



Civil Resolution Tribunal

Date Issued: June 21, 2021

File: SC-2020-005859

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Drance v. Matthews*, 2021 BCCRT 682

BETWEEN:

MICHAEL DRANCE

APPLICANT

AND:

TOM MATTHEWS and TEPIC MANAGEMENT GROUP INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Michael Drance, brings this small claims dispute against respondents Tom Matthews and Tepic Management Group Inc. (TMG) for alleged breaches of a Hotel Management Agreement (HMA).

2. Mr. Drance owns a strata lot in the strata corporation, The Owners, Strata Plan KAS 3625 (strata). The strata is a resort, with a hotel business operated as Summerland Waterfront Resort Inc. (SWR). It has a Resort Section and a Restaurant Section. Mr. Drance's strata lot is in the Resort Section. Most Resort Section strata lots are in a "rental" pool for public hotel use. The owners who are in the rental pool are part of the Summerland Resort Rental Pool Owners Association (Owners Association). At the time of this decision, Mr. Drance's strata lot was not in the rental pool and he was not a member of the Owners Association.
3. The SWR and rental pool are managed by the respondent TMG under the HMA. Mr. Mathews is TMG's president.
4. Mr. Drance claims TMG breached Article 6.05 of the HMA by allegedly misallocating over \$1 million in hotel expenses as strata expenses since 2007. He seeks an order that TMG and Mr. Matthews "pay the appropriate hotel expenses as outlined in the HMA" and obtain an independent accountant's review of the SWR and strata finances.
5. Mr. Drance also claims TMG breached Article 14.05 of the HMA because it issued an "Estoppel Certificate" that states Mr. Drance was in "default" of the HMA. Mr. Drance says he was not in default of the HMA. Mr. Drance seeks an order that the respondents "tell me what section of the HMA I am in contravention". In argument, he seeks an additional order that TMG correct the Estoppel Certificate.
6. Next, Mr. Drance claims TMG breached Article 19.01 of the HMA because Mr. Matthews refused to discuss the rental pool and expense issues with Mr. Drance. Mr. Drance requests a "finding that the respondents violated section 19.01 of our Agreement and \$5,000 in damages". Mr. Drance also claims an additional \$5,000 in damages for the same alleged HMA breaches.
7. The respondents denies all Mr. Drance's claims. The respondents say a certified CPA firm annually audits SWR and Mr. Drance provided no evidence of any expense misallocation. They describe Mr. Drance's claims as repetitive, vexatious, frivolous,

or unsubstantiated. The respondents ask that I dismiss or refuse to resolve Mr. Drance's claims.

8. Mr. Drance is self-represented. The respondents are represented by Mr. Matthews.
9. For the reasons that follow, I refuse to resolve some of Mr. Drance's claims against the respondents and dismiss the remainder.

JURISDICTION AND PROCEDURE

10. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
11. Section 39 of the CRTA says the CRT 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 "he 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and it was not requested. I also note the 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.

12. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
13. Under CRTA section 10(1), the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
14. As set out in CRTA section 118 and prescribed by regulation, the CRT's small claims jurisdiction is limited to claims for relief up to \$5,000. The CRT may resolve small claims over debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property.

Linked Dispute

15. In 2020, Mr. Drance brought several interrelated claims to the CRT against the strata under the CRT's strata property jurisdiction. I have decided a linked strata property dispute published as *Drance v. The Owners, Strata Plan KAS 3625*, 2021 BCCRT 681 (*Drance A*).

ISSUES

16. The issues in this dispute are:
 - a. Should the CRT resolve any of Mr. Drance's claims in this dispute?
 - b. If so, did the respondents breach the HMA?
 - c. What, if any, are the appropriate remedies?

EVIDENCE, ANALYSIS AND FINDINGS

17. In a civil proceeding like this one, Mr. Drance as the applicant, must prove his claims on a balance of probabilities. This means Mr. Drance must prove his position is more likely than not the correct one. I have read all the parties' submissions but refer only to what I find relevant to provide context for my decision.
18. On January 1, 2019 The Resort Section and the Owners Association entered into the HMA with TMG to provide hotel property management services. As mentioned, Mr. Drance's claims the respondents breached certain sections or Articles of the HMA. I summarize the relevant Articles as I find necessary when discussing each claim below.
19. Generally, a corporation's directors and employees are not personally liable for the company's actions. However, since I have dismissed or refused to resolve the claims, I find no need to decide whether Mr. Matthews, who is not a party to the HMA, would have been personally liable to Mr. Drance under the HMA.

Article 6.05 Claim

20. Article 6.05's title is "Maintenance and Repair of Strata Lots". It sets out some of the responsibilities of the manager and owners over maintenance and repair of the hotel portions of the premises, the common property, and strata lots.
21. Although Mr. Drance states the value of his claim is "\$5,000" he alleges the respondents misallocated in excess of \$1 million dollars in hotel expenses to owners as strata fees. Since Mr. Drance frames the claim as a breach of Article 6.05, I infer he means maintenance and repair expenses. Mr. Drance brought a similar claim against the strata, which I dismissed for the reasons in *Drance A*.
22. Apart from Mr. Drance's apparent lack of standing (authority) to bring a claim against the respondents on behalf of the Resort Section, I find Mr. Drance's claim far exceeds the CRT's small claims monetary jurisdiction. I have no authority under CRTA section 118 to decide the alleged \$1 million dollar misallocation issue. I also have no authority

to make the requested order that TMG conduct an accounting review of either the hotel or strata finances. The CRT has no general authority under its small claims jurisdiction to grant injunctive relief to require a party to do something. I also would not order TMG to conduct an accounting of another legal entity's financial records. I find this claim falls outside the CRT's small claims jurisdiction and I must refuse to resolve it under CRTA section 10(1).

Article 14.05 Claim

23. Article 14.05 requires that TMG issue Estoppel Certificates providing information about a strata lot on request of the owner or security holder. The Estoppel Certificate must certify that the HMA is unmodified (or modified) and in force, and state whether or not, to the best of the signatory's knowledge, there exists any owner default in the performance of any duty or obligation contained in the HMA. If so, the Estoppel Certificate specifies each such default of which the signatory may have knowledge.
24. On June 22, 2020 Mr. Drance asked TMG for an Estoppel Certificate. TMG issued a signed certificate on July 2, 2020. The certificate refers to the unmodified HMA and states that to the best of TMG's agent's knowledge and belief there exists a default in relation to the strata lot not being in the rental pool and that it is subject to CRT proceedings. The certificate goes on to describe the active CRT disputes at the time.
25. Mr. Drance says he was not in default or violation of the HMA by not keeping his strata lot in the rental pool. He also says the certificate has an error because it states Mr. Drance's suite number instead of his strata lot number. Again, Mr. Drance seeks an order that the respondents tell him the HMA section and to provide a new certificate with "all errors corrected, that confirms I am not in violation of the HMA."
26. At the time TMG issued the certificate, there were several active CRT proceedings, as there still are. One of those CRT proceedings included a dispute over Mr. Drance's strata lot use and his strata lot being outside the HMA rental pool. The published decision is cited as *The Owners, Strata Plan KAS 3625 v. Drance*, 2021 BCCRT 151 (KAS 3625). Article 14.05 only required TMG to state the information "to the best of"

its signatories' knowledge at the time. I find the information in the certificate was not perfectly worded but that it was relatively consistent with the facts at the time.

27. I have no authority to order a party to do something under the CRT's small claims jurisdiction apart from an order for specific performance of an agreement. I find TGM already performed its requirements under Article 14.05 by issuing the July 2020 certificate at Mr. Drance's request. While I agree the certificate asks for a strata lot number, Mr. Drance has not shown that anything turns on the certificate stating his unit number instead. So, I decline to order the respondents correct the certificate in further performance of the agreement. Also, as circumstances have change since July 2, 2020, the certificate is likely outdated in any event.
28. I find no requirement under the HMA for the respondents to explain the content of the certificate to Mr. Drance. So, I find the respondents did not breach the HMA by not further explaining it. I dismiss Mr. Drance's claim that the respondents breached Article 14.05 of the HMA.

Article 19.01 Claim and Damages

29. Article 19.01 says subject to the HMA's terms and conditions, the parties will act in good faith, cooperate and act reasonably in respect of all matters within the scope of the HMA.
30. Mr. Drance argues the respondents breached Article 19.01 by not engaging in a conversation about the ongoing rental pool and expenses issues. Mr. Drance says he offered multiple times to sit down and discuss the issues with Mr. Matthews "in a manner befitting Section 19.01". He says Mr. Matthews should be "instructed to stop violating that Section of the HMA and to justify his proposed nonsensical 900% increase in the out of pool expenses". He seeks a declaratory order that "the respondents violated section 19.01". He also seeks a total of \$10,000 for the alleged HMA breaches. Mr. Drance says he is willing to abandon his claim over \$5,000 to bring it into the CRT monetary limit.

31. I find no specific provision in the HMA that requires the respondents to sit down and discuss rental pool and expenses issues with Mr. Drance. I also find such issues are the subject of ongoing CRT disputes and the *KAS 3625* decision that has an active petition for Judicial Review. Much of his submitted evidence involves Mr. Drance's emailed questions to Mr. Matthews about central issues in these disputes. I find Mr. Matthews had no obligation under the HMA to respond to these questions or discuss issues in legal proceedings. In sum, I find Mr. Drance has not proven the respondents breached Article 19.01 by not engaging in further conversations with him or by not further answering his emailed questions.
32. Even had I found a contractual breach, I find Mr. Drance's damages claim is unproven. Mr. Drance submitted his practicing physician's letter of Mr. Drance's self-reported stress due to the CRT legal proceedings and his worry over District of Summerland zoning. I find Mr. Drance's evidence only proves he experienced stress because he was engaged in several ongoing CRT disputes and the District zoning was not in his favour. I find his evidence does not prove the stress was caused by the respondents.
33. The CRT also has no authority to grant the claimed injunctive order or the requested declaratory relief under CRTA section 118. So, I would refuse to grant the requested non-monetary remedies in any event.
34. For the above reasons, I dismiss Mr. Drance's claim that the respondents breached Article 19.01 and his related damages claim.

CRT FEES AND EXPENSES

35. Mr. Drance claims \$14,185.60 in dispute-related expenses, including for legal fees and his own time. The CRT does not generally order reimbursement of a party's own time for a dispute and will only order reimbursement of legal fees in extraordinary circumstances as set out in rule 9.5(3). I find no extraordinary circumstances here. Also, under section 49 of the CRTA and CRT rules, the unsuccessful party is not generally entitled to reimbursement of CRT fees or dispute-related expenses from

the successful party. As Mr. Drance was unsuccessful, I dismiss his claim for CRT fees and dispute-related expenses.

36. The respondents did not pay any CRT fees nor claim any dispute-related expenses.

ORDERS

37. I refuse to resolve Mr. Drance's claim about HMA Article 6.05 under CRTA section 10(1).

38. I dismiss Mr. Drance's remaining claims.

Trisha Apland, Tribunal Member