



Civil Resolution Tribunal

Date Issued: May 6, 2021

File: SC-2020-004757

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Edgar v. Newman*, 2021 BCCRT 483

BETWEEN:

DOUGLAS EDGAR

APPLICANT

AND:

GEOFFREY NEWMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a preliminary decision about the applicant Douglas Edgar's application for production of documents from a strata corporation, The Owners, Strata Plan VR390 (strata), property manager 604 Real Estate Services Inc. (604 Real Estate), and the Vancouver Police Department (VPD). The strata, 604 Real Estate, and VPD are not parties to this dispute.

2. In this small claims dispute, Mr. Edgar says the respondent Geoffrey Newman assaulted him by pushing his fingers into Mr. Edgar's chest, and subjected him to "harassment and threats" at or after a special general meeting (SGM) on June 18, 2018. Mr. Edgar reported the incident to the VPD.
3. Mr. Edgar claims \$5,000 in damages and seeks an order requiring Mr. Newman to "stop stalking and bullying me." Mr. Newman denies Mr. Edgar's claims.
4. Mr. Edgar applies for an order to have the strata and 604 Real Estate produce a list of attendees at the June 18, 2018 SGM, and for the VPD to produce an unredacted incident report from the same date.
5. For the reasons given below, I dismiss Mr. Edgar's applications for document production.

JURISDICTION AND PROCEDURE

6. Under section 61 of the *Civil Resolution Tribunal Act (CRTA)*, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager (also known as a CRT facilitator).
7. 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.
8. 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 CRT considers appropriate.
9. As noted above, Mr. Edgar's Dispute Notice seeks damages for harassment and an order to require Mr. Newman to stop "stalking and bullying". I question whether these

remedies are within the CRT's jurisdiction. However, in this preliminary decision I only address Mr. Edgar's application for document production.

ISSUE

10. The issue is whether Mr. Edgar is entitled to document production orders requiring:
 - a. The strata to produce a list of the June 18, 2018 SGM attendees,
 - b. 604 Real Estate to produce a list of the June 28, 2018 SGM attendees, and
 - c. The VPD to produce an unredacted incident report from June 18, 2018.

EVIDENCE AND ANALYSIS

11. It is uncontested that Mr. Edgar served a Summons Notice on the strata, the property manager and the VPD for the documents he seeks in this application. The strata and property manager each provided a Summons Response.
12. The VPD provided a redacted copy of VPD File 18-136613 which it describes as a Computer Aided Dispatch (CAD) file (June CAD Report) in response to an earlier Freedom of Information (FOI) request from Mr. Edgar.
13. Both parties, and the strata, property manager and VPD provided submissions on Mr. Edgar's application for document production. I have read all the evidence and submissions provided on this application, but only refer to them as necessary to explain my decision.

Document Production Orders Generally

14. CRTA section 33(1)(b) provides that a party to a dispute may prepare and serve a summons requiring a person to produce a record that is relevant to the issue in the dispute and is "in the person's possession or control."

15. For a document to be relevant to an issue in dispute it must contain information that may fairly lead to a line of inquiry which may enable a party to either advance their case or damage the other party's case: *Kaladjian v. Jose*, 2012 BCSC 357 at paragraph 40. The connection between the documents sought and the issues must be more than a mere possibility: *Przybysz v. Crowe*, 2011 BCSC 731 at paragraph 45. The pleadings govern the determination of issues of relevance: *Kaladjian* at paragraph 61. Here, the pleadings are the Dispute Notice and Dispute Response.
16. Section 33(1)(b) also requires that the record sought be in the person's possession or control. If it is not, then production cannot be ordered even if the document is relevant.

Must the strata produce a list of the June 18, 2018 SGM attendees?

17. Mr. Edgar seeks a copy of the June 18, 2018 SGM owners voting list, including the names and strata lot numbers of owners who attended in person and owners who attended by proxy. Mr. Edgar says the evidence is relevant because the SGM attendees could be witnesses to his alleged harassment and assault by Mr. Newman.
18. The strata opposes the request for document production because:
 - a. It does not have such a document in its possession and control,
 - b. The CRT previously decided that a list of attendees at the June 18, 2018 SGM is not a record or document that the strata is required to prepare or retain under Strata Property Act (SPA) section 35,
 - c. Mr. Newman attended the June 18, 2018 SGM, so he was aware of the other in person attendees, and
 - d. The strata has only 12 strata lot owners, meaning Mr. Newman could likely canvass witnesses without a list of SGM attendees.
19. The strata produced minutes of the SGM held June 18, 2018. The minutes confirm that the strata had quorum, with 9 owners represented at the SGM. At the SGM, a $\frac{3}{4}$

resolution was passed to add a bylaw. The motion carried 8 in favour, 0 against and 1 abstention.

20. Section 35 of the SPA governs the records a strata is required to prepare or retain. Under section 35 of the SPA the strata must prepare minutes of an SGM including the “results of any votes”.
21. In *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, the court said a record or document that is not set out in section 35 of the SPA is generally not available to an owner or tenant. Having said that, in *Kayne* the court notes that where a party seeks document production in a civil claim, it may be “relevant and produceable no matter how it is described or the purpose for which it is prepared if it happens to contain relevant information”: paragraph 6. Following *Kayne*, while I look to the SPA for guidance in assessing relevance, I acknowledge that the SPA alone may not be determinative.
22. Mr. Edgar submits that “the results of any votes” should include a voters roll showing which strata lots were qualified to vote in person or by proxy, and records of which strata lots voted in favour, against, abstained or were absent. As I explain below, I find that the “results of any votes” requirement is less detailed than Mr. Edgar submits. As well, I do not find the vote count relevant to Mr. Edgar’s claims.
23. In *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 at para. 133, affirmed 2017 BCCA 341, leave to appeal refused 2018 CanLII 61047 (SCC), the court noted that the purpose of minutes is to “inform the members of decisions made and money spent on their behalf.” Aside from the results of the votes, in terms of the number of votes cast for or against a resolution, and any abstentions, there is no requirement for more detail to be contained in those minutes: *Kayne*, paragraph 8.
24. In *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 944, the vice chair dismissed Ms. Harvey’s claim for the strata to produce a list of attendees of the June 18, 2018 SGM, because the strata is not required to prepare or retain that document

under section 35 of the SPA. It is undisputed that Mr. Edgar and Ms. Harvey are common-law spouses living in the same strata lot. I agree with the vice chair's non-binding analysis about the scope of SPA section 35 and apply it here.

25. Following the analysis in *Yang, Kayne and Harvey*, I find that the SGM Minutes produced by the strata satisfy the requirements of SPA section 35 in that they record the results of the votes. I find that the strata is not required to prepare or retain a document containing a higher degree of detail than what is in those minutes. I find the strata is not required to list the names and strata lots owned by those who voted on the $\frac{3}{4}$ resolution, nor to align those names with how each owner voted.
26. Turning to whether the document sought is relevant, I find the identities of the owners who attended by proxy is not relevant to Mr. Edgar's assault claim, since those owners were not present in person. I also find the nature of the vote cast by each owner irrelevant to Mr. Edgar's claim for damages.
27. Given that Mr. Edgar attended the June 18, 2018 SGM, I find he observed the owners who were present in person. Therefore, I find a further list of attendees is of questionable relevance to his current claim. I say that because Mr. Edgar alleges a physical assault occurred either as he was leaving or after he left the SGM meeting room. In his Dispute Notice, he does not say that anyone observed the alleged assault.
28. Even if I am wrong and the owner names are relevant, I would not order the production of the document. I find that strata does not have a voting list and is not required to prepare it. Having considered the evidence and submissions, I do not agree with Mr. Edgar's submission that failing to produce this document would be an "obstruction of justice" or unfair. I find that the strata is not required to produce the list that Mr. Edgar describes, given CRTA section 33(1)(b).
29. For these reasons, I dismiss Mr. Edgar's application for an order requiring the strata to produce a voting list from the June 18, 2018 SGM.

Must 604 Real Estate produce a list of the June 18, 2018 SGM attendees?

30. In its Summons Response, 604 Real Estate noted that it did not have possession or control of a list of the SGM attendees, though it referred to an incorrect date for the SGM. In submissions, 604 Real Estate corrected the date error and confirmed it does not have possession or control of a list of June 18, 2018 SGM attendees.
31. Mr. Edgar says his Summons was directed to EB, 604 Real Estate's representative, in her personal capacity. I have reviewed the Summons and find it was directed to 604 Real Estate, and not EB personally. Mr. Edgar says that EB had to sign the Summons Response for 604 Real Estate but did not do so. I find EB was not required to sign the Summons Response provided by 604 Real Estate.
32. Mr. Edgar says that EB was present at the June 18, 2018 SGM, signed off on the minutes and was "in charge of any and all voting." I infer that he believes that EB, for 604 Real Estate, has a list of the June 18, 2018 SGM attendees with voting details.
33. I accept 604 Real Estate's evidence that it does not have such a list. Even if EB prepared the minutes, I find she likely would have provided them to the strata in the course of her property management work. The strata has already produced the SGM minutes.
34. I find that, because 604 Real Estate does not have possession or control of the list Mr. Edgar seeks, it is not required to produce it. I dismiss Mr. Edgar's application for a production order against 640 Real Estate.

Must the VPD produce an unredacted copy of the June CAD Report?

35. In submissions, VPD's legal counsel described the June CAD Report as a 4-page document more in the nature of a dispatch record than a formal report.
36. The VPD points out that section 22(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) requires that the VPD balance the unreasonable invasion of personal privacy presumed in a law enforcement investigation (FIPPA, section 22(3)(b)) with the need to disclose the information. On balance, the VPD decided to

redact the parties' respective personal information before producing the June CAD Report in response to Mr. Edgar's FOI request.

37. Based on the VPD's submission which specifically addresses the redactions, I find that the redacted information included only contact information and identifying details for Mr. Edgar and Mr. Newman, driver's License numbers, and response information from law enforcement database queries about Mr. Newman. Having reviewed the redacted June CAD Report, I accept the VPD's evidence that no indicators of violence were returned in the database queries and no officer opinions or analysis were redacted.
38. I find that redacted information included only personal details of the parties that are not relevant to the issues in dispute. The parties have each other's current contact information through the CRT process. I find that the nature and results of law enforcement queries that returned no violence indicators are not relevant to Mr. Edgar's claim about damages for harassment and an alleged assault on June 18, 2018.
39. For these reasons, I dismiss Mr. Edgar's application to have the VPD produce an unredacted copy of the June CAD Report.

CONCLUSION

40. I dismiss Mr. Edgar's application for document production from the VPA, 604 Real Estate and the strata.

Julie K. Gibson, Tribunal Member