Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2017-002799

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Somers v. The Owners, Strata Plan VIS 160*, 2018 BCCRT 370

B E T W E E N :

Kenneth Somers

APPLICANT

A N D :

The Owners, Strata Plan VIS 160

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Michael F. Welsh, Q.C.

INTRODUCTION

1. This is a small claims dispute between a former owner of a strata lot and the strata corporation over a "for sale" sign. The applicant Kenneth Somers, a former owner of a lot in the strata, used a type of sign when selling his property that was no longer approved by the council of the respondent strata corporation. He was fined as a result. He claims for return of that money, totalling $2,430 with interest. The applicant disputes the respondent strata's legal entitlement to levy the fines or require him to pay them.

2. The applicant acts for himself. The respondent strata is represented by an employee of the strata manager's office.

3. This is the second proceeding between the parties over this money. The first is indexed as *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28, and was brought under the Civil Resolution Tribunal's (tribunal's) strata property disputes jurisdiction. In that case, the tribunal held that it has no jurisdiction to accept a request for resolution of a strata property dispute under section 4 of the *Civil Resolution Tribunal Act* (Act) from a former owner of a strata lot within a strata corporation, and refused to resolve the dispute. It also held that the applicant could make a fresh application for dispute resolution to the tribunal within the tribunal's small claims jurisdiction. That has now happened.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and

fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions and exhibits, as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:

   a. Was the respondent strata legally entitled to levy fines against the applicant for his use of “for sale” signs that were not first approved by the strata council?

   b. Was the respondent strata legally entitled to demand payment of these fines as a term of issuing of a Form F Certificate of Payment?

EVIDENCE AND ANALYSIS

9. Stated simply, the facts are that the respondent is a 646 lot bare land strata corporation in the Duncan area under the *Strata Property Act* (SPA). It uses the name, “Arbutus Ridge” and is a gated golf course community. The applicant owned a strata lot in the strata with his spouse for a number of years until August

1, 2015, when the strata lot was sold. During 2012 the respondent strata levied fines totalling $2,450 against the applicant's strata lot for alleged contravention of its strata bylaw on posting "for sale" signs. The applicant paid the bylaw fines in July 2015 through his lawyer "'under protest" to allow the sale of the strata lot to complete.

10. The applicant has submitted a large number of documents and made a lengthy submission. The respondent strata has also submitted documents and made a submission. I have read everything, but will only reference the evidence and submissions necessary for this decision

11. I begin by noting some sections of the SPA that are relevant.

12. Section 121 says that a bylaw is not enforceable to the extent that it prohibits or restricts the right of an owner of a strata lot to freely sell the lot.

13. Section 122 says that a strata may pass a bylaw governing activities relating to the sale of a lot, "including locations for posting of signs" but that the bylaw may not prohibit or "unreasonably restrict" those sale-related activities.

14. Section 115 deals with Form F Certificates of Full Payment and says that if the owner owes money (which includes fines,) then the money must be paid to the strata or into court, or other arrangements satisfactory to the strata must have been made, before the strata is required to provide the certificate.

15. Prior to June 2012, the bylaw in place governing strata lot sales was Bylaw 36. It allowed for posting of a "for sale" sign, but said in part that "All such signs must first be approved by Council", and "Approved signs can be obtained from the office of the strata corporation at cost…"

16. In a September 29, 2011 strata council meeting, the council moved to adopt the use of "spotlight signs" in place of "for sale" signs, due to complaints from some owners about some signs being unsightly. From pictures provided by the applicant,

spotlight signs are much smaller than normal “for sale” signs and they all look alike. From the photos provided I conclude they can be somewhat difficult to see.

17. The strata gave owners who were selling until January, 2012, to remove their “for sale” signs and replace them with the spotlight signs.

18. There was resistance. 19 selling owners, including the applicant, refused to change. The respondent strata provided an extension to February 1, 2012.

19. Starting in April, 2012, the respondent strata started levying a recurring weekly fine to owners who had not changed their “for sale” signs. The amount that accumulated for the applicant between April 6 and July 6, 2012, is the $2,450 for which he now claims. Of that amount, $1,850 was levied before June 22, 2012.

20. On June 22, 2012 at the strata’s annual general meeting (AGM), a schedule with certain design change criteria was adopted by special resolution as part of some bylaw amendments. The schedule deals with exterior changes to homes, and includes an amendment to Bylaw 36 to require spotlight signs and notes where they should be placed and what information must be included. The revised bylaws were registered in the Land Title Office on June 26, 2012.

21. The decision to have the owners vote on the bylaw amendments was in response to an arbitration decision in a dispute between another owner and the respondent strata where the arbitrator held this schedule of criteria was unenforceable as it had not been approved as a bylaw by special resolution.

22. The applicant raises what he describes as 6 “contraventions” by the respondent strata. For the purposes of this decision I do not need to address them all, as I find that the strata council did not have the authority to require the applicant to use a “spotlight” sign prior to the bylaw change registered June 26, 2012.

23. While Bylaw 36 before the June 26, 2012, amendment provided that signs had to be approved, the bylaw provided no criteria for approval. Instead it delegated this to the strata council. But under section 122 of the SPA, it is only by a bylaw, and

not by a strata council determination, that restrictions can be put on the right of an owner to list and sell. It cannot be simply delegated to the strata council to govern what signs can be posted and where. Section 4 of the SPA limits the strata council's ability to exercise the powers and duties of a strata where the SPA provides otherwise, and this is one such limitation.

24. In reaching this conclusion I rely on the decision in *ARA Holdings v. Dodds*, 2000 BCSC 274 at paragraph 28, where the court said that generally speaking, when the legislature has entrusted a specific body with decision-making power, the power must be exercised only by that body and cannot be delegated. In this case, I find the BC legislature provided in section 122 that stratas must act by bylaw to govern lot sales. I further find that the respondent strata could not delegate this decision-making power to its council.

25. I have also considered the decision in *Atira Property Management v. Richardson*, 2015 BCSC 751. The court had to review a decision of an arbitrator under the *Residential Tenancy Act* (RTA). At issue was a landlord adopting a general policy of requiring photo identification from guests of its tenants before allowing entry. The court held that the statutory protection from unreasonable interference by a landlord with a tenant's right of quiet enjoyment could not be limited by policy decisions that have no statutory force.

26. The same principle applies here. Prior to the bylaw amendment, the council made decisions regarding signs based on policies it adopted periodically by a council motion. In the absence of a bylaw properly passed, that was an unreasonable restriction on the applicant owner's rights to sell as protected by the SPA.

27. In conclusion on the two issues, I find that the respondent strata was not legally entitled to levy the fines, or to demand payment of the fine amounts as a term of issuing the Form F in this particular case.

28. As a result, I find that all fines totalling $2,450 must be returned to the applicant. They were either not lawfully levied under section 130 of the SPA, or in the case of

those from June 22, 2012, do not comply with section 135 of the SPA. That section requires that, before a strata imposes a fine on an owner for breach of a bylaw or rule, it must follow certain procedures. They include receiving a complaint about the contravention, giving the owner the particulars of the complaint in writing, and giving the owner a reasonable opportunity to answer the complaint. In this case, once the bylaw was in place, I find none of this happened.

29. To this will be added interest from August 1, 2015, the approximate date on which the applicant paid the fines.

30. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $125 in tribunal fees.

ORDERS

31. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $2,834.54, broken down as follows:

    a. $2,650 for repayment of unauthorized fines paid to the respondent,

    b. $59.54 in pre-judgment interest under the *Court Order Interest Act*, (COIA) and

    c. $125 in tribunal fees.

32. The applicant is entitled to post-judgment interest, under the COIA, as applicable.

33. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The

time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

34. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Michael F. Welsh, Q.C., Tribunal Member