

Presentation to Judge, December 12, 2016

Mystic Springs is a 44 unit condominium located here in Canmore. It was built in 2003. My wife and I own 2 units and are original owners. Defendants Dean Jarvey, Del Reinhart and Glenn Street are also original owners and have been the core of Mystic's Board, all signing off on a 2014 lawsuit against me to try and stop me from renting my 2 units.

In 2015 the defendants lost their lawsuit and were cited by the Judge for "improper conduct". The defendants ignored Alberta law and ignored Mystic's own bylaws with the goal to prevent me from renting my units. Their motivation to sue me was expressed at the 2013 AGM where defendant Dean Jarvey, acting as president of the Condominium Corporation said if people rent themselves it would destroy Mystic and it's property values (Exhibit 6). In fact the opposite has happened since they were cited for misconduct, property values are up ~\$100,000 or almost 70%.

This malicious lawsuit cost the condominium corporation ~\$47,000 in legal bills. As a member of the condominium corporation paying common expenses I am requesting the return of my and 2 other unit owners who I represent and rent for our unit share of the \$47,000 cost.

History:

In 2003 all original owners signed off on 1) a Management Agreement and, 2) Mystic's Bylaws.

Management Agreement states (Exhibit 1):

- "The Owner intends for the Condominium Corporation 0312235 to operate the entire Property with a voluntary rental pool..."

Bylaw section 5.20 states (Exhibit 2):

- "If a number of Owners decide to pool any rental income, they may do so with the approval of the Manager. However, under no circumstances will this action obligate or compel any other Owner to join or participate in this pool. Nor will this pool have an effect financially or otherwise on any other individual Owner."

Bylaw section 1.5 states:

- If there is a conflict between a By-law, or any part thereof, and the (Condominium) Act, the Act shall prevail.
- The Condominium Act states you cannot restrict an owner from renting their unit (Exhibit 3).
- Judge L.R.A. Ackerl stated the Alberta Condominium Act is "clear and absolute", you cannot restrict an owner from renting their unit (Exhibit 3).

These defendants blatantly disregarded all 3 of these facts and maliciously sued me to try and stop me from renting my unit and force me into their rental pool.

Jan 1, 2010. Condominium president Del Reinhart (defendant) passed a bylaw amendment, section 14, which prevented owners from renting their units outside of the rental pool. President Del Reinhart advised owners it was written by a lawyer (I believe Ms. Stephanie Whyte), complied with all laws and

was best for Mystic. At the time we were in the rental pool and weren't experts in the Condominium Act or our Bylaws so we signed off on the amendment trusting Del as he said it was legal and in the best interest of everyone.

2011, in talking with Mystic's new lawyer, we discovered that this bylaw section 14 preventing owners from renting themselves was illegal (Exhibit 4). In the lawsuit against me the judge stated in his judgment: "[37] That they (Scott's) agreed to the Amendments (section 14) is irrelevant..."

The rental pool declined drastically from 2010 through 2012 with our distributions falling well below breakeven and terrible upkeep of our units.

In January 2013 we "had it" with the rental pool and paid for a 2nd legal opinion (Exhibit 5) which confirmed that under the Condominium Act you cannot restrict an owner from renting their units. We had Mystic's Management Agreement and Bylaw 5.20 that said the rental pool is voluntary and 2 legal opinions stating bylaws cannot restrict owner rentals so we began renting outside of the rental pool.

April 27, 2013 AGM President Dean Jarvey stated to owners that allowing owners to rent themselves "would create an environment were all owners would be competing for each other, destroying Mystic and its property value" (Exhibit 6). This was the defendants' motive to sue us on January 14, 2014. BTW, since the defendants court loss property values have increased ~70%, or ~\$100,000 per unit, or \$4.4 million for all 44 units.

January 14, 2014. The Board, comprised of long term board members Dean Jarvey, Del Reinhart, Glenn Street and two other short term novice board members, sued us to stop us from renting our units (Exhibit 7). The board members based their lawsuit against us on the 2010 amended bylaw section 14 which the Judge said is clearly in violation of the Condominium Act. They ignored Mystic's Management Agreement, ignored Mystic's Bylaw 5.20 which states participation in a rental pool is voluntary, and they ignored 2 legal opinions based on the condominium act advising you cannot restrict owners from renting their units.

March 12, 2015. The judge handed down his decision. The Corporation was cited for improper conduct (Exhibit 8). The judge wrote:

- [28] re Condominium Act Section 32(5): "Its language is clear and absolute. In effect, this provision contains no articulated prohibition curtailing a substantive right to lease a condominium unit.
- [50] re The Scotts Conduct: "They have not failed to comply with the Act and therefore they have not acted improperly"
- [53] The Corporation...this is improper conduct
- [66] In this case, the Corporation acted improperly
- Judge's Order (Exhibit 9): "Attempts by the Condominium Corporation to enforce ultra vires and invalid Bylaw Amendments against the Scott's constitutes improper conduct by virtue of the wording of section 67(1)(a)(i) of the Condominium Property Act".

Mystic Condominium Board:

The 3 defendants have been at the core of Mystic’s Board for many years. Before, during and after their failed lawsuit. Other Board members have come and gone. President Dean Jarvey signed all the Corporation’s court documents against me.

- Dean Jarvey has been President of the Mystic Board from 2012 to 2016
- Del Reinhart has been the president of the Board in 2007 and 2010, Treasurer from 2013-2016
- Glenn Street has been on the Board from 2011 – 2016

These 3 board members coordinated and lead the lawsuit against me which is why I filed this claim against them

Mystic Board Members

2010	2011	2012	2013	2014	2015	2016 to May
				Lawsuit filed		
Bill Hogue	hogue	Dean Jarvey	Dean Jarvey	Dean Jarvey	Dean Jarvey	Dean Jarvey
Phil foreman	Glenn Street	Glenn Street	Glenn Street	Glenn Street	Glenn Street	Glenn Street
Del Reinhart	Chris Stathonikos	Chris Stathonikos	Del Reinhart	Del Reinhart	Del Reinhart	Del Reinhart
David Adelman	Donna Scott	Donna Scott	Chris Stathonikos	Bill Hogue	Dean Miles	Ralph Huizinga
Peter Ffoulkes-Jones	Dean Miles	Dean Miles	Dean Miles	Patrick Riechers	Ralph Huizinga	

The corporations legal bill of \$46,981.93 could be allocated \$34,000 to the defendants lawsuit against me which Judge Ackerl stated “was the focal issue” (Exhibit 8, [67]) and \$13,000 to a counter claim I made that the judge denied. However given the maliciousness of the defendants actions I request a settlement based on the full \$47,000

I own 2 units at Mystic which represents 4.55% of all 44 units and I represent 2 additional units that I rent for which represents another 4.55%. Given the Defendants misconduct I am seeking reimbursement of 9.1% of the \$46,981.93 in common property legal costs, or \$4,275.35.