



# Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2018-007492

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1991 v. Erdodi*, 2019 BCCRT 884

**B E T W E E N :**

The Owners, Strata Plan LMS 1991

**APPLICANT**

**A N D :**

Una Erdodi

**RESPONDENT**

**A N D :**

The Owners, Strata Plan LMS 1991

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The applicant strata corporation (and respondent by counterclaim), The Owners, Strata Plan LMS 1991 (strata), claims against the respondent and applicant by counterclaim, Una Erdodi, for repudiation of a contract. Ms. Erdodi owns strata lot 12 (SL12) in the strata.
2. In March 2005 the parties entered into a settlement agreement under which Ms. Erdodi agreed not to reside in SL12. In October 2014 Ms. Erdodi moved back into SL12. The strata wants Ms. Erdodi to pay \$5,000 in damages for repudiating the settlement agreement.
3. Ms. Erdodi says the strata is out of time to bring its claim. She counterclaims and says the strata has continuously harassed her and breached various terms of the settlement agreement. She wants the strata to pay her \$5,000 in damages, and she wants the tribunal to order the strata to stop harassing her.
4. Ms. Erdodi is self-represented and the strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

5. 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*. 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. Ms. Erdodi has requested special accommodation to have legal representation for these proceedings. She says the strata's representative is a paralegal, so she feels that she is at a disadvantage, but there is no evidence before me of the strata's representative's qualifications. The tribunal's rules allow a party to ask for permission for legal representation at any time during a dispute. When considering

such a request the tribunal may consider whether any other party in the dispute has legal representation, whether the other parties in the dispute agree to the requested representation, whether the person proposed as the representative is appropriate, and whether permitting the request is in the interests of justice and fairness.

7. Ms. Erdodi failed to make a formal request for legal representation during the intake or facilitation process, and she has not provided the name of her potential legal representative. She has provided fulsome submissions and evidence that address the factual and legal issues in this dispute, and she appears to have received legal advice on at least some of the legal issues relevant to this dispute. I find I can fairly decide the issues in this dispute based on the evidence and submissions she has already provided without her having formal legal representation. Therefore, I find there is no prejudice to Ms. Erdodi by not having formal legal representation in this dispute, and I deny her request.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “she said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
9. 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.

10. Under tribunal rule 9.3 (2), 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**

11. The issues in this dispute are:
  - a. Is the strata's claim out of time?
  - b. If not, is Ms. Erdodi required to pay the strata \$5,000 in damages for repudiating the settlement agreement?
  - c. Is the strata required to pay Ms. Erdodi \$5,000 in damages for breaching the settlement agreement?
  - d. Is the strata required to reimburse Ms. Erdodi for strata expenses, legal expenses and other dispute-related expenses?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim like this one, the strata must prove its claim on a balance of probabilities. This means I must find it is more likely than not that the strata's position is correct. Likewise, Ms. Erdodi is responsible for proving her counterclaim.
13. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
14. In 2003 Ms. Erdodi and her son filed 2 separate Human Rights Tribunal (HRT) complaints against the strata. In March 2005 the parties entered into a settlement agreement to resolve the 2 complaints which includes the following terms:

- a. The strata agreed to pay Ms. Erdodi and her son \$6,000 each as general damages to injury to dignity, feelings and self-respect.
  - b. The strata agreed to pay Ms. Erdodi and her son's complaint-related expenses in the amount of \$2,193.27.
  - c. Ms. Erdodi agreed not to reside in SL12 or any other unit in the strata complex.
  - d. The strata agreed to allow Ms. Erdodi or her son to rent out SL12 indefinitely, without penalty or sanction, otherwise Ms. Erdodi and her son would be allowed to move back into SL12.
  - e. The strata agreed not to cause or sanction any "malicious damage" to SL12 or to any property of a tenant of SL12, including vehicles.
  - f. The strata agreed not to cause or sanction any undue interference or harassment of any tenant of SL12.
  - g. The strata agreed not to charge Ms. Erdodi any special levies or strata expenses for payment of the settlement funds or legal expenses.
  - h. The parties agreed to keep the particulars of the settlement agreement confidential, and not to disclose them to anyone except for their legal or financial advisors, or as required by a court of law.
15. It is undisputed that Ms. Erdodi moved back into SL12 on October 16, 2014. She says she was forced to move because of financial reasons but provided no documentary evidence to support this contention.
16. The strata says Ms. Erdodi repudiated the settlement agreement and it accepted her repudiation, which brought the parties' future obligations under the settlement agreement to an end. As damages for the repudiation, the strata seeks repayment of Ms. Erdodi's portion of the settlement amount, which is \$7,096.43, less \$2,096.43, for a total of \$5,000, which brings the claim within the tribunal's small claims monetary limit of \$5,000.

17. Ms. Erdodi says the strata has breached the settlement agreement in various ways since April 2005 by breaching confidentiality, damaging her personal property, damaging her reputation, restricting who may visit her home, treating her differently than it treats other owners, failing to attend to a water leak in SL12 in July 2018, and verbally abusing, threatening, bullying and harassing her. She claims \$5,000 in damages for the strata's breach of the settlement agreement.
18. With respect to the alleged water leak in SL12, although she did not specifically articulate this claim or formally request a remedy, in her submissions Ms. Erdodi seeks payment from the strata of an additional \$5,625.76 for the cost of repairing the water damage in SL12. However, the claim appears to relate to the interpretation or application of the *Strata Property Act* and the strata's bylaws, which means it falls within the tribunal's strata property claims jurisdiction. Under section 1 (2) of the Act, if a claim may be a small claim or a strata property claim, the tribunal will adjudicate it under its strata property claims jurisdiction. Accordingly, under section 10 (1) of the Act, I refuse to resolve Ms. Erdodi's claim related to the water leak in SL12.
19. In her reply submissions Ms. Erdodi asks for compensation of \$25,000 because of the strata's "devious" behavior, however this amount well exceeds the tribunal's small claims monetary limit. Since Ms. Erdodi first raised this claim in her reply submissions the strata did not have an opportunity to respond to it. I also find there is a lack of evidence of the strata's allegedly "devious" behavior. For all of these reasons, I dismiss this aspect of Ms. Erdodi's claim.

***Is the strata's claim out of time?***

20. Ms. Erdodi says the strata learned of its claim against her in October 2014 when she first moved back into SL12. She relies on the BC Supreme Court's decision in *Roberts v. E. Sands Associates Inc.*, 2013 BCSC 902, in which the court said a claimant must exercise reasonable diligence in discovering the material facts that form the basis of an action. The court said willful blindness to the existence of damages is not an effective answer to a limitation defense.

21. It is undisputed that when Ms. Erdodi first moved back into SL12 in October 2014 she misled the strata and told them she was only there on a temporary basis for renovations. The strata's position is that it did not learn of her intention to live permanently in SL12 until she attended a strata council meeting on October 24, 2016.
22. On the evidence before me, I find the earliest date the strata knew that Ms. Erdodi had moved back into SL12 was November 5, 2014. On that date the strata informed her by letter that it had been advised she had temporarily moved back into SL12, and that she was in breach of the settlement agreement. The strata requested that she vacate SL12 within 3 days, failing which it would issue fines against her.
23. The evidence is clear that the strata first learned of Ms. Erdodi's residence in SL12 as early as November 5, 2014. Whether that residence was temporary or permanent, I note the settlement agreement makes no distinction and simply says Mr. Erdodi will not reside in SL12. The strata made it clear in its November 5, 2014 letter that it viewed Ms. Erdodi's residence in SL12 to be a breach of the settlement agreement.
24. The strata says its claim in this dispute is for repudiation, not simply for breach of contract. It relies on the decision in *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361, in which the Court of Appeal said a repudiation occurs when a party to a contract shows an intention, either by words or conduct, not to be bound by the contract. The court said the innocent party may choose to accept the repudiation which brings the contract to an end, and they may seek damages from the repudiating party.
25. The strata says it did not learn that Ms. Erdodi repudiated the settlement agreement, or intended not to be bound by it, until it received a letter from her dated March 31, 2017. In that letter Ms. Erdodi said about the settlement agreement, "I do not consider this piece of paper to be a contract of any sort – I signed a promise – not a contract, and promises may be broken – so, I moved back into my home – I broke my promise..." The strata accepted Ms. Erdodi's repudiation of the settlement

agreement by letter on July 30, 2018 but provided no explanation for the 16-month delay. The strata says the limitation period on its repudiation claim did not start running until it accepted her repudiation on July 30, 2018. The tribunal issued the strata's Dispute Notice on October 11, 2018.

26. I find nothing in Ms. Erdodi's March 31, 2017 letter materially changed her situation. Before she wrote that letter she had been residing in SL12 for more than 2 years. I find the letter is merely an acknowledgment of her breach of the agreement, which was not news to the strata. As stated in *Mantar*, a party can demonstrate its intention not to be bound by a contract through either its words or conduct. I find the words in Ms. Erdodi's March 31, 2017 letter are simply a confirmation of her previous conduct, which showed an intention to no longer be bound by the settlement agreement.

27. Under the *Limitation Act*, the strata was required to bring its claim within 2 years of the date it knew or reasonably ought to have known it had a claim. Whether characterized as a breach or repudiation of the settlement agreement, I have found the strata first learned about its claim on November 5, 2014. Therefore, the strata was required to bring its claim by November 5, 2016. I note that under section 24 of the *Limitation Act* the running of a limitation period restarts on the date a person acknowledges liability for a claim, however that acknowledgement must occur before the expiration of the limitation period. While I find Ms. Erdodi's March 31, 2017 letter to be an acknowledgment of her breach of the settlement agreement, I find that acknowledgement occurred more than 4 months after the expiration of the limitation period. Therefore, I find the limitation period expired on November 5, 2016. Since the Dispute Notice was not issued until October 11, 2018, I find the strata's claim is out of time, and I dismiss it. It is therefore unnecessary for me to address the merits of the strata's claim for damages.

***Is the strata required to pay Ms. Erdodi \$5,000 in damages for breaching the settlement agreement?***



28. Ms. Erdodi claims the strata breached the settlement agreement in various ways, including by harassing her. One of the terms of the settlement agreement expressly prohibits the strata from harassing Ms. Erdodi. I note the Supreme Court has said it is doubtful the tort of harassment is a recognized cause of action in Canada (see *Total Credit Recovery v. Roach*, 2007 BCSC 530), but my analysis here is based on the relevant harassment provision in the settlement agreement.
29. It seems the thrust of Ms. Erdodi's claim is that the strata harassed her by continuously attempting to enforce the terms of the settlement agreement after learning she had moved back into SL12. She says it sent her multiple communications by mail, email, and posting on her door demanding that she move out. However, I do not find these actions of the strata to be inappropriate in the circumstances, particularly since Ms. Erdodi has acknowledged that she is living in SL12 in breach of the settlement agreement. There is no evidence before me that Ms. Erdodi suffered any mental distress or physical harm as a result of the strata's communications. Therefore, I dismiss Ms. Erdodi's claim for damages related to the strata's alleged breach of the harassment provision of the settlement agreement.
30. Ms. Erdodi notes that the strata copied its January 23, 2017 letter to her to D.W., the strata's representative in this dispute, who she says was not on the strata council at the time. She says this breached her confidentiality and privacy. The evidence before me indicates that D.W. was a council member on December 15, 2018, but it is unclear on what date D.W. joined the council. In the absence of supporting evidence to establish the date D.W. joined the strata council, I dismiss this allegation.
31. Ms. Erdodi says she found a document related to her HRT complaints on display in the strata's library which was a breach of her confidentiality. However, the document Ms. Erdodi refers to was printed from CanLII, which is accessible to the public. Therefore, I find no basis to this allegation.
32. Ms. Erdodi says some of the correspondence she received from the strata in 2017 was falsified, but I find the evidence does not support this assertion.

33. Ms. Erdodi says the strata council members have told new owners that she is “bad news” and should be avoided, but I find the evidence does not support this assertion.
34. Ms. Erdodi says D.W. slipped a threatening letter under her door, but the letter demands that she stop harassing him otherwise he would seek legal recourse. I find the content of the letter does not form the basis of a legal claim against the strata.
35. Ms. Erdodi submitted handwritten notes about her encounters with D.W. and C.H., past president of the strata council. These notes allege that D.W. swore at her on multiple occasions and that C.H. was rude to her and followed her through the strata complex. Ms. Erdodi also claims that D.W. kicked her door stop every time he passed her door and shared the terms of the settlement agreement with his partner. However, I find there is no other documentary evidence to support these claims aside from Ms. Erdodi’s handwritten notes. In particular, there are no witness statements to corroborate her allegations. I also note Ms. Erdodi did not name D.W. or C.H. as parties to this dispute. For all of these reasons, I find Ms. Erdodi has not established these claims.
36. Ms. Erdodi says that she has permission from the strata to charge her van’s battery using the outlet next to her parking stall, and that someone continues to pull out the plug to prevent her from charging the battery. She says that in February 2017 her parking stall outlet was without power for 7 days and that the strata was slow to respond to her concerns. She says that on October 24, 2017 at 5:45 p.m. she witnessed D.W. walking towards the plug to pull it out of the wall, but that he stopped when he saw her. She says D.W. confessed to the police on October 25, 2017, and that no one pulled the plug for a month afterwards. However, there is no police report in evidence, and I find the balance of the evidence does not support this claim.
37. Ms. Erdodi submitted excerpts of minutes from numerous strata council meetings which refer to the strata’s issue with her residing in SL12 and its eventual decision to bring this dispute. Ms. Erdodi says the reference to the terms of the settlement

agreement in the minutes are a breach of confidentiality under the agreement. However, the strata was a party to the settlement agreement, and therefore I find the strata council was within its rights to discuss Ms. Erdodi's alleged breach or repudiation of the agreement, and that such discussions and their recording in the minutes are not a breach of confidentiality as contemplated by the settlement agreement.

38. On September 25, 2017 the strata manager sent Ms. Erdodi an email informing her that the strata would no longer respond to her allegations about open houses, given her history of making multiple unfounded complaints. While I find the tone of the letter could have been worded more politely, I find there is nothing in the email to form the basis of a legal claim.
39. On December 19, 2018 the strata notified Ms. Erdodi that the council had voted to prohibit her from observing council meetings. She says this is in breach of bylaw 21 (3) which says owners may attend council meetings as observers. However, I find this allegation does not relate to the strata's breach of the settlement agreement, so I decline to address it further, bearing in mind this is a small claims dispute.
40. For all of these reasons, I find Ms. Erdodi has not established that the strata breached the settlement agreement, and I dismiss her counterclaim.

***Is the strata required to reimburse Ms. Erdodi for legal expenses and other dispute-related expenses?***

41. Paragraph 14 of the settlement agreement says that Ms. Erdodi will not be the subject of any special levy of the strata owners for payment of the settlement funds or legal expenses. Ms. Erdodi says the strata breached this term of the agreement in April 2005, and she claims \$177.41 for her portion of the strata's payout of the 2005 HRT settlement, an undisclosed amount for her portion of the strata's legal fees related to the HRT complaints, and an undisclosed amount for her portion of the increase to the strata's building insurance due to the HRT payout.

42. The strata says that, in accordance with paragraph 14 of the settlement agreement, it has not charged Ms. Erdodi any fee or levy to cover the cost of the strata's settlement fees or legal expenses related to defending her HRT complaints.
43. I find the evidence does not support Ms. Erdodi's claim for any of these amounts, and in any event such claims are out of time. I dismiss them.
44. Ms. Erdodi also claims \$44.51 for her portion of "disclosed" strata legal fees from October 2014 to December 2015. She submitted an email dated December 12, 2016 from the strata property manager informing her that from October 2014 to the date of the email the strata had spent \$3,385.15 in legal fees related to SL12. However, I find there is no evidence the strata charged Ms. Erdodi any amount for these legal expenses, and I dismiss this claim.
45. Ms. Erdodi also claims \$1,570 in legal fees. Under the tribunal's rules, it generally does not order reimbursement of a party's legal fees except in extraordinary circumstances. I find there is nothing extraordinary about this case, and I dismiss this claim.
46. 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. Since neither party was successful, I find each party is responsible for their own tribunal fees and dispute-related expenses.

## **ORDERS**

47. I dismiss the strata's claims.
48. I refuse to resolve Ms. Erdodi's counterclaim related to a water leak in SL12.

49. I dismiss the remainder of Ms. Erdodi's counterclaims.

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Sarah Orr, Tribunal Member