

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment  
Mr. Justice Lowry  
Pronounced in Chambers  
April 13, 2000

BETWEEN:

**YVONNE ABBAS**

PETITIONER

AND:

**THE OWNERS, STRATA PLAN LMS1921,  
THE STRATA COUNCIL OF STRATA LMS1921**

RESPONDENTS

Counsel for the Petitioner:

I.I. Turaglio

Counsel for the Respondents:

G.S. Hamilton

[1] **THE COURT:** Southridge House is an apartment style condominium building in Vancouver. Yvonne Abbas purchased one of the units in 1994, which she decided to lease in 1999. The strata council took the position that the lease of the unit was precluded by the lease restriction bylaw (No. 54) that was adopted by its special resolution in 1995.

[2] Ms. Abbas applies under ss. 42 and 43 of the *Condominium Act* and Rule 10(b) of the court rules seeking relief from what she maintains is the council's oppressive conduct in precluding her from leasing her unit. Her case is put in the alternative.

[3] Ms. Abbas first contends that the bylaw does not apply to her suite and she seeks a declaration to that effect together with some ancillary relief.

[4] The bylaw is said not to apply because of the 1993 rental disclosure statement made by the developer from whom Ms. Abbas purchased her suite. Section 31 of the *Condominium Act* required the developer to disclose to all prospective purchasers its intention with respect to

its leasing any of the units in the building and, specifically, the length of time it intended to lease them. The disclosure was to be made in the prescribed regulatory form.

[5] The developer completed a form but stated only that it was reserving the right to lease all of the units in the building for an indefinite period; it did not disclose its intention. Ms. Abbas says the disclosure was nevertheless sufficient. She then relies on subsections (5) and (6) which provide that a purchaser, who acquires a unit from a developer which disclosed an intention to lease it, may lease the unit for as long as the developer stated it intended to lease it but thereafter only in accordance with the bylaws.

[6] In my view, the disclosure the developer made did not comply with s. 31 of the *Act* and cannot be relied upon. What was required was a statement of intention, which was not given. The statute mandates a disclosure not only of the intention to lease but of the time intended. Neither was disclosed and to that extent the statement is of no effect. It is not a document upon which Ms. Abbas can rely as she seeks to do with respect to subsections (5) and (6).

[7] It follows that the bylaw made in 1995 applies to her unit and precludes her from leasing it.

[8] Ms. Abbas then contends that even if the bylaw does prevent her from leasing, she ought to be permitted to do so nonetheless. She says the council's conduct in refusing to permit her to lease, as it could, is oppressive in the circumstances. This is said to be so because she cannot live in the building anymore and cannot sell her unit.

[9] The contention is that Ms. Abbas had an altercation with one of her neighbours in the building in April 1999 and moved out in May. She accuses the council of having taken inadequate steps to have the offender evicted and says she fears him. It is said that her only recourse is to lease her suite so she can live elsewhere because her suite cannot be sold.

[10] The council did, however, do what it appears it could to have the offending neighbour evicted, albeit without Ms. Abbas's support. Further, and more importantly, Ms. Abbas entered into an agreement to lease her unit before the altercation with the neighbour occurred, such that she was not, at least then, motivated by fear of her neighbour as is now said. There must be other reasons why she wishes to lease her unit.

[11] Finally, there is no evidence that Ms. Abbas cannot sell her unit. There is no evidence that she has even tried. In my view, she has not made out any case of oppression against the council.

[12] Ms. Abbas's application will accordingly be dismissed with costs.

“P.D. Lowry, J.”

The Honourable Mr. Justice P.D. Lowry