
CANADA / JUDGMENT

Sherwood v. The Owners, Strata Plan VIS 1549

2019 BCSC 1714

COURT

Supreme Court of British Columbia

DECIDED

7 October 2019

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

2019 BCSC 1714 Sherwood v. The Owners, Strata Plan VIS 1549

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sherwood v. The Owners, Strata Plan VIS 1549,

2019 BCSC 1714

Date: 20191007

Docket: S147102

Registry: Vancouver

Between:

Douglas Sherwood and Rosslyn Sherwood

Plaintiffs

And

The Owners, Strata Plan VIS 1549 and

Cinnabar Brown Holdings Ltd.

Defendants

And

The Owners, Strata Plan VIS 1549

Third Party

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Plaintiffs:

D.P. Lucas

Counsel for the Defendant/Third Party, The Owners, Strata Plan VIS 1549:

A. Tryon

Representative for the Defendant, Cinnabar Brown Holdings Ltd.:

L. Sharp

Place and Date of Hearing:

Vancouver, B.C.

September 30, 2019

Place and Date of Judgment:

Vancouver, B.C.

October 7, 2019

- [1] The litigation in this case arose over the reconstruction of the roof of one-half of a duplex resulting from an effort to add about 34 square feet of living space and a shed to a strata unit in Beach Acres Resort in Parksville, B.C. The defendant, Cinnabar Brown Holdings Ltd. ("Cinnabar"), completed the extension of its side of the duplex, but construction stopped when it was thought that the roof placed on its side of the duplex did not comply with the relevant building permit.
- [2] The plaintiffs brought claims in negligence against Cinnabar and The Owners, Strata Plan VIS 1549, the strata corporation, consisting of all the owners of the strata lots in Beach Acres ("BA Strata Corporation").
- [3] After 18 days of trial, Madam Justice Grey issued reasons for judgment, indexed at 2018 BCSC 890, dismissing the claim in negligence, but finding that the roof built by Cinnabar was not built in accordance with the building permit and the approvals granted by the Beach Acres strata council.
- [4] At paras. 215 - 216 and 223 of her reasons for judgment, under the heading "What Did the BA Strata Corporation Approve at the AGM 2012?", Gray J. found:

215 The BA Strata Corporation says that is [sic] all the owners approved at the AGM 2012 was the changing of about 34 square feet of [limited common property] into habitable area for each of the strata lots by the relocating of the exterior wall on to the [limited common property]. The BA Strata Corporation describes this as an approval "in principle" or an approval of the "concept". As I understand it, the position of the BA Strata Corporation is that the AGM 2012 approved the

October 2012 Joint Proposal generally, but left the details to be determined as the [Beach Acres strata council] saw fit.

216 In my view, the resolution as passed is determinative.

223 As a result, Cinnabar was required to cause the work to be done in compliance with the Sharp February 2013 [Building Permit]. That required the work to be done "in accordance with the plans and specifications submitted and approved", which were the attached February 2013 Plans showing a Two-Slope Roof Design.

[5] At para. 285, Gray J. addressed the structural changes to Cinnabar's addition and shed, concluding:

285 The BA Strata Corporation, jointly with Ms. Sharp, proceeded to seek a [building permit] which would permit the work to increase the post strength, other remedial work necessary to preserve the Sharp [strata lot], and the removal of the chimney enclosure, all the while permitting Ms. Sharp to obtain the approved shed. This [building permit] was not obtained until summer 2015, whereupon the remedial work was performed.

[6] Gray J. made the following orders, none of which contemplate the removal of the addition or the shed that Cinnabar built:

1. All claims of the Sherwoods against the Strata Corporation alleging that the actions or conduct of the Strata Corporation were significantly unfair in relation to the Sherwoods be and are hereby dismissed;
2. All claims of Cinnabar Brown against the Strata Corporation alleging that the actions or conduct of the Strata Corporation were significantly unfair in relation to Cinnabar Brown be and are hereby dismissed;
3. The claim of the Sherwoods that Cinnabar Brown negligently breached a duty of care owed by Cinnabar Brown to the Sherwoods be and is hereby dismissed;
4. If the Sherwoods, Cinnabar Brown and the Strata Corporation do not, within 60 days of the date of this order, make an agreement which will result in the removal of the as-built roof (the "as-built roof") atop Strata Lot 14, District Lot 123, Nanoose District, Strata Plan 1549 ("strata lot 14") and the construction of a same roof over strata lot 14 and Strata Lot 13, District Lot 123, Nanoose District, Strata Plan 1549 ("strata lot 13") then the Strata Corporation is hereby ordered to take all reasonable steps required to remove the as-built roof and replace it with a roof similar to the roof which existed atop strata lot 14 before the as-built roof was built (the "work"), including:
 - a) make application for a building permit for the work within 90 days of the date of this order, and
 - b) complete the work within 90 days of receiving the building permit.

5. The Sherwoods pay to the Strata Corporation the costs of this proceeding;
6. Cinnabar Brown pay to the Sherwoods the costs of this proceeding, including as a disbursement the costs which this order requires the Sherwoods to pay to the Strata Corporation.
- [7] Cinnabar and the BA Strata Corporation have brought competing applications with respect to the entered order of Gray J.
- [8] In its application, Cinnabar seeks the following orders:
 1. Correct and vary the Order After Trial pursuant to Rule 13-1(17):
 - a. Include "The parties have liberty to apply for any orders necessary to permit the work to be completed as soon as possible before another judge."
 - b. Amend the Order After Trial pursuant to s. 165 of the Strata Property Act, and the Strata Bylaws, that the Strata Corporation approve the As-Built Sharp Roof.
 2. Such further direction and orders as this Honourable Court may deem just; and
 3. An order that the cost of this application is payable to the applicant.
- [9] In its application, the BA Strata Corporation seeks the following orders:
 1. The order after trial be varied by adding "Liberty to apply" as the final paragraph of the order after trial.
 2. The Court declare that the City of Parksville Bylaw No. 1387, section 10 entitles the Strata Corporation to be the applicant for a building permit for the scope of work required by the order after trial, namely, work on or to both common property and strata lot 14.
 3. Alternatively, the defendant Cinnabar Brown Holdings Ltd., ("Cinnabar") shall within seven days sign the building permit application submitted by the Strata Corporation to the City of Parksville, without otherwise altering that building permit application, and
 4. If Cinnabar does not sign the said building permit application by the stipulated deadline then the Strata Corporation may sign the building permit application for Cinnabar.

Discussion

- [10] This is not the first application that I have heard to vary the order of Gray J.
- [11] In reasons for judgment indexed at 2018 BCSC 2105, I dismissed an application by Cinnabar to vary the award of costs given by Gray J. In so doing, I discussed the legal principles that apply where a party seeks to vary an entered order at paras. 23 - 25:

23 In the normal course, once an order has been entered, the court which made the order is *functus officio* with respect to the issues therein: *Piyaratana Unnanse et al v. Wahareke Sonuttara Unnanse et al*, [1950] 2 W.W.R. 796 (P.C.). In some circumstances, however, the court retains jurisdiction to re-visit some issues. Generally speaking, that jurisdiction is confined to making corrections or amendments.

24 Under Rule 13-1(17) of the Supreme Court Civil Rules:

The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.

25 A court may also correct an entered order "where there has been an error in expressing the manifest intention of the court": *Harrison v. Harrison*, 2007 BCCA 120 at para. 29; *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142; see also *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.

[12] Despite filing a response opposing the first order sought by Cinnabar, the BA Strata Corporation and the plaintiffs consented to that order before me, abandoning the first order sought by the BA Strata Corporation. I therefore order that the entered order of Gray J. be varied by the addition of a clause 7, stating:

The parties have liberty to apply for any orders necessary to permit the work to be completed as soon as possible before another judge.

[13] The other variations sought by Cinnabar and the BA Strata Corporation are opposed. All are based upon the self-interested interpretation of the order of Gray J. by Cinnabar and the BA Strata Corporation.

[14] As Madam Justice Smith stated in *Yu v. Jordan*, 2012 BCCA 367 at para. 53:

the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

[15] Cinnabar argues that it can be inferred from the order that a roof similar to that which was previously on its side of the duplex is all that it is obliged to provide, and that the roof that was built is sufficiently similar to the original roof to meet the terms of the order of Gray J.

[16] Cinnabar proposed that I should make a variation of the entered order due to a change in circumstances. The change was said to be the passage of time. In my view, there is no basis upon which to vary the order as Cinnabar asks. Such a variation is completely contrary to the decision and the order of Gray J., and in the result that part of Cinnabar's application is dismissed.

[17] The relief sought by the BA Strata Corporation in the second variation is effectively relief against the City of Parksville, who were not present before me. At para. 328 of her reasons, Gray J. commented:

328 The question of remedy is complicated by the need to comply with the City's requirements for a [building permit]. The City is not a party to this lawsuit, and there is not presently a valid [building permit] for changes to the Sharp [strata lot]. The court can only order parties to this lawsuit to take steps that are in their power.

[18] I decline to make any declaration with respect to Parksville's Bylaws without its participation, and so dismiss that part of the BA Strata Corporation's application.

[19] The third and fourth variations sought by the BA Strata Corporation are to obtain the approval of a building permit that would require the removal of all of the addition and the shed that Cinnabar built, rather than just the roof portion. The BA Strata Corporation says that this is necessary in order to produce a roof like the original one, both in slope and in dimension.

[20] The scope of the building permit work sought by the BA Strata Corporation includes the restoration of the relocated east side wall of Cinnabar's strata unit to its original location and the removal of the new shed built by Cinnabar. Cinnabar has refused to sign or consent to the building permit application, which is required by Parksville.

[21] As with the second variation proposed by Cinnabar, such a building plan would be contrary to the spirit and intent of the reasons and the entered order of Gray J., and would effectively give the BA Strata Corporation relief that was not given to them by Gray J.

[22] In the result, the BA Strata Corporation's application for the third and fourth variations sought is dismissed.

[23] As success on the applications was divided, the parties will bear their own costs.

"The Honourable Chief Justice Hinkson"

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/19/17/2019BCSC1714.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sherwood-v-the-owners-strata-plan-vis-1549-2019>

Prepared on 26 October 2026 · Esheria