



Civil Resolution Tribunal

Date Issued: October 19, 2023

File: SC-2022-007781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rowbotham v. Otter Bay Owners Corporation*, 2023 BCCRT 891

B E T W E E N :

DANNY BERTRAND ROWBOTHAM

APPLICANT

A N D :

OTTER BAY OWNERS CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. This dispute is about procedure at a corporate general meeting. Otter Bay Owners Corporation (OBOC) is a corporation that has a 99-year lease over all the land held by a strata corporation, The Owners, Strata Plan VIS 5996 (strata). OBOC subleases the individual strata lots to the strata's owners, who each have a right to

occupy a strata lot for a quarter of the year. Danny Bertrand Rowbotham is one such owner. The strata is not a party to this dispute.

2. Mr. Rowbotham alleges that OBOC's 2022 annual general meeting (AGM) was not run properly. In particular, he says the vote on the budget was invalid. He says the budget increased his monthly contributions to OBOC by \$14.07. He initially asked for \$5,000 in damages, which he described as an "attempt to recapture \$14.07 for as many months as I can". This amounts to almost 30 years of monthly \$14.07 contributions.
3. In submissions, Mr. Rowbotham asked for additional orders about OBOC's governance and overall compliance with its articles of incorporation and the *Business Corporations Act* (BCA). He also changed the breakdown of his \$5,000 damages claim to include 4 years of contribution increases, a refund of a special levy, and \$4,000 for inconvenience and mental distress.
4. OBOC denies any wrongdoing and asks me to dismiss Mr. Rowbotham's claims.
5. I note that Mr. Rowbotham brought a strata property Civil Resolution Tribunal (CRT) dispute with very similar allegations about the strata's voting process at its AGM. I have issued a separate decision for that dispute because it involves different parties.
6. Mr. Rowbotham is self-represented. A corporate director represents OBOC.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.

8. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
9. Section 42 of the CRTA says 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 inform itself in any other way it considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Should I refuse to resolve this dispute?
 - b. If not, did OBOC properly conduct the 2022 AGM?
 - c. What, if anything, are Mr. Rowbotham's damages?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Rowbotham as the applicant must prove his claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. Under section 11(1)(a)(i), the CRT may refuse to resolve a claim if it would be more appropriate for another legally binding process, such as a court proceeding.

13. As noted above, Mr. Rowbotham's claim is about corporate governance. The BCA includes several provisions giving the BC Supreme Court authority to address certain claims about corporate governance. I asked the parties to provide submissions about whether the CRT has jurisdiction over Mr. Rowbotham's claim, and if so, whether the CRT should resolve it.
14. As noted above, Mr. Rowbotham's claims against OBOC are similar to his claims against the strata. I resolved Mr. Rowbotham's other dispute because the CRT's strata property jurisdiction in the CRTA is very broad. It allows the CRT to scrutinize a strata corporation's compliance with the *Strata Property Act* and its bylaws. The CRT does not have comparable jurisdiction over a corporation's compliance with the BCA or its articles. The CRT's small claims jurisdiction is generally limited to debt or damages claims.
15. There are 2 BCA sections that could apply to Mr. Rowbotham's claims. Section 227 allows the court to make any order it considers appropriate to remedy conduct that is oppressive or unfairly prejudicial. Among other things, section 227(3) allows the court to vary or set aside a resolution, compensate an aggrieved person, or correct the corporation's records. Section 229 allows the court to make orders to correct corporate mistakes, which includes errors in the conduct of a shareholder meeting. Section 229(2) specifically allows the court to invalidate any consequence of a corporate mistake. I find that Mr. Rowbotham's claims are captured by the court's authority under these sections of the BCA. The CRT is not a court, and the BCA confirms that the BC Supreme Court has the authority to make the above-noted orders. In other words, the CRT has no authority to make orders under the BCA.
16. Mr. Rowbotham argues that he is unable to bring BCA proceedings because OBOC has neglected to provide him with a share certificate, even though he says he is entitled to one under OBOC's articles. He says that the above sections are restricted to shareholders. However, sections 227 and 229 both allow non-shareholders to bring applications. Section 227 allows any person whom the court considers appropriate to bring an application. Section 229 allows any interested

person to bring an application. So, I find that Mr. Rowbotham's status as a non-shareholder does not preclude him from bringing a court application.

17. Mr. Rowbotham also argues more generally that the CRT should decide this dispute "as a representative body of the government of British Columbia" to enforce OBOC's "legal obligations to the Government of British Columbia". I find that Mr. Rowbotham misunderstands the CRT's mandate and purpose. It is not a government agency that exists to enforce a corporations' legal obligations to the government. It is a tribunal empowered to resolve only those civil disputes specifically set out in the CRTA. I note that the CRTA specifically prohibits the CRT from deciding disputes that involve the government except in limited circumstances that do not apply here.
18. Finally, Mr. Rowbotham argues that the CRT has jurisdiction to award damages based on OBOC's alleged breaches of the BCA and its articles. I find there is no common law right to claim damages against a corporation for breaching the BCA or its articles. I say this because the BCA establishes a comprehensive set of legal proceedings that certain people may bring to ensure a corporation's compliance with the BCA and its articles and to remedy any damage resulting from a breach. As noted above, only the BC Supreme Court can make those orders. I therefore find that Mr. Rowbotham's claims are not within the CRT's jurisdiction. I therefore refuse to resolve his claims, and this dispute, under section 10 of the CRTA.
19. If I am wrong in that conclusion, I would find that the BC Supreme Court is the more appropriate forum for Mr. Rowbotham's claims because of its expansive authority under the BCA, which the CRT does not share. I would therefore refuse to resolve this dispute under section 11(1)(a)(i) of the CRTA.
20. I note, as well, that most of the additional remedies in Mr. Rowbotham's submissions are for injunctive relief, which are orders that a party do or stop doing something. Unlike in strata property disputes, the CRT's small claims jurisdiction grants very little authority to order injunctive relief. This is another reason I would have refused to resolve many of Mr. Rowbotham's claims.

21. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Rowbotham was unsuccessful, I dismiss his claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDER

22. I refuse to resolve Mr. Rowbotham's claims, and this dispute, under section 10 of the CRTA.

Eric Regehr, Vice Chair