

Trump Developments Ltd. v. Pipke, 2000 ABQB 197

Date: 20000331
Action No. 9901-15696

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**TRUMP DEVELOPMENTS LTD. AND
PHILLIP CARROLL**

Applicants

- and -

ROLAND PIPKE

Respondent

**MEMORANDUM OF DECISION
of L. ALBERSTAT Q.C., Master in Chambers**

APPEARANCES:

**JAMES F. MAXWELL
MacLeod Dixon
for the Applicants**

**DANIEL J. ABERLE
for the Respondent**

[1] This is an application by Trump Developments Ltd. for termination of a residential tenancy and for an order directing vacant possession.

[2] The property is a unit in a condominium development.

[3] I.I.P. Properties Inc. (IIP) redeveloped an existing building and converted it into a condominium complex. Unit #205 was retained in the name of IIP. Unit #205 was then sold to Trump Developments Ltd. (Trump).

[4] The shares of Trump are owned by two numbered companies. Mr. P. Carroll controls one of the numbered companies.

[5] The condominium corporation in another action is suing Trump and IIP claiming that unit #205 was supposed to form part of the common property of the condominium corporation. They claim that unit #205 is presently being held in trust for the condominium corporation.

[6] Unit #205 is presently occupied by the resident manager of the condominium corporation. It has been occupied by the same resident manager since the building was converted into a condominium.

[7] The condominium by-laws were originally drafted by agents of IIP and Trump.

[8] Clause 91 of the By-laws says:

91. Manager's Suite

The office premises forming part of the Common Property shall be entitled to be used on behalf of the on-site manager appointed and employed by either the Corporation or the Manager, and also shall be entitled to be used by any manager of rental units on behalf of non-Owner/Occupiers, at no cost to such rental manager. The Corporation is empowered to grant a license of use in respect of the said manager's suite to the manager and/or the rental manager as the case may be.

[9] The resident manager has received notice to terminate his tenancy on the basis that Mr. Carroll and his family wish to take possession.

[10] Notice to terminate the tenancy is purported to be given pursuant to the *Residential Tenancies Ministerial Regulation A.R. 229/92*:

"2(2) For the purposes of section 4.1 of the Act, a landlord may terminate the periodic tenancy of a tenant for one or more of the following reasons:

(a) the landlord or a relative of the landlord intends to occupy the residential premises of the tenant."

[11] The resident manager has now received notice of termination of his suite on the basis that Phillip Carroll wants possession. The notice purports to be pursuant to Regulation A.R.

229/92. Mr. Carroll who is a shareholder of the owner corporation claims he is either the landlord or a representative of the landlord.

[12] The question to be decided is whether Mr. Carroll can, as a shareholder of the registered owner, give notice to terminate pursuant to Regulation A.R. 229/92; s. 2(2)(a).

[13] The definitions of landlord in the *Residential Tenancies Act* s. 1(1)(c.2) says:

“landlord” means

- (i) the owner and the property manager of the residential premises and a person who permits the occupation of residential premises under a residential tenancy agreement,
- (ii) the heirs, assigns, personal representatives and successors in title of the owner, property manager and person who permits occupation, and
- (iii) a person who is entitled to possession of the residential premises, other than a tenant, and who attempts to enforce any of the rights of a landlord under a residential tenancy agreement or this Act;

[14] The term “owner” is not defined in the *Residential Tenancies Act*.

[15] The Respondent argues that a corporate landlord cannot evict on the basis that a corporate landlord wishes to live in the premises or that a relative of a corporate landlord wishes to live in the premises.

[16] A similar problem was dealt with in *McInnis et al v. Shirlmae Enterprises Ltd.*, (1977) 2 B.C.L.R. 391. The question was whether or not a corporate landlord could take possession of property pursuant to the *Landlord and Tenant Act*, R.S.B.C. 1974?

[17] The particular section in question in the British Columbia Act was s. 23(2) which reads:

“(e) the landlord bona fide requires the residential premises for the purpose of occupation by himself, his spouse or a child or parent of his or of his spouse, and the notice of termination was given in accordance with section 17”.

[18] At page 383 of the report Stewart, County Court J. says:

“In my respectful opinion, the deputy rentalsman has ignored the corporate identity of the landlord and has in effect treated the matter as if Mr. Drysdale was the landlord, or, alternatively, as if a corporation can occupy residential premises through a shareholder. A corporation such as that involved in this proceeding as landlord cannot in my opinion bring itself within s. 23(2)(e).”

[19] In *Duke's Trailer Court Ltd. v. Block*, (1997) 10 R.P.R. (3d) 194, Platana, J. dealt with a similar problem. It was a case in which a corporate landlord sought an order for possession pursuant to s. 103 of the Ontario *Landlord Tenant Act*.

[20] At page 202 Platana, J. sets out the definition and excerpts from some cases on point.

"Ontario's Landlord and Tenant Act, R.S.O. 1990, c.L. 7 does not contain a specific provision permitting a corporate landlord to terminate a tenancy for occupation by corporate shareholder or a family member of a corporate shareholder. The definition of landlord in s. 1 is:

Section 1 - Landlord

"landlord" includes a person who is lessor, owner, the person giving or permitting the occupation of the premises in question, and these persons, heirs and assigns and legal representations, and in Parts II and III also includes the person entitled to possession of the premises.

In *479460 Ontario Ltd. v. Lambert* (October 22, 1981), Doc. M54643781 (Ont. Co. Ct.) a corporate landlord was refused its application for possession for its sole shareholder.

In *DaVinci Towers Apartments v. Harris*, (October 7, 1985), Zalev D.C.J. (Ont. Dist. Ct.), an apartment building was owned by a corporation with two shareholders. Each held 50 percent of the issued shares of the corporation. One of the shareholders sought to obtain possession of the premises in question for occupation by his daughter. The court dismissed the application, finding that a corporation with two shareholders, each of whom owns 50 percent of the issued shares, is not a landlord for the purposes of obtaining the relief sought.

In *629576 Ontario Ltd. v. Ogg*, (1986), 42 R.P.R. 310 (Ont. Dist. Ct.) (Ont. Dist. Ct) the sole shareholder of a corporate landlord brought an application for an order for vacant possession of an apartment unit on the ground that he required possession for personal occupation. Killeen, D.C.J. (as he then was) dismissed the application holding that the plain meaning of section 110(3)(a) of the Landlord and Tenant Act restricts the right of personal occupation to human landlords and therefore does not apply to artificial persons such as corporate landlords. He found it irrelevant that the applicant was exclusively controlled and owned by a sole shareholder. He also found that the applicant's position was not supported by the definition of landlord in section 1(b) of the Act which includes "legal representatives". The following excerpt from the reasons for judgment is noteworthy (at 312-313):

The difficulty, of course, with this application is that the landlord is not a living person but rather, a limited company. The words of s. 110(3)(a) appear on their plain meaning to contemplate relief for a "living person" landlord and not a

corporate landlord because the paragraph mentions "... occupation by himself, his spouse or a child...".

In *Petrozakis Corp. v. Harris* (June 14, 1993), Doc. 1592/93 O.T. (Ont. Gen. Div.) a corporate landlord, comprised of two shareholders, applied for a declaration that a tenancy was terminated, and for a writ of possession. One of the shareholders alleged that he required the premises for his son. The application was dismissed.

[21] The learned Justice went on to cite cases that held to the contrary and decided that since the Ontario Act used the word "includes", in its definition, that the definition was not exclusive. In the result he held that family held corporations could obtain occupancy of property owned by the corporation which was required for family members who were corporate shareholders.

[22] The definition of landlord in the Alberta Statutes does not use the word "includes". The Alberta Act defines the word landlord. It says "Landlord means" ... and defines the word.

[23] The Alberta Statute therefore differs from the Ontario counterpart and the term as defined in the Alberta Act is exclusive to the parties named and set out in the definition section, s. 1(1)(c.2) of the *Residential Tenancies Act*.

[24] A corporate landlord therefore is not a landlord for the purposes of obtaining possession pursuant to the Alberta *Residential Tenancies Act*, and the *Residential Tenancy Ministerial Regulation A.R. 229/92*.

[25] Only a live person landlord may give notice pursuant to the *Residential Tenancy Ministerial Regulation A.R. 229/92*. That is because a corporate person cannot have a "... relative of the landlord [who] intends to occupy the residential premises".

[26] The application of Trump Developments Ltd. and Phillip Carroll is therefore dismissed.

[27] The parties have leave to speak to costs on notice.

HEARD on the 17th day of January, 2000.

DATED at Calgary, Alberta this 31st day of March, 2000.

L. ALBERSTAT Q.C.
M.C.C.Q.B.A.