



# Civil Resolution Tribunal

Date Issued: July 7, 2020

File: SC-2020-000181

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS 4769 v. MCB Property Group Ltd.*,

2020 BCCRT 756

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

The Owners, Strata Plan VIS 4769

**APPLICANT**

**A N D :**

MCB PROPERTY GROUP LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. This dispute is about a contract to provide property management services. The applicant, The Owners, Strata Plan VIS 4769 (strata), says that the respondent MCB Property Group Ltd. (MCB), did not provide proper financial statements. They ask for \$1,000 to hire an accounting professional to audit and rebuild the records. The strata is represented by a strata council member.
2. MCB says that there was a problem with the information it had and the bookkeeping software. It says that it corrected the errors in the financial information and provided an accurate second statement. MCB argues there is no need for an accounting professional to rebuild the records it has already fixed and supplied. MCB is represented by an organizational contact, PB.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "it said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

7. The issue in this dispute is whether MCB provided defective financial statements and, if so, what is the correct remedy.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, the applicant strata must prove its claim on a balance of probabilities.
9. The strata originally requested an order for document production. The strata has withdrawn that request, apparently because the documents have been provided. Therefore, I will not consider this issue in my decision.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. It is undisputed that MCB's representative, PB, was employed by the strata's previous property management company (R) until he decided to start MCB in February 2019. MCB then became the strata's management company. R prepared

the 2018 fiscal year-end financial statements and the January 2019 financial statements.

12. MCB says that when it started to work individually with the strata in February 2019 it noticed some issues with R's financial statements but worked through them. MCB says that it is standard practice for a new management company to clarify the previous company's mistakes. Although it is clear that PB worked for R, and was involved in work for the strata before he started his own company, it is unclear on the evidence how much PB had to do with creating the financial statements for the strata when he was an employee of R. In any event, MCB says that there were problems with R's records, and it investigated these to provide an accurate financial statement. The strata does not specifically address the issue of R's previous financial statements.
13. MCB also says that contracting an outside accounting company to completely rebuild the previous records due to some incorrect entries is not accepted practice.
14. MCB says that not only were there inaccurate entries after it took over the strata's bookkeeping but that there were software issues with how the bookkeeping was linked to the banking records. The strata also does not specifically address this issue. MCB says that it provided a financial statement just after February 2019 but when it discovered problems it started over and in July 2019 it completed a new financial statement. The evidence shows that MCB did provide another financial statement in July 2019.
15. The strata gave MCB a 60-day termination notice on August 20, 2019. I note that the strata mentioned in its submissions that MCB did not pay some of the strata's bills on time and that the strata had to pay late fees. The strata did not start a claim for these late fees so I will only consider the issue of late fees in determining whether MCB performed defective work in producing the financial statements, which is the issue in this claim.

16. The strata hired another property management company, C, soon after it terminated MCB. MCB says that C started on November 1, 2019 and must have prepared the financial statements from November 2019 until now. MCB says that it fixed the mistakes it discovered and that any other issues discovered were fixed by the strata or by C. The emails between the parties do show that several issues were addressed by the strata and C.
17. The strata disagrees that a new property management company is expected to perform a full review of previous financial records and whether they are accurate. The strata notes that it only received disclosure of documents from MCB in February 2020. It says there might still be mistakes about whether all strata lot owners paid their monthly assessments and if fees were properly collected. It also says that there is a question whether any other fees were collected and properly recorded in unit account registers. It does not say why an accountant or other professional is required to do this or why the strata or the new property management company does not have the expertise to find out this information. It also does not explain why the strata did not start a claim to get back late fees if this was its concern.
18. Essentially the crux of this dispute is whether MCB's work was so defective or below industry standards that the strata needs to hire a professional firm to rebuild the strata's financial records and provide financial statements.
19. As mentioned, the strata must prove that MCB performed defective work which requires another professional to fix. To reach that conclusion, I find that I would need expert evidence on whether a reasonably competent property manager would have provided a financial statement with no errors and that it was not standard practice that these were acceptable mistakes which another property manager could fix. The strata did not provide expert evidence on this issue.
20. Similarly, a recent CRT decision, *Jonas v. Nirvana Pet Resort Inc.*, 2020 BCCRT 626, considered the standard expected of a professional in terms of professional negligence and noted that an applicant must prove a breach of the standard of care

through expert opinion evidence. In that dispute, the tribunal member noted the subject matter was technical and outside the knowledge and experience of the ordinary person, so required expert evidence.

21. I am not bound by this decision but find its analysis persuasive and apply it to this dispute. Based on the above, I find that this dispute involves technical matters and it is unclear what the standard practices are for property managers' financial statements. I am unable to tell by viewing the financial statements how much work is necessary to fix them or how many errors, if any, remain. The strata provided three quotes from other professional firms ranging from \$800 to \$1,600 for re-writing financial statements and generating unit ledgers. However, as noted above, there is no expert evidence about why professional accounting services are necessary. Based on the evidence, I find that the strata has not proved that MCB's work was defective or negligent such that an accounting firm needs to be hired to fix its mistakes.
22. For all these reasons, I dismiss the strata's claims.
23. Under section 49 of the CRTA and CRT rules, the CRT 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. As the strata was not successful it is not entitled to reimbursement of its tribunal fees.

## **ORDER**

24. I dismiss the strata's claims and this dispute.

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Kathleen Mell, Tribunal Member