

CANADA / JUDGMENT

Schlieper v. Canada Lands Company CLC Limited

2024 BCSC 761

COURT

Supreme Court of British Columbia

DECIDED

12 April 2024

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2024 BCSC 761 Schlieper v. Canada Lands Company CLC Limited

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Schlieper v. Canada Lands Company CLC Limited,

2024 BCSC 761

Date: 20240412

Docket: S240824

Registry: Vancouver

In the Matter of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

Between:

Gunter Schlieper and Gail Marilyn Foran

Petitioners

And:

Canada Lands Company CLC Limited

Respondent

Before: The Honourable Justice G.C. Weatherill

On Judicial Review from: A decision of the Residential Tenancy Branch

dated January 28, 2024

Oral Reasons for Judgment

In Chambers

The Petitioner, Gunter Schlieper, appearing in person:

G. Schlieper

The Petitioner, Gail Marilyn Foran:

No appearance at this hearing

Counsel for the Respondent:

C. Elrick

Place and Date of Hearing:

Vancouver, B.C.

April 12, 2024

Place and Date of Judgment:

Vancouver, B.C.

April 12, 2024

- [1] THE COURT: The petitioners, Gunter Schlieper and Gail Marilyn Foran (together, the "petitioners"), seek judicial review of the decision of the Residential Tenancy Branch ("RTB") dated January 28, 2024. This is my decision following the hearing of that application.
- [2] In an application for dispute resolution submitted on October 24, 2023 by the petitioners to the RTB, they sought an order setting aside a One Month Notice to End Tenancy for Cause issued by the respondent, Canada Lands Company CLC Limited.
- [3] During the dispute resolution hearing held on November 27, 2023, the RTB arbitrator (the "Arbitrator") heard the parties and considered the evidence they presented.
- [4] On January 28, 2024, the Arbitrator dismissed the petitioners' application without leave to reapply. The Arbitrator accepted the respondent's evidence that Mr. Schlieper, had over a span of several years, harassed and threatened other people who were present on the property owned by the respondent that surrounded the home the petitioners rented and continued to do so after repeated warnings that his conduct was not permitted by the respondent.
- [5] The lands in question, comprising 52 acres, are known as the "Jericho lands" (the "Lands"). They are situated in the Point Grey neighbourhood of Vancouver's west side. The Federal Department of National Defence previously used the various residential units on the Lands as housing for Department of National Defence personnel and their families. The petitioners are tenants in one of the housing units pursuant to a licence to occupy granted by the respondent on January 14, 2016 (the "Licence to Occupy").

- [6] Since approximately 2018, Mr. Schlieper has engaged in conduct that the respondent considered constituted significant interference with or unreasonable disturbance of other occupants of the Lands or of the respondent, and/or had seriously jeopardized the health, safety, or lawful right of them. Mr. Schlieper's conduct involved his patrolling the Lands, often with his pit bull terrier, and confronted people who he considered were trespassing on the Lands and did not belong there.
- [7] The respondent received many complaints from other residents and the public about Mr. Schlieper's conduct. It wrote several letters to him warning him that his threatening conduct, which included making obscene gestures and intimidating people with his dog, was a violation of the terms under which he was occupying his residence on the Lands. These letters included:
- 1) dated June 28, 2022, explaining that Mr. Schlieper lacked the authority to enforce trespass laws and that he must abide by the terms of the Licence to Occupy;
 - 2) dated September 6, 2023, identifying the terms of the Licence to Occupy and the Occupant Handbook, with which Mr. Schlieper had failed to comply.
- [8] In rendering her decision, the Arbitrator found that:
- a) Mr. Schlieper had engaged in conduct that had significantly interfered with and had unreasonably disturbed other occupants and the respondent, and had seriously jeopardized the lawful rights of others;
 - b) The petitioners had been advised over the course of several years and in writing that Mr. Schlieper was engaging in activity that violated material terms of the parties' agreement concerning the petitioners' occupancy of their unit and that they had failed to take appropriate corrective or remedial measures concerning that conduct;
 - c) That Mr. Schlieper's threatening and harassing conduct towards the public, other residents, and their guests had persisted over several years despite repeated warnings that had contravened the licence agreement; and
 - d) The petitioners had not provided any authority supporting their position that Mr. Schlieper was entitled to lawfully patrol the respondent's property for alleged trespass or other misdeeds.

Analysis

- [9] The appropriate standard of review is patent unreasonableness: Administrative Tribunals Act, S.B.C. 2004. C. 45, s. 58(2)(a). This means that a finding of fact or law or an exercise of discretion by an arbitrator must not be disturbed unless it is patently unreasonable: Yee v. Montie, 2016 BCCA 256 at paras. 19-21.

- [10] The courts accord an arbitrator's decision significant deference. Decision is only patently unreasonable if it is "openly, clearly, evidently unreasonable" and is so flawed that no amount of curial deference can justify it. In other words, it must border on the absurd: *Vaquerano v. 43 Housing Society*, 2016 BCSC 2300 at paras.16-17; *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.
- [11] The function of this court on the judicial review in this case is supervisory. It must not undertake a fresh examination of the substantive issues. Judicial review concerns itself only with the evidence that was before the tribunal: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para. 34.
- [12] This court has no jurisdiction to reweigh the evidence or second guess the findings of the arbitrator, substitute different findings of fact or inferences drawn from those facts, or conclude that the evidence is insufficient to support the result: *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 37.
- [13] In this case, the written reasons of the Arbitrator demonstrate that, with one exception, she considered the evidence before her; she considered the submissions of both parties; and she considered the relevant statutory framework and law. The Arbitrator concluded that the petitioners had engaged in conduct that justified the respondent's One Month Notice to End Tenancy for Cause.
- [14] In my view, the one exception referred to above is a significant one. The evidence presented to the Arbitrator included the following:
- a) that the vast majority of the petitioners' impugned conduct occurred prior to May 2023;
 - b) the petitioners' Licence to Occupy terminated on September 30, 2023;
 - c) on May 24, 2023, the respondent sent a letter to the petitioners advising that they had the opportunity to extend the termination date of their Licence to Occupy to September 30, 2024, if they met certain conditions, including that they were in compliance with the conditions of their Licence to Occupy, the Occupant Handbook, and the fire regulations;
 - d) on June 5, 2023, the respondent was advised of another incident likely involving Mr. Schlieper and his trespass-policing conduct; and
 - e) sometime between May 24 and June 16, 2023, the respondent provided the petitioners with a document entitled "Third Amending Agreement Extending the Licence to Occupy to September 20, 2024". That document was signed by or on behalf of the petitioners on June 16, 2023.
- [15] On June 19, 2023, the respondent learned of another incident that had occurred on May 9, 2023, again, involving Mr. Schlieper harassing the public regarding them allegedly trespassing on the Lands.

[16] On September 6, 2023, the respondent sent a letter to the petitioners, informing them of the May 9th and June 5th incidents. That letter stated as follows:

Inappropriate Interaction with Public Accessing Jericho Lands

Following correspondence to you dated August 9, 2018, from Canada Lands Company and July 28, 2022, from Tribe Management, we have been notifying of incidents on May 9, 2023, and June 5, 2023, when Mr. Schlieper again interacted inappropriately and aggressively with individuals walking on Jericho Lands' property.

Mr. Schlieper is again in breach of the following terms:

[...]

[17] And they list parenthetically the Licence to Occupy Page 6, Section 33, and Occupant Handbook Page 16, Good Neighbour Considerations, Section (b).

[18] Carrying on with the quote from the letter:

Mr. Schlieper has previously been warned that he does not have the authority to enforce trespass against any individuals, residents, or passersby, nor to decide who can and who cannot use the common grounds of the property. Despite the multiple warning given, he has not stopped his actions.

Due to the above, Canada Lands Company will only extend the Licence to Occupy agreement until January 31, 2024. The Licence to Occupy will terminate on January 31, 2024, and will not be extended further.

[19] After sending the September 6, 2023 letter, without any further notice to the petitioners and without any evidence of any further inappropriate conduct on the part of Mr. Schlieper, the respondent issued the One Month Notice to End Tenancy for Cause.

[20] During the course of the hearing before the Arbitrator, the Arbitrator said the following, and this is at page 7, lines 12 through 18 of the transcript:

And just so you know, counsel, a lot of these incidents occurred -- they are attenuated in time to where we are today. So I would like much of the focus if possible to be on what -- why something was not done earlier, why a notice to end tenancy wasn't included earlier, and also the most recent events are probably what I want to focus on. I do understand the landlord's position that they are providing context and want to show that this has been an ongoing situation, but I would like an explanation as to why -- why we are here in 2023 with this issue when it could have been dealt with 2019.

[21] And then in the transcript at page 8, lines 28 to 32 inclusive, Mr. Elrick, counsel for the respondents, submits:

And I won't take you to it, but the [L]icence to [O]ccupy includes a written no-waiver provision, and so any sort of argument from Mr. Schlieper that Canada Lands was somehow acquiescing to his either intimidation campaign or his acting as sheriff of the Canada Lands just will not fly because the written no-waiver provision is clear on its face. And so Canada Lands has the right to rely on the contract and the breaches of the contract for ending the tenancy.

[22] The no-waiver provision that is contained in the Licence to Occupy reads as follows.
Heading "Waiver", paragraph 34:

No waiver by CLC is effective unless it is in writing.

[23] Counsel for the respondent made submissions to the Arbitrator during the hearing regarding the no-waiver provision in the Licence to Occupy as well as on the law of waiver. In my view, he correctly submitted that the law of waiver requires two things. First, that the person waiving has full knowledge of the rights that are being waived. Counsel for the respondent conceded during his submissions that the respondent indeed had full knowledge of its rights. The second requirement of waiver is that the person waiving have a conscious intention to abandon its rights. Clearly, in my view, both those requirements were met here, as evidenced by the September 6, 2023 letter. However, despite the issue of waiver having been squarely raised during the hearing, it was never addressed by the Arbitrator. There was no finding by the Arbitrator on the law on waiver or any issue respecting the application of the facts to that law in this case.

[24] I recognize that the issue of waiver was not raised by the petitioners during the hearing. They are lay litigants. Rather, the petitioners' focus during the hearing was on Mr. Schlieper's alleged right to enforce trespass laws, but, nevertheless, the issue of waiver was squarely before the Arbitrator.

[25] I recognize as well the constraints that the Arbitrator was under during the hearing, but, regardless, the Arbitrator did not issue her reasons for approximately two months after the hearing. In my view, it was patently unreasonable for the Arbitrator to fail to consider whether the September 6, 2023 letter constituted a waiver in law of the respondent's right to terminate the Licence to Occupy.

[26] It is my view that the September 6, 2023 letter was a clear waiver of the respondent's right to terminate the Licence to Occupy on the basis of the conduct being relied upon for its notice of termination.

[27] I am allowing the petition and setting aside the order of possession.

[28] Now, what does that mean? It means that the Licence to Occupy terminated on January 31, 2024. There was no longer a right to occupy. What has happened since then is that there is a stay in place pending the hearing of this judicial review. That stay has now expired. So the question is whether or not there is any right to occupy. However, that question is not before me.

[29] Mr. Elrick, do you have any views on that? What is the current situation? Or has the Licence to Occupy already been extended to September 30th? I do not know. It is not before me, but it is something to think about. Mr. Schlieper, it is something for you to think about as well.

[30] All I have done is allow the petition, which means that the order of possession is vacated. So where does that leave you? You both had better give it some thought. You have possibly an over-holding situation. At best, the petitioners' occupancy expires on September 30, 2024.

[DISCUSSIONS]

[31] THE COURT: It was the addendum that was sent. You signed it. I am not here to speculate or provide an opinion or a decision on whether or not, in fact, it has been extended, but it is something to think about. All I am here to tell you is that the order of possession is set aside, which means that you are in a very grey area. If you behave as you have in the past, I would expect that, regardless of the grey area, there will be another notice to terminate. But, again, I am not running this operation, but it is previous obvious to me that if you so much as take any offence to any other member of the public or a resident or a visitor or anybody else on this property, then you would likely expect a notice to terminate forthwith.

[32] PETITIONER G. SCHLIEPER: A hypothetical, if I may, Justice, since we are here [indiscernible]. In the letter of 2018.

[33] THE COURT: Of what?

[34] PETITIONER G. SCHLIEPER: Of the August 2018 letter from Canada Lands to me in response to the letter I sent to them.

[35] THE COURT: Look --

[36] PETITIONER G. SCHLIEPER: No, I am not trying to argue. I am trying to get [indiscernible]. [Indiscernible] interesting, so ... if their lawyer says my rights and where my -- my yard is and -- and I have no rights under the lease elsewhere --

[37] THE COURT: Do not -- let me back up.

[38] PETITIONER G. SCHLIEPER: Okay. I am just trying to ask -- no, I am just trying to -- it is a legal thing. I [indiscernible] --

[39] THE COURT: Your conduct in taking it upon yourself to unilaterally determine that you have the right to enforce the so-called trespass laws is not going to stand you in good stead. It is simply not. You have tried it. It has not worked out. And if you do it again, I would expect to see that there will be another notice to terminate.

[40] Now, I do not know what the situation is now, whether you are over-holding, and that you have no right to be there because your lease is terminated or your occupancy is terminated January 31st, or possibly it has been extended to September 30. I do not know. I do not have that evidence before me.

"G.C. Weatherill J."

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Prepared on 28 October 2026 · Esheria