

CANADA / JUDGMENT

Martin v. The Owners, Strata Plan NW 177

2021 BCSC 1123

COURT

Supreme Court of British Columbia

DECIDED

16 April 2021

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

2021 BCSC 1123 Martin v. The Owners, Strata Plan NW 177

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Martin v. The Owners, Strata Plan NW 177,

2021 BCSC 1123

Date: 20210416

Docket: S205022

Registry: Vancouver

Between:

Orphee Martin

Petitioner

And

The Owners, Strata Plan NW 177

Respondent

- and -

Docket: S229890

Registry: New Westminster

Between:

The Owners, Strata Plan NW 177

Applicant

And

Orphee Martin

Respondent

Corrected Judgment: The text of the judgment was corrected on the front page on September 21, 2022

Before: The Honourable Madam Justice Iyer

(appearing by videoconference)

On judicial review from: A Decision of Civil Resolution Tribunal, dated March 3, 2020 (2020 BCCRT 285)

Oral Reasons for Judgment

In Chambers

The Petitioner, Appearing in Person by videoconference:

O. Martin

Counsel for the Respondent appearing by videoconference:

G.S. Hamilton

Counsel for the Civil Resolution Tribunal appearing by videoconference:

Z.N. Rahman

Place and Date of Hearing:

Vancouver, B.C.

April 9, 2021

Place and Date of Judgment:

Vancouver, B.C.

April 16, 2021

[1] THE COURT: All right, I am going to give my reasons for judgment. I reserve the right to edit them for clarity. I will not change anything of substance.

Overview

[2] This case arises out of a longstanding dispute over an awning or structure that the petitioner, Orphee Martin, built over the deck of her strata unit at Kent Manor in White Rock, B.C., without the requisite authorization from the Strata Council.

- [3] The matter first came to court in 2016, when Ms. Martin sought a court order permitting her to install an awning. Prior to that hearing and without authorization, Ms. Martin installed an awning. The Court dismissed Ms. Martin's application and Ms. Martin removed the awning. However, she installed a new awning in November 2017, again without authorization. The Strata Council commenced proceedings before the Civil Resolution Tribunal ("Tribunal") and was successful. Ms. Martin now applies for judicial review in this court. In turn, the respondent, Owners Strata Plan NW 177 ("Strata"), applies to have Ms. Martin found in contempt of court for violating the Tribunal's order that she remove the awning.
- [4] The two central issues are whether I should set aside the Tribunal's decision and whether I should find Ms. Martin in contempt of court.

Factual background

- [5] Ms. Martin purchased her strata unit in November 2013. When she bought it, her third-floor balcony unit had only a small overhang above the balcony, unlike the other third-floor units in the building, which had more cover. The building had just undergone an extensive building envelope renovation. Shortly before Ms. Martin became a registered owner, the Strata had unanimously amended its bylaws to add the following:

8.0 DECORATION AND IMPROVEMENT

8.1 No Owner, Tenant or Occupant . . . shall permit the any of the following to be done:

- (a) the enclosure, whether partially or fully, of a balcony or patio;
- (b) the installation or placement of plastic, glass or other material on a balcony or patio for any purpose, including without limiting the generality of the foregoing, to block wind or sun from entering the balcony or patio.

8.2 No Owner, Tenant, or Occupant shall, without the written consent of the Strata Corporation, install or cause to be installed shades, awnings, window or balcony guards, screens, ventilators, heating or cooling units, in or about the Premises.

- [6] One difference between 8.1 and 8.2 of the bylaws is that 8.1 is a complete prohibition, whereas 8.2 provides for authorization by the Strata. Although I used the term "awning" to describe what Ms. Martin installed, the term "partial enclosure" is equally apt, so both 8.1 and 8.2 apply.
- [7] In March 2016, Ms. Martin applied to the Strata for permission to install a fixed-glass cover on her balcony. The Strata refused her request. Its reasons were that the bylaws prohibit awnings, the awning would likely penetrate the building envelope, and that the awning would disrupt the building's appearance. Ms. Martin then petitioned this court for an order authorizing her to build it.

- [8] In her decision of September 7, 2016 ("Decision"), Justice Dardi declined to make that order. Justice Dardi noted that Ms. Martin had built the awning without authorization. She found that the structure contravened Bylaw 8 and there was no principled basis to permit her to keep it. Ms. Martin subsequently took down the awning.
- [9] Some months later, Ms. Martin again sought the Strata's approval to install an awning on her balcony. She proposed a different design that, in her view, addressed the Strata's concern about the previous design, in that it did not penetrate the building's envelope and was more consistent with the building's exterior design. The Strata denied her request, but authorized Ms. Martin to set up a black patio umbrella, 10 feet or less in diameter. It informed her that if dissatisfied with this outcome, she could ask in writing for a Strata Council hearing.
- [10] By letter dated March 15, 2017, Ms. Martin invoked her right under s. 34.1 of the Strata Property Act ("SPA") to require the Strata Council to hold a hearing within four weeks. Despite correspondence, the hearing did not occur.
- [11] Ms. Martin installed a second awning on her balcony in November 2017, knowing that she did not have authorization to do so. The Strata issued a Notice of Infraction of Bylaw 8 to Ms. Martin on November 15, 2017. The matter stood until May 2019, when The Owners passed a three-quarter-vote resolution authorizing the Strata to commence proceedings before the Tribunal to compel Ms. Martin to remove the awning. The Strata commenced those proceedings in August 2019.
- [12] In its decision dated March 11, 2020 ("Tribunal Decision"), the Tribunal found in favour of the Strata. It ordered Ms. Martin to remove the awning within 90 days, failing which it authorized the Strata to enter Ms. Martin's unit and remove the awning at Ms. Martin's cost ("Order"). Ms. Martin did not remove the awning, nor did the Strata exercise its right to do so. Instead, Ms. Martin filed the present petition in May 2020. The Strata filed a contempt application in January 2021.

Should the Tribunal Decision be Set Aside?

- [13] The parties agree that the standard of review of the merits of the Tribunal Decision is correctness, as determined by this court in *The Owners, Strata Plan BCS 435 v. Wong*, 2020 BCSC 1972.
- [14] Section 164(1) of the SPA establishes that the test for review of a strata's action or decision is whether the act or decision is "significantly unfair". Ms. Martin submits that the Strata's refusal to comply with its obligation to hold a hearing under s. 34.1 of the SPA and to authorize her to install the awning was significantly unfair, and therefore that the Tribunal's conclusion to the contrary is incorrect. Ms. Martin also submits that the Tribunal decision is procedurally unfair because its reasons are insufficient when compared with the reasons of Justice Dardi in the Decision. The standard of review on procedural fairness grounds is fairness: *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at para. 52.

- [15] In her submissions, Ms. Martin also disputed the Tribunal's interpretation of s. 171(2) of the SPA, which requires a strata corporation to obtain approval by three-quarter-vote at an annual or special general meeting before commencing a "suit". The Tribunal Decision found that proceedings before it were not within the meaning of the term "suit". However, that issue does not arise in this case because it is clear that the Strata obtained approval through a three-quarter-vote before it filed the notice of dispute with the Tribunal. I reject Ms. Martin's suggestion that the text of the resolution was unclear or meant something else.

Significant unfairness

- [16] In assessing whether the Tribunal Decision was significantly unfair, I want to be clear that I am not reviewing the Strata's actions directly. They are only relevant to the extent that they inform the Tribunal Decision.
- [17] In *King Day Holdings v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, at paras. 88-89, the Court of Appeal confirmed that significantly unfair conduct within the meaning of s. 164(1) of the SPA is "conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable". The reasonable expectations of the petitioner, assessed objectively, are a relevant factor.
- [18] Ms. Martin says that there the Tribunal Decision is significantly unfair in three respects. First, it wrongly characterizes the Strata's failure to comply with s. 34.1 of the SPA as a mere "technical breach". Second, it wrongly finds that the Strata's refusal of permission to build an awning was not significantly unfair. Third, it errs in find that Ms. Martin did not have a reasonable expectation that the Strata would hold the required hearing and allow her to install the awning.
- [19] The Tribunal Decision finds that the Strata failed to comply with the mandatory requirements of s. 34.1, and describes it as a technical breach because it did not result in substantive unfairness. The Decision adds that the remedy for the breach would be to require the Strata to hold a hearing, not to order the Strata to approve Ms. Martin's awning, which is what Ms. Martin wanted.
- [20] I agree with Ms. Martin that s. 34.1 confers an important procedural right on strata owners. However, the dispute before the Tribunal was the Strata's request for an order for removal of the awning. Ms. Martin was not seeking an order compelling a hearing under s. 34.1. In light of that, the Tribunal Decision correctly focused on whether the Strata's refusal of permission to install the awning was significantly unfair.

- [21] The Tribunal Decision correctly stated the legal test for significant unfairness at paras. 57 and 61. It found that the Strata's denial of permission to install the second awning was not significantly unfair because it had provided detailed reasons for denying permission to install the first awning, a decision which Justice Dardi had already concluded was not significantly unfair, and Ms. Martin had conceded that the second awning was materially similar to the first awning.
- [22] Even if Ms. Martin had not conceded this point, the second awning was materially similar to the first, in that it was a glass cover over her balcony. In this context, the Tribunal concluded that the lack of detailed reasons for the Strata's second denial of permission was not substantially unfair to Ms. Martin, at para. 65.
- [23] The Tribunal also correctly considered whether Ms. Martin's expectation that the Strata would approve her request was objectively reasonable. It concluded that it was not, because the two awnings were materially similar and the second awning clearly contravened Bylaw 8.1, which, in relevant part, expressly prohibits an owner from installing a partial glass enclosure on a balcony.
- [24] Even assuming that the Strata had the power to waive Bylaw 8.1, the Tribunal Decision found that Ms. Martin had no objectively reasonable expectation that it would since the bylaw was in force and her unit had no awning when she bought it (at para.66).
- [25] Ms. Martin bought her unit knowing that it did not have a balcony cover at a time when the bylaw prohibiting the installation of awnings was in effect. She wanted to install an awning and asked permission to do so. After the Strata denied her permission and gave her its reasons for doing so, she exercised her right to seek judicial review of that decision. After that was unsuccessful, she made what was essentially the same request again.
- [26] While the Strata's refusal to hold a hearing under s. 34.1 of the SPA was unfair, it was not significantly unfair in that context. I infer that is what the Tribunal Decision meant when it characterized the s. 34.1 breach as "technical". The Tribunal expressly considered Ms. Martin's objectively-reasonable expectations as a factor in the significant unfairness determination.
- [27] I find it made no error in its analysis. The significant unfairness test requires an objective assessment of the evidence against a standard that is higher than simple unfairness. I conclude that the Tribunal Decision correctly found that the Strata's refusal to permit Ms. Martin to install a second awning was not significantly unfair.

Procedural fairness

- [28] Ms. Martin's submission that the Tribunal's Decision is procedurally unfair because its reasons are not as fulsome as those of Justice Dardi cannot succeed. The Tribunal is not a court and neither its process nor its decisions are subject to a judicial standard of procedural fairness: *Allard v. The Owners, Strata Plan VIS 962*, 2019 BCCA 45.

- [29] The basis for Ms. Martin's fairness submission is that the Tribunal did not adequately address her evidence that the second awning responded to some of the reasons that Justice Dardi regarded as justifying the Strata's initial refusal of authorization. Those were that the awning would likely penetrate the building envelope and would detract from the building's uniform appearance. However, Justice Dardi found that Ms. Martin changed the design of her proposed awning prior to June 28, 2016, to one that would not penetrate the building envelope and would be consistent with the building's exterior finishes (at para. 58).
- [30] Ms. Martin has not pointed me to any evidence before the Tribunal that the second awning differed from the amended proposal Justice Dardi considered. In light of that, the Tribunal's consideration of the evidence was procedurally fair. It is not necessary for me to determine in general the standard of procedural fairness that applies to the Tribunal. I dismiss Ms. Martin's petition for judicial review.

Should I find Ms. Martin in contempt of court?

- [31] The test for civil contempt has three elements, all of which the party seeking a contempt order must prove beyond a reasonable doubt:

- 1) the existence of a court order;
- 2) the contemnor's knowledge of the order and its terms; and
- 3) the contemnor's intentional conduct constituting disobedience of the terms of the order.

Law Society of British Columbia v. Gorman, 2011 BCSC 1484; North Vancouver v. Sorrenti, 2004 BCCA 316.

- [32] Section 60 of the Civil Resolution Tribunal Act provides:

60 (1) A person who fails or refuses to comply with an order of the tribunal is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgment of the Supreme Court.

- (2) Subsection (1) does not limit the conduct for which the Supreme Court may make a finding of contempt in respect of a person's conduct in relation to a tribunal proceeding.

- [33] I am satisfied that the Strata has established all three elements beyond a reasonable doubt.

- [34] In her oral submissions, Ms. Martin essentially admitted her contempt. She said she knew about the Order, but did not consider the matter that serious because no one was endangered by her conduct and, to her mind, the only consequence was the delay in removing the awning. Ms. Martin also pointed out that the Strata had not acted under the authority of the Order to remove the awning itself, but fined her instead. That is not an excuse for deliberately violating a court order.

- [35] Ms. Martin, I find you in contempt of court. That is a very serious matter. The penalties for civil contempt include jail sentences. If people can choose whether to obey court orders, freely disregarding the law, we would have no system of justice. You knew you had to obey the law and you deliberately chose not to do so. That is inexcusable, whether you think the law is important or not. In strata communities, the requirement that every community member obey the law is the bedrock of a functioning community.
- [36] In the course of hearing this case, you have vigorously asserted your rights under the law, but you have flouted those of other strata members by refusing to abide by a Court order.
- [37] Under the Supreme Court Rules, I have broad discretion to decide upon a suitable punishment. In this case, bearing in mind that the Strata did not act to remove the awning, I am going to give you an opportunity purge your contempt.
- [38] Ms. Martin, you will have 30 days from today's date to remove the awning. I am setting this amount of time, in light of the current pandemic, which may delay arrangements for removal of the awning. Absent the pandemic, I would not have given you that amount of time.
- [39] The Strata seeks a fine of \$2,500 or alternatively an award of special costs. While I am adjourning the penalty phase of the contempt proceeding to allow Ms. Martin to purge her contempt, I note that Ms. Martin said that the Strata has levied fines against her for not taking down the awning. In my view, evidence of any such fines are relevant to a costs order. The Strata is not entitled to double recovery. In deciding on an appropriate penalty, I would also consider the Strata's choice not to exercise its rights under the Order.

Conclusion

- [40] In conclusion, I dismiss Ms. Martin's petition with costs of this petition on Scale B, payable by Ms. Martin.
- [41] I find Ms. Martin in contempt of court and order her to take down the awning within 30 days of today's date.
- [42] I adjourn the penalty phase of the contempt hearing generally. The Strata may reset that hearing if Ms. Martin does not purge her contempt.
- [43] Ms. Martin, that means that if you do not take the awning down within 30 days, the Strata may have another hearing before me and I will impose appropriate punishment. The punishment can include a fine, a jail term, or both. I can also order you to pay the full legal costs the Strata incurred in bringing the contempt application. Right now, I have only ordered you to pay the Tariff Scale B costs of the petition.
- [44] That concludes my reasons.

"Iyer 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/21/11/2021BCSC1123cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/martin-v-the-owners-strata-plan-nw-177-2021>

Prepared on 30 October 2026 · Esheria