice of application on November 7, 2023, seeking, inter alia, an order that the relief sought against its council members personally be dismissed, an order pursuant to s. 57(2) of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25 [CRTA], extending the time for replacing the Glass Panels to June 23, 2023, and special costs against the plaintiffs.
- [5] The Strata says that it always intended on fully complying with the CRT Order and took all reasonable steps to comply by the Deadline. It says that the delay in having the Glass Panels installed was caused by the unforeseen circumstances that prevented it from completing the work necessary to install the Glass Panels, and given that they were replaced as soon as reasonably possible, this application should never have been brought. It seeks special costs on a full indemnity basis against the plaintiffs.

- [6] The Strata also says that it was entitled to borrow funds from its contingency fund to pay for the installation of the Glass Panels and legal costs and will be taking steps to repay those funds through a special levy it seeks to have approved at its upcoming annual general meeting. That special levy will be an assessment against all Strata properties save the plaintiffs.

Summary of Decision

- [7] For the following reasons, the plaintiffs' application is dismissed and the defendant's application is allowed, with Scale B costs.

Overview

- [8] The Strata comprises 19 units, of which Strata lot 1 is owned by the plaintiffs ("SL 1"). The plaintiffs installed the Glass Panels over SL 1's main entrance as an unapproved alteration to limited common property. They did so to provide a transparent cover and protection from weather.
- [9] To facilitate required roof repairs/replacement to the Strata's units, the Glass Panels were removed by the Strata but not replaced. On March 31, 2021, the plaintiffs filed an application with the CRT seeking an order that the Strata be required to replace the Glass Panels.

- [10] On April 20, 2022, the CRT ruled in the plaintiffs' favour stating that:

. . . Within 6 months, the strata replace the roof coverings removed from the limited common property adjacent to strata lot 1 with tempered glass coverings, similar to those removed.

- [11] At the May 3, 2022 Strata council meeting, the CRT Order was discussed. The meeting minutes state:

Council accepts the ruling of the Tribunal and will begin the process to cover these spaces at SL1. The original design of the complex did not include entranceway covers over the rancher style units. Over the years, some owners installed their own coverings. Due to this ruling, all owners must now pay to have the coverings of SL 1 reinstalled. Council believes the entranceways over other units of the same design must also be included. This will be costly and come in the form of a levy.

Once the new design plan for the complex is in place, it will specify the style, type of glass required as well as the correct installation method for these areas. Council will initiate the required levy to fund this work. Since the Tribunal has ruled under SPA 72(8) that council must do this. . . . Under the order, Council has six months to complete this work.

- [12] The Strata admits, that despite its best efforts to comply with the CRT Order, the Deadline was missed. It says that the delay was unavoidable due to a number of prohibitive circumstances outside of its control, including: i) hiring a contractor who had agreed to complete the work by the Deadline and who then withdrew at the last minute; ii) difficulties securing another contractor; iii) glass panel supply chain issues; and iv) a previously

unknown issue that came to light requiring structural upgrades to support the weight of the Glass Panels, which were not addressed in the original unapproved alteration made by the plaintiffs. As it was entitled to do, the Strata relied on experts who concluded that the manner in which the plaintiffs had installed the previous glass panels was not structurally sound nor in accord with the B.C. Building Code. Despite these obstacles, the Strata says that it took prompt steps to minimize any delays and made reasonable efforts to comply with the CRT Order.

- [13] Mr. Dan Moe, is the Strata's council member charged with overseeing the replacement of the Glass Panels. He states that, although the Strata was disappointed and surprised by the CRT Order, council members unanimously accepted the ruling, decided not to appeal, and began taking steps to comply with it by the Deadline. Inquiries of contractors were initiated, quotes obtained, and a contractor hired. Shortly before the Deadline, it became clear that the Glass Panels could not be replaced by the Deadline because of circumstances beyond the Strata's control, not the least of which was that the hired contractor withdrew on late notice. Attempts to find other contractors to perform the work by the Deadline were unsuccessful because of the small size of the project, glass shortages, labour shortages and supply chain issues at the time.
- [14] Mr. Moe also states that a further reason for the delay was that the Strata was informed by a contractor and an engineer that additional work would be required to reinforce the structural framework to support the weight of the Glass Panels and to allow for the proper installation of flashing. Further, the Glass Panels themselves could not be ordered until the structural framework was rebuilt and reinforced and proper measurements for the Glass Panels taken. The contractor also recommended that the replacement of the Glass Panels be undertaken at the same time as planned major renovations to the exterior of all the Strata units.
- [15] In February 2023, because of what Mr. Moe understood would be a three-four-month delay in obtaining the Glass Panels due to supply chain issues, arrangements were made for the installation of polycarbonate panels as a temporary measure until the Glass Panels could be measured and sourced.
- [16] Mr. Moe states that the Strata continued to take active steps to fully comply with the CRT Order by installing remedial bracing that it understood was required before the Glass Panels could be installed.
- [17] Despite these measures, the plaintiffs maintain that the Strata deliberately dragged its feet and failed to comply with the CRT Order by the Deadline. They say that instead of timely compliance, the Strata improperly decided to combine the work with planned major renovations in order to reduce costs. They say that, accordingly, the Strata's dilatory and deliberate behaviour is deserving of rebuke. They say they had no choice but to enforce the CRT Order because of the Strata's lack of communication and response. They seek a finding of contempt and special costs for having to enforce the CRT Order in this Court. In their

notice of application as against the council members personally, the plaintiffs cite the following as a legal basis:

- (7) The Council Members have acted in bad faith by failing to carry out the necessary repairs to the Roof Coverings. By doing so, the Council Members have acted contrary to section 31 of the Strata Property Act, SBC 1998 Chapter 43. Whereby strata council members conduct themselves dishonestly and in bad faith, strata council members could be exposed to personal liability.

Discussion

- [18] I intend to make this brief. Civil contempt is an enforcement power rather than a remedy of first resort. It is derived from the court's inherent jurisdiction to control its own process and it is not to be reduced to a mere means of enforcing orders: *Carey v. Laiken*, 2015 SCC 17 at para. 36.
- [19] Contempt requires an element of defiance or willful inaction. It requires proof beyond a reasonable doubt that the party alleged of contempt deliberately engaged in such conduct: *The Law Society of British Columbia v. Sino-Canadian Legal Services Inc.*, 2013 BCSC 421, at paras. 25 and 29.
- [20] It is a power meant to be used cautiously and with great restraint. Contempt may be justified or excusable. Not every breach will be contempt and especially not trifling ones.
- [21] The plaintiffs have the burden of establishing the elements of civil contempt beyond a reasonable doubt. The plaintiffs must prove that the Strata disobeyed the CRT Order in an intentional, inexcusable, and culpable manner.
- [22] The plaintiffs have fallen far short of meeting that burden. Although not in perfect compliance with the CRT Order, and the Strata might have done things differently in hindsight, I am easily satisfied that there was no contemptuous behavior on the part of either the Strata or its council members. For the most part, I conclude that the delay in meeting the Deadline was because of an unanticipated increase in the scope of the work required, contractors not being available, and supply chain disruptions.
- [23] The evidence is that neither the Strata nor its council members intended to defy or disregard the CRT Order. Indeed, the weight of the evidence is to the contrary. The Strata followed their contractors' recommendations to install the Glass Panels together with the overall major renovation because it made practical and economic sense. The steps they took to resolve the issue were reasonable, proportionate and an attempt to solve the issue in a cost-effective manner for all Strata owners. The Strata regularly communicated with the plaintiffs through Strata council minutes, verbally and in emails of the efforts being made to complete the installation.

- [24] While I can accept that the plaintiffs were upset that the Deadline was not met and they subjectively felt it necessary to enforce the CRT Order by filing it in this Court, it should have been apparent to them that a contempt application was bound to fail. The application should have been abandoned once the Glass Panels were re-installed in June 2023. The strong inference I draw is that the plaintiffs are attempting to use this Court's civil contempt process for an improper purpose and with ulterior motives.
- [25] I find it noteworthy of comment that in their notice of application, the plaintiffs found it necessary to name not only the Strata itself, but all individual council members and seek sanctions against them personally, including an order that:
3. . . . a warrant be issued for the arrest of the Council Members, and that each individual be brought before the court on the next court day following the arrest to be dealt with on an inquiry to determine whether a breach has been committed by the Strata and Council Members;
 4. An order imposing a fine against the Strata and Council Members for contempt of court . . . jointly and severally; . . .
- [26] Seeking such a remedy against individual Strata council members in these circumstances was extremely unfortunate. I am not persuaded by the plaintiffs' attempt to dilute matters by suggesting that at the time the notice of application was filed, they did not have all the material they now have and did not know whether the individual council members were acting in bad faith, and that they advised the Strata's council that they would not be pursuing relief against the individual council members.
- [27] I accept the Strata's evidence that after the original contractor it had retained cancelled the job shortly before the Deadline, the Strata took immediate steps to contact nine other contractors, all of whom refused. The contractor it finally found, and its engineer, advised the Strata that the structure holding the Glass Panels needed upgrading, the work could not be scheduled sooner and there were supply chain issues outside of its control, all of which forestalled the completion of the project as contemplated by the CRT Order.
- [28] While perhaps less than perfect (which is not the standard), the Strata's decision was certainly not contemptuous or defiant. While there were communication issues between the parties (caused in part by an incorrect return email address noted on the plaintiffs' counsel's letterhead), the plaintiffs knew in February 2023, at the latest, that the replacement of the Glass Panels was in progress and of the extenuating circumstances involved.
- [29] Further, other than the delay itself, there is no evidence of any damages caused to either the plaintiffs or SL 1.

[30] Given that the plaintiffs chose to file the CRT Order in this Court, it has the same force and effect as a Supreme Court order: CRTA, s. 57(2). As such, this Court has the jurisdiction to extend the six-month deadline imposed by the CRT Order: Supreme Court Civil Rules: R. 22-4(2). The Strata's application to extend the Deadline to June 23, 2023, is granted.

[31] I will now comment on what the plaintiffs contend was "double contemptuous conduct" by the Strata when it made use of its contingency reserve fund to pay the costs of the Glass Panels and the Strata's legal fees as "bridge" financing pending its annual general meeting. The plaintiffs refer to s. 167(2) of the SPA which reads:

167(2) The expense of defending a suit brought against the strata corporation is shared by the owners in the same manner as a judgment is shared under section 166, except that an owner who is suing the strata corporation is not required to contribute.

[32] The plaintiffs say that the use of the contingency fund was an encroachment of funds they had paid into, thereby violating s. 167(2).

[33] I decline to make that finding. Section 95(4) of the SPA allows the Strata to temporarily borrow money from its contingency fund pending a special levy being authorized that the expense be paid by the remaining owners. The special levy authorization was set to be addressed during the Strata's annual general meeting on November 28, 2023, and the loan was slated for repayment from the special levy against every Strata lot save the plaintiffs.

[34] Accordingly, the plaintiffs' suggestion that the Strata's temporary borrowing of monies from its contingency fund was contemptuous, is misguided.

Summary

[35] The plaintiffs' application is dismissed.

[36] The Strata seeks special costs against the plaintiffs. There is a long-standing practice of awarding special costs to a successful applicant in a civil contempt proceeding: *I Buy Beauty LLC v. Dong*, 2023 BCSC 1352 at para. 30. That practise appears to be to award special costs against the party who was found to be in contempt. That is not the case here.

[37] Awarding special costs against a party who has been unsuccessful in obtaining an order of contempt remains discretionary. Although close, I am not persuaded that the plaintiffs ought to be sanctioned with an order of special costs against them.

[38] The Strata will have its Scale B costs throughout.

"G.P. Weatherill J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/21/2023BCSC2195.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/irvine-v-the-owners-strata-plan-k451-2023>

Prepared on 29 October 2026 · Esheria