

Court of Queen's Bench of Alberta

**Citation: Owners: Condominium Plan No 7921815 (Pepperwood Village) v MacMillan,
2019 ABQB 642**

Date: 20190815
Docket: 1603 20809
Registry: Edmonton

Between:

**The Owners: Condominium Plan No. 7921815
o/a Pepperwood Village**

Applicant

- and -

Shelly MacMillan

Respondent

**Reasons for Judgment
of the
Honourable Mr. Justice B.R. Burrows**

- [1] The Owners: Condominium Plan No. 7921815 seek an order:
- a. declaring that Shelly MacMillan has engaged in improper conduct;
 - b. directing Shelly MacMillan to cease and desist from making, publishing, posting or otherwise communicating harassing statements or materials respecting the Owners, the Owners' former, current and future Directors, condominium managers and management firms, or legal service providers;
 - c. directing that Shelly MacMillan not contact third parties on behalf of the Owners unless she is a member of the Board of Directors of the Owners, or has written authorization of the Owners to do so.

[2] Ms. MacMillan owns one or more units in the condominium development and resides in one of them.

[3] The Owners brought this application in response to various communications issued by Ms. MacMillan in which she expresses dissatisfaction with the manner in which the Board of the Directors of the condominium corporation has performed its function. The Owners characterize her communications as harassing and defamatory.

[4] The management firm which the Board retained, terminated its contract with the Board citing “the constant slander, defamation and lies by Shelly MacMillan and Darlene Irwin of your Condominium Corporation.” This was in August 2017, several months after the Owners commenced this application.

[5] The Owners submit that Ms. MacMillan’s conduct constitutes “improper conduct” which is defined in s 67(1)(a)(i) of the *Condominium Property Act*, RSA 2000 c C-11, as:

non-compliance with this Act, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of the board or an owner.

[6] The Owners submit that Ms. MacMillan’s conduct is within this definition because it constitutes non-compliance with two provisions of the bylaws of the condominium corporation:

a. Part II, s 2(e):

An owner shall . . . not use his unit or permit it to be used in any manner for any purpose which may be illegal or injurious, or that will cause nuisance or hazard to any occupier of a unit (whether an owner or not) or the family of such an occupier . . .

b. Part VI, s 46 (a)(i)

An owner shall not . . . use his unit for any purpose that may be illegal or injurious to the regulation of the buildings comprising the condominium or the parcel . . .

[7] The Owners seek several of the remedies contemplated by s 67(2) of the *Act*, available where the Court is satisfied that “improper conduct” has taken place, including a direction that Ms. MacMillan cease carrying on the improper conduct.

[8] Both of the bylaws alleged to have been violated relate to conduct which constitutes the condominium unit owner’s use of her unit. In my view, whether or not what Ms. MacMillan said in the communications complained of was slanderous, defamatory, rude, inaccurate, beyond her authority, or aggravating to the members of the Board, her saying it was not in any sense a use of her unit in the condominium development.

[9] No authority where it has been held that speaking or otherwise communicating is a use of a condominium unit was cited.

[10] The content or rudeness of a communication may make the communication a “nuisance” to a person referenced in it in the colloquial sense, but not in the legal sense. It does not constitute a use of real property or affect anyone else’s use of theirs. It is not improper conduct within the meaning of the *Act*.

[11] Whatever remedies the Owners or individual board members might have as a result of Ms. MacMillan's communications, they do not include the remedies sought in this application.

[12] The application is dismissed.

[13] If it necessary for the parties to address costs, that is, if they cannot agree as to costs, they may seek a disposition as to costs in written submissions. I direct that Ms. MacMillan's written costs submissions be filed and served by August 30. I direct that the Owner's responding written costs submissions be filed and served by September 13.

Heard on the 22nd day of July, 2019.

Dated at the City of Edmonton, Alberta this 14th day of August, 2019.

B.R. Burrows
J.C.Q.B.A.

Appearances:

Hugh Willis
for the Owners: Condominium Plan No. 7921815

Ryan Phillips
for Shelly MacMillan