



Civil Resolution Tribunal

Date Issued: April 8, 2019

File: SC-2018-004090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DPM Strata Management Ltd. et al v. Strataco Management Ltd. et al*, 2019
BCCRT 433

B E T W E E N :

DPM Strata Management Ltd. and The Owners, Strata Plan VAS 2348

APPLICANTS

A N D :

Strataco Management Ltd. and The Owners, Strata Plan BCS 1785

RESPONDENTS

A N D :

DPM Strata Management Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. In the first claim, the applicant strata corporation, The Owners, Strata Plan VAS 2348 (strata 2348), says on 2 occasions in September and October 2016 its bookkeeper erroneously deposited 3 cheques totaling \$3,302.45 into the account held by the respondent strata corporation, The Owners, Strata Plan BCS 1785 (strata 1785). At that time, strata 2348's bookkeeper worked for the applicant strata property manager DPM Strata Management Ltd. (DPM) and DPM had not yet closed out its trust account for strata 1785. DPM joins strata 2348 in this claim. Strata 2348 claims reimbursement of the \$3,302.45.
2. The respondent Strataco Management Ltd. (Strataco) is strata 1785's current property manager. Strataco says strata 1785 gave express instructions not to return the \$3,302.45 and so it had to abide by its client's instructions. Strata 1785 says the financial records are not sufficiently clear to show the claimed \$3,302.45 belongs to strata 2348.
3. In its counterclaim, strata 1785 claims \$5,000 against DPM, its former property manager that until 2017 operated under the name Kazawest Services Inc. (Kazawest). The counterclaim relates to financial reporting and accounting from May to November 2015. Strata 1785 says it did not discover the errors until 2017 when it received the relevant financial records. In response, DPM denies liability and also says the limitation period has expired given the transactions at issue date back to November 2015.
4. DPM and strata 2348 are represented by Jane Dennison, an employee of DPM. Strataco is represented by Allan Grandy, an employee or principal. Strata 1785 is represented by Kent Craig, who I infer is a strata council member.

JURISDICTION AND PROCEDURE

5. These are the tribunal's formal written reasons. 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.

6. 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.
7. 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.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Is strata 2348 entitled to reimbursement of \$3,302.45 that it says its bookkeeper erroneously deposited into strata 1785's account, and
 - b. Is strata 1785 entitled to \$5,000 from DPM for alleged irregularities in financial reporting and management fee withdrawals in May to November 2015, plus alleged failure to provide complete financial reporting?

EVIDENCE AND ANALYSIS

10. In their civil claim, the applicants strata 2348 and DPM bear the burden of proof, on a balance of probabilities. Strata 1785 bears the burden of proving its counterclaim against DPM. I have only referenced the evidence and submissions as necessary to give context to my decision.

Strata 2348's claim for \$3,302.45 for mistakenly deposited funds

11. On November 30, 2015, Kazawest resigned its position as strata property manager for strata 1785. Strataco took over as strata 1785's property manager. In July 2016, DPM bought Kazawest, but continued to operate under the name Kazawest for around a year. As discussed below, Kazawest/DPM did not finalize strata 1785's accounts and records until October 2017, though DPM paid the \$3,302.45 at issue to Strataco in November 2016 as part of its closing strata 1785's trust account.

12. In September and October 2016, strata 2348's property manager was DPM. DPM says its accounts receivable clerk AW mistakenly deposited 3 cheques, totaling \$3,302.45, into strata 1785's account, when those funds were rightfully strata 2348's. I agree, for the reasons that follow.

13. I find the following is an accurate background summary, which I note is consistent with what Strataco says happened. Strata 1785 indicated that Kazawest failed to provide accurate financial statements, properly deposit money, and properly pay invoices for a number of months, May to November 2015, before Strataco was retained. At the time of transition, despite requests, Kazawest did not provide financial statements, a final accounting, nor did they provide funds that they were or expected to be holding in their trust account on behalf of strata 1785. This resulted in strata 1785 filing a complaint with the Real Estate Council of BC.

14. Several months later, after DPM had purchased Kazawest, on November 4, 2016 DPM sent Strataco financial statements and a \$4,323.99 cheque as a final payout of the funds that DPM held on behalf of strata 1785. Then, on March 7, 2017 DPM advised that \$3,302.45 of the funds they provided in fact belonged to strata 2348

and requested that sum be returned. Strataco had deposited the \$4,323.99 to strata 1785's trust account on receipt. Strata 1785 issued instructions to Strataco to not refund DPM as a result of their concerns for the accuracy of the financial statements and funds owing to the strata by DPM in light of the changing final accounting documents.

15. As for the \$3,302.45 claim, DPM says:

- a. AW deposited 2 cheques, \$1,210.20 and \$564.50, for a total of \$1,774.70 to strata 1785's account on September 28, 2016. The copies of the 2 cheques in evidence show they were payable to strata 2348 on their face, although the sender/payor of the cheques was redacted. However, they appear to be from third parties, for matters unrelated to strata 1785. The bank deposit slips and bank statements for September 2016 for strata 1785 confirm \$1,774.70 was deposited to strata 1785's operating account on September 28, 2016.
- b. AW deposited a 3rd cheque for \$1,527.75 into strata 1785's account on October 6, 2016. The evidence before me shows this was a cheque from a painting company representing an overpayment of their October 6, 2016 invoice #878 to strata 2348.
- c. AW says these 2 erroneous deposits to strata 1785's account left strata 1785 with a balance of \$4,323.99 (a small amount of interest included), when \$3,302.45 of that sum actually belonged to strata 2348.
- d. On November 4, 2016, DPM (still operating under the name Kazawest) sent Strataco a \$4,323.99 cheque from strata 1785's business chequing account. This was done after Kazawest closed strata 1785's bank accounts that it had managed, although Kazawest had ceased being strata 1785's property manager on November 30, 2015. Strataco says the funds were on their face payable to their client strata 1785 and were deposited to strata 1785's trust account accordingly.

Strataco's liability

16. It is uncontested that Strataco was not the authorized owner of the account to which DPM deposited the funds which was then later paid over to Strataco. Rather, it was strata 1785's account that Strataco only managed on their behalf. Strataco asked for instructions to release the funds back to DPM, and as noted Strataco's client strata 1785 refused.
17. There is no evidence or legal authority before me that would support a conclusion that Strataco is legally responsible for the return of the funds, in these circumstances. DPM does not seriously dispute this, and argues that Strataco could have informed strata 1785 of the error. I find that Strataco provided the relevant information, but also accepted its client's instructions as described above. I dismiss strata 2348's and DPM's claims against Strataco.

Strata 1785's liability

18. I find the evidence clearly shows the 3 cheques were erroneously deposited by DPM into strata 1785's account when those funds were rightfully owed to strata 2348.
19. I find that strata 1785's defence to refunding the funds is essentially speculation that due to other unrelated concerns about DPM/Kazawest's financial accounting that it could not trust the \$3,302.45 was a certain debt owing to strata 2348. I have found otherwise. I find strata 1785 must pay strata 2348 \$3,302.45 accordingly.
20. In support of my conclusion that strata 1785's refusal to repay the claimed funds was based on speculation, I note strata 1785's refusals to return the \$3,302.45 on May 12 and July 3, 2017. In the May 12 letter, strata 1785 stated it would only consider strata 2348's request after it responded to 3 concerns:
 - a. Kazawest had provided no proof the money was incorrectly deposited into strata 1785's account. I have found above that strata 2348 has provided sufficient proof.

- b. “Whether or not financial statements from May 2015 onwards” for strata 1785 are “correct, in light of this request”. I find this was a speculative open-ended concern that did not justify repaying the \$3,302.45.
 - c. “There is belief that this may be a breach of the *Real Estate Services Act*”. I find this is speculative and not sufficiently specific, so as to justify not returning the \$3,302.45.
21. In the July 3, 2017 letter, strata 1785 asked for “actual financial statements” for May through November 2015, along with supporting invoices and receipts, without which strata 1785 would not consider returning the \$3,302.45. I find DPM provided the available documents in October 2017, although I acknowledge strata 1785 says they were incomplete. Nonetheless, the evidence shows that the specific discrepancies alleged by strata 1785 relate to distinct and older transactions from 2015, unrelated to the \$3,302.45.
22. On April 26, 2018, strata 1785 wrote that it had reviewed the financial statements provided by DPM and felt that a professional review by an accountant was necessary to ensure their accuracy. Strata 1785 stated that it would only be willing to consider strata 2348’s request for the \$3,302.45 if it paid for the professional audit. This supports my conclusion that strata 1785 was speculating that the \$3,302.45 was not owed to strata 2348, and had no specific evidence that it was not an error as claimed by strata 2348 and DPM.
23. Again, on balance I find strata 1785’s defence to repaying the \$3,302.45 amounts to speculation that DPM’s records might be wrong because of the error that led to the \$3,302.45 deposit and because it took DPM about a year to close strata 1785’s accounts and until October 26, 2017 to finalize the transfer of records. Such speculation is insufficient, and I find strata 2348 has proved it is entitled to reimbursement of the \$3,302.45. To the extent strata 1785 expresses concerns about other invoices and alleged financial irregularities, I have addressed those in my discussion below about strata 1785’s counterclaim.

24. In summary, I find strata 1785 must return the \$3,302.45 to strata 2348. Strata 2348 is entitled to pre-judgment interest on the \$3,302.45 under the *Court Order Interest Act* (COIA), from May 12, 2017, the date strata 1785 refused to return the funds.

Strata 1785's counterclaim for \$5,000, for alleged financial and reporting irregularities

25. By agreement with strata 1785, Kazawest resigned as their property manager as of November 30, 2015. I accept that DPM did not provide all of the financial records until October 26, 2017, including for the May 2015 to Nov 2015 period in issue. Strata 1785 also says that confirmation of DPM's closure of strata 1785's account has never been provided.

26. Strata 1785's counterclaim against DPM is summarized below, and I note strata 1785 has expressly reduced their total claim to the tribunal's \$5,000 monetary limit in small claims disputes:

- a. Missing monthly strata fees or fees received from owners but not deposited to the strata's trust account between June 2015 and May 2016 - \$523.23
- b. Management fees withdrawn by Kazawest from the strata's trust account without providing "required services" for each month between May and November 2015 - \$5,287.60
- c. Duplicate payments of invoices
- d. Unauthorized disbursements from strata trust accounts

Limitation Act defence

27. As referenced above, DPM says strata 1785's claims are out of time, given the 2-year limitation period. Strata 1785 says their counterclaim is in time, because they only discovered the errors in October 2017 when they received the limited records following DPM's March 2017 request for the return of the \$3,302.45 funds.

28. The *Limitation Act* applies to disputes before the tribunal. The Limitation Act sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.
29. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which it is discovered.
30. Section 8 of the *Limitation Act* says a claim is “discovered” on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
31. In *Michael (Bruce) Woytuik v. The Owners, Strata Plan VIS 5970*, 2017 BCCRT 3, a decision that is not binding on me but which I find persuasive, a tribunal member stated as follows in paragraphs 44-46 (my bold emphasis added):

The limitation period begins on the first day that a person had knowledge of the matters in the claim **or reasonably ought to have known about the claim.** ...

In *Tender Choice Foods Inc. v. Versacold Logistics Canada*, 2013 ONSC 80, (“Tender Choice”), the Ontario Supreme Court [at para. 56] reviewed Ontario legislation with almost identical wording to section 8 of the *Limitation Act*. In *Tender Choice*, the court said that **the limitation period commences** when the person making the claim learns the underlying material facts or **when the person ought to have discovered those facts by the exercise of reasonable diligence.**

32. Strata 2348 and DPM’s claim started on June 12, 2018, when the tribunal issued the Dispute Notice. The tribunal issued the Dispute Notice for strata 1785’s counterclaim on October 29, 2018, during the tribunal facilitation stage. For reasons detailed below, I find that if strata 1785’s claim arose before October 29, 2016 it was

filed out of time. I note the Act changed on January 1, 2019 such that the limitation period stops when the application is filed (strata 1785 filed their counterclaim on October 7, 2018). Nothing turns on it in this case, but I note that because the limitation defence is a substantive rather than procedural issue in this dispute, I find the version of the Act that was in force at the time the application was filed applies. In other words, in 2018 the date the Dispute Notice was issued is what stopped the applicable limitation period from running.

33. I find strata 1785's claims were not discoverable until they knew or reasonably ought to have known they had a claim against DPM for alleged financial losses. However, I do not accept that discoverability was delayed until October 2017 when the records were provided. As noted, Kazawest terminated its manager role on November 30, 2015. I find that with reasonable diligence strata 1785 ought to have discovered the alleged financial discrepancies and losses by early 2016, as it knew by then that it was missing records it should have. The strata is required to keep such financial records under section 35 of the *Strata Property Act* (SPA). Apart from a complaint to the Real Estate Council of BC that was closed without action, there is no evidence before me that strata 1785 took any formal steps to pursue the records apart from making requests to Kazawest/DPM. I find these circumstances mean that strata 1785's claim against DPM was likely discoverable by the summer of 2016 if not before, well before October 29, 2016. As such, I find that strata 1785's claim is out of time.
34. While not raised by the parties, I acknowledge section 22 of the *Limitation Act*, which states that if a claim is started within the basic limitation period, a "related claim" such as a counterclaim can be started even if the limitation period for the counterclaim has expired. It is undisputed that 2384's claim for the mistakenly deposited funds was started in time.
35. However, I find strata 1785's counterclaim is not a "related claim" for the purposes of the *Limitation Act*. First, strata 2384 is the owner of the mistakenly deposited funds that were deposited in the fall of 2016. In contrast, strata 1785's claim is

against only DPM, for alleged financial irregularities in Kazawest's role as their former property manager dating back to May 2015. As noted above, while the records transfer was not completed until October 2017, Kazawest stopped representing strata 1785 on November 30, 2015, a year before the mistaken funds transfer. I find strata 1785's claims against DPM are out of time, as they were not filed within 2 years of their discoverability in the spring or summer of 2016, when I find strata 1785 knew it was missing financial records and with reasonable diligence should have pursued them and would have discovered the alleged losses. This obligation to pursue the financial records is particularly strong given the legal requirement to retain financial records contained in section 35 of the SPA. My conclusion is also supported by the fact that strata 1785 argues that its numerous requests for "proper financial disclosure" led to Kazawest's resignation in November 2015.

Merits of strata 1785's counterclaim

36. Even if I am incorrect about the *Limitation Act* analysis, I find strata 1785's claims must be dismissed. I find there is insufficient evidence to support strata 1785's claims that "some of the withdrawals could be unauthorized payments or loans to another party". Strata 1785's arguments are simply too speculative.
37. DPM bought Kazawest in July 2016. DPM acknowledges that Kazawest "did not do a good job of financial reporting", but says that ultimately all financial statements for the period in question have been provided and that there is no proof they are inaccurate. The tribunal's small claims jurisdiction is over debt or damages claims. The tribunal is not a regulator empowered to investigate the financial records and identify any financial irregularities, to the extent strata 1785 is asking for such relief. As noted above, the burden in strata 1785's claim is on it to prove DPM owes it money. I find strata 1785's request for repayment of "any funds" owed is speculative, based on the evidence before me. I find that the fact that strata 1785 submits in this dispute that it "could not and at the current time cannot determine the amount" that DPM/Kazawest owes, is support for my conclusion. I find strata 1785

has had ample opportunity to review the records provided and make their case about any missing funds. I find it has failed to do so.

38. Strata 1785's argument is also that "due to the poor and incomplete accounting and financial records" funds "may have been withdrawn" or deposited without strata 1785's knowledge. Strata 1785 says the disputed funds that are the subject of strata 2384's claim "may have been a repayment of an unauthorized loan" to strata 2384 or to Kazawest/DPM or "some other 3rd party for all [strata 1785] is aware". Again, I find their speculation about what "may" have happened is insufficient.
39. That said, strata 1785 identified a number of specific transactions between June through November 2015 as problematic. Strata 1785 says DPM failed to provide supporting documentation such as invoices and/or the charges were not authorized. It says DPM failed to either collect or remit strata fees. I note these specific arguments were not raised until strata 1785's reply submission (strata 1785 chose to make no initial argument in its counterclaim), leaving DPM with no opportunity to respond. I place less weight on strata 1785's submission accordingly.
40. DPM provided an explanation and records showing the disputed strata fees were as paid by the strata owners in question, and to support the expenses charged. On balance, I find I cannot prefer strata 1785's evidence about the allegedly duplicated expenses and alleged improper transactions.
41. In summary, quite apart from the successful limitation defence I find strata 1785 has not met the burden of proving DPM owes it any money. In light of these conclusions, I find strata 1785's claims must be dismissed.
42. The applicants strata 2348 and DPM were successful this dispute. Under the Act and rules, I therefore find DPM is entitled to reimbursement of \$175 in tribunal fees it paid, payable by strata 1785. Strata 1785 must also reimburse DPM \$68.91 for Land Title searches it had done in order to start this proceeding, which sum I find reasonable. Strata 2348 did not pay any fees. As strata 1785 was unsuccessful in

its counterclaim, I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDERS

43. Within 14 days of this decision, I order strata 1785 to pay strata 2348 a total of \$3,378.35, broken down as follows:
 - a. \$3,302.45 in debt, and
 - b. \$75.90 in pre-judgment interest under the COIA.
44. Within 14 days of this decision, I order strata 1785 to pay DPM a total of \$243.91, for \$175 as reimbursement of tribunal fees plus \$68.91 in dispute-related expenses.
45. Strata 2348's and DPM's claims against Strataco are dismissed. Strata 1785's counterclaim against DPM is dismissed.
46. 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.
47. 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.

Shelley Lopez, Vice Chair