



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-006078

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bews et al v. Salmon River Property Owners Association*,
2019 BCCRT 343

B E T W E E N :

William Bews and Alice Bews

APPLICANTS

A N D :

Salmon River Property Owners Association

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants, William Bews and Alice Bews, say the respondent, Salmon River Property Owners Association (Association) improperly demanded “back dues” from

them. The applicants say they had relinquished their membership in the Association on July 5, 2016, and so they owed no membership dues after that date. However, in order to complete the sale of their home in May 2018, the applicants say they had to pay the Association \$2,310 it said were the “back dues”. In this dispute, the applicants seek reimbursement of the \$2,310.

2. The Association acknowledges the applicants withdrew their membership in July 2016. However, it says that if the purchaser of the applicants’ home wanted to be a member of the Association then they needed to pay an initiation fee of \$2,310. The Association says under their bylaws this initiation fee represented the monthly dues that had accrued since the applicants ceased membership in July 2016. The Association says the applicants agreed to pay the fee as a condition of the sale of their home and if the new purchaser wanted membership they could have paid the initiation fee.
3. The applicants are represented by William Bews. The respondent is represented by Julie Clemens, who I infer is an employee or officer. For the reasons that follow, I find the applicants’ claims must be dismissed.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the

tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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, or order any other terms or conditions the tribunal considers appropriate.
8. I note the Association is a society under the *Societies Act*. The applicants have not challenged the validity of the Association's bylaws, which is currently a matter only the BC Supreme Court could hear. As such, I find I have jurisdiction under the Act to decide this damages claim.

ISSUE

9. The issue in this dispute is whether the respondent Association must refund the applicants the \$2,310 they paid as "back dues" in the course of selling their home.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. It is undisputed the applicants chose to withdraw their membership in the respondent Association in July 2016, as was their right. The non-profit Association

operates under the *Societies Act* as a ranch, with members having access to horses and other related services.

12. It is also undisputed that in March 2018 the applicants listed their home for sale and it sold in May 2018. It is further undisputed that the buyers of the applicants' home had the option to become members of the Association and were not required to do so.
13. The issue in this dispute is whether the respondent improperly required the applicants to pay \$2,310 as "back dues". In other words, did the Association impose the \$2,310 payment as a condition on the sale of the house? I find the answer is no.
14. The Association's bylaws state at bylaw 6(2) that the directors may require any owner applying for membership to pay an "initiation fee". Owner is defined as being the registered owner or purchasers. Initiation fee is defined as "any amount" established by the directors under bylaw 6. Bylaw 6(3) says the amount of any initiation fee must be determined by the directors in their sole and absolute discretion, subject only to the bylaws. Bylaw 6(4) says the initiation fee must not exceed an amount equal to what would have been paid since the property was last in good standing, defined as "back dues". The back dues also allow 15% per year for interest.
15. I therefore find the bylaws clearly permit the Association to charge the purchasers of the applicants' property an "initiation fee" to become a member, which is calculated based on the property's membership dues if they had been paid since July 2016 when the property was last a member. This is not an obligation imposed on the applicants who were no longer members. It is a fee payable by anyone choosing to become a member of the Association.
16. It appears the applicants' position rests on the assertion that the Association forced them to pay back dues even though they had withdrawn their membership in July 2016. I find this simply did not occur. Upon learning of the applicants' house listing, the Association wrote the applicants on March 17, 2018 (my bold emphasis added):

You recently listed your home for sale. The [Association] has the right to require an Initiation Fee **from a new Member**. This is outlined in the By-Laws Your Member **property** has not been in good standing ... since July 2016.

The Directors have calculated that a fee of \$2310.00 reflects the back dues **that will bring your property into good standing for new owners**.

17. Contrary to the applicants' submission, there is nothing in this letter that forced the applicants to pay anything. I find the letter was clear that if the new owners of the applicants' property wanted to become members of the Association, then \$2,310 was payable. Whether the applicants chose to pay that as part of the sale or whether they passed that on to the purchasers was between the applicants and the purchaser of their home. The Association was not a party to the applicants' contract of purchase and sale of their home. The Association did nothing improper in alerting the applicants to the initiation fee that it clearly was entitled to impose before new owners would be permitted to join the Association. While I acknowledge the applicants' submission that the sale of their house would not complete if the \$2,310 was not paid, and this is shown in the applicants' contract of purchase and sale, that is a matter between the applicants and their purchaser.
18. The applicants do not dispute the \$2,310 was an accurate calculation of what they would have paid had they continued to pay dues after July 2016.
19. In accordance with the Act and the tribunal's rules, as the applicants were unsuccessful I find they are not entitled to reimbursement of the \$125 paid in tribunal fees.

ORDER

20. I order the applicants' claims and this dispute dismissed.

Shelley Lopez, Vice Chair