



Civil Resolution Tribunal

Date Issued: July 28, 2022

File: CS-2021-004095

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Peterson v. Barta*, 2022 BCCRT 861

B E T W E E N :

DEBORAH PETERSON

APPLICANT

A N D :

CHRISTOPHER BARTA, DAPHNE JOAN LAFLEUR, ELAINE WARKENTIN, ADRIAN NIEOCZYM, JANELLE NICHOL, JAMES STUART, JUNE WHITE and SOUTHGATE MANOR HOUSING CO-OPERATIVE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Deborah Peterson, is a member and resident of the respondent co-operative association, Southgate Manor Housing Co-operative (co-op). Christopher Barta, Daphne Joan Lafleur, Elaine Warkentin, Adrian Nieoczym, Janelle Nichol,

James Stuart and June White (personal respondents) are or were members of the co-op's Board of Directors (board).

2. Mrs. Peterson says the board installed vinyl plank flooring in some co-op units, without first obtaining approval from the co-op membership at an annual general meeting (AGM). As remedy, Mrs. Peterson requests an order that the respondents reimburse the co-op \$9,000 for the flooring costs.
3. The co-op and personal respondents say the board followed the applicable rules and policies in replacing the flooring. They say that if flooring needs replacement, the board has discretion to choose the flooring type without ownership approval at a general meeting. The personal respondents also say that as directors, they are not individually liable for lawful board decisions.
4. Mrs. Peterson and the personal respondents are each self-represented in this dispute. The co-op is represented by board member Adrian Nieoczym, who is also a respondent.
5. For the reasons set out below, I dismiss Mrs. Peterson's claim and this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain cooperative association claims under section 125 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says 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.
7. CRTA section 39 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 and fairness.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under CRTA section 127, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Does Mrs. Peterson have standing (legal authority) to make a claim about reimbursement of co-op flooring expenses?
 - b. If so, must any of the respondents reimburse the co-op for flooring expenses?

BACKGROUND

11. In a civil claim like this one, Mrs. Peterson, as applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
12. The co-op was incorporated in 1983 and exists under the *Cooperative Association Act* (CAA).
13. The parties agree that at the co-op's September 26, 2020 annual general meeting (AGM), members discussed a motion to use using vinyl plank flooring when replacing unit flooring in future. The minutes show, and the parties agree, that this motion was

tabled and no vote occurred. The parties agree that the co-op later installed vinyl plank flooring in some units.

14. Mrs. Peterson argues that the board did not obtain proper membership approval for this work, particularly the type of flooring used. Mrs. Peterson says the vinyl plank flooring costs almost 3 times more than the laminate flooring previously used in the co-op, which is unreasonable. She says the board deliberately mischaracterized the type of flooring in its records because the cost was contentious among co-op members.
15. The co-op says it did not need membership approval for the work, since the flooring replacement was a required expense that fit within the co-op's indoor maintenance budget. The co-op also says the board correctly following the co-op's spending policy, and the board did not need membership approval of the type of flooring used. The co-op says it was reasonable to use vinyl flooring because it is more durable. The co-op also denies that the vinyl flooring was 3 times more expensive than laminate, denies that the flooring cost was contentious among co-op members, and denies that it deliberately mischaracterized the flooring type in its records.

REASONS AND ANALYSIS

16. I find it is not necessary to decide whether the board required membership approval for its flooring decisions. This is because, as explained below, I find Mrs. Peterson does not have standing to bring claims against individual board members for decisions made in their capacity as directors. Also, I find Mrs. Peterson's requested remedies are not appropriate.

Standing

17. The respondents named in this dispute are the co-op and the co-op's directors. The duties of co-op directors are set out in CAA section 84(1). That section says that in exercising the powers and performing the functions of a director, a director must:
 - a) act honestly and in good faith with a view to the best interests of the co-op,

- b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,
 - c) act in accordance with the CAA and the regulations, and
 - d) act in accordance with the co-op's memorandum and rules.
18. This provision is similar to section 31 of the *Strata Property Act* (SPA), which says a strata council member has a duty to act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
19. In *Rochette v. Bradburn*, 2021 BCSC 1752, the BC Supreme Court (BCSC) interpreted and applied SPA section 31. In that case, the plaintiffs had sued the strata corporation and 3 former strata council members. Among other things, the plaintiffs alleged that the former council members breached their fiduciary (trusted) duties owed under SPA section 31. The BCSC concluded that an individual strata lot owner cannot sue a council member, unless it is for an alleged conflict of interest (paragraph 85). The court also said, “individual strata owners are not entitled to sue the strata council whenever they disagree with a decision” (paragraph 84).
20. Similarly, the BCSC has stated in other cases that the fiduciary duties in SPA section 31 are owed to the strata corporation, and not to individual strata lot owners: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267 and *Extra Gift Exchange Inc., et al v. Ernest & Twins Ventures (PP) Ltd., et al*, 2007 BCSC 426 at paragraph 149. In both *Sze Hang* and *Extra Gift*, the BCSC dismissed claims by owners against strata council members for alleged breaches of fiduciary duty.
21. SPA section 31 is very similar to CAA section 84(1). So, I find this reasoning from *Rochette*, *Sze Hang*, and *Extra Gift* reasonably applies to claims against co-op directors made by co-op members. I therefore apply that reasoning in this case. I find that the fiduciary duties of co-op directors set out in CAA section 84(1) are owed to the co-op, and not to individual co-op members. So, I dismiss Mrs. Peterson’s claims

against the personal respondents Christopher Barta, Daphne Joan Lafleur, Elaine Warkentin, Adrian Nieoczym, Janelle Nichol, James Stuart and June White.

Claim Against Co-op

22. Since I have dismissed Mrs. Peterson's claims against the personal respondents, the only remaining respondent is the co-op. As discussed above, Mrs. Peterson's requested remedy is an order that the respondents reimburse the co-op \$9,000 for the vinyl flooring costs. I find it would be impossible for the co-op to reimburse money back to itself. I also find that this order would serve no useful purpose.

23. For this reason, I dismiss Mrs. Peterson's claim against the co-op.

CRT FEES AND EXPENSES

24. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The co-op is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

25. I dismiss Mrs. Peterson's claims and this dispute.

Kate Campbell, Vice Chair