



Civil Resolution Tribunal

Date Issued: March 24, 2023

File: CS-2022-004247

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Ericson v. Cultus Lake Holiday Park Association*, 2023 BCCRT 249

B E T W E E N :

DAVID ERICSON

APPLICANT

A N D :

CULTUS LAKE HOLIDAY PARK ASSOCIATION and KELLEY HEATH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about document inspection and governance. The applicant, David Ericson, is a suspended member of the respondent society, the Cultus Lake Holiday Park Association (CLHPA). The other respondent, Kelley Heath, is a former member and former director of CLHPA.

2. Mr. Ericson says that Ms. Heath's employment with Associa British Columbia Inc. (Associa) placed her in a conflict of interest because CLHPA hired Associa as its property manager. He asks for an order that CLHPA's board of directors (board) prove that Ms. Heath appropriately disclosed her conflict of interest and acted appropriately in each and every board meeting and financial transaction. He also requests emails between the board, Associa, and CLHPA's insurer and insurance broker about CLHPA's insurance premiums. In submissions, Mr. Ericson outlines other claims which I discuss below.
3. CLHPA says Mr. Ericson is requesting documents he is not entitled to under the *Societies Act* (SA). Ms. Heath denies any wrongdoing and says Mr. Ericson lacks any legal basis for the requested order.
4. Mr. Ericson and Ms. Heath are self-represented. A board member represents CLHPA.
5. For the reasons that follow, I dismiss Mr. Ericson's claims.

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.

Mr. Ericson's Late Evidence

10. Mr. Ericson submitted as late evidence a December 7, 2022 letter from CLHPA's lawyer, addressed to Mr. Ericson and another individual, GY. The respondents had the opportunity to view the late evidence and comment on it. They did not object to it. I find the letter is relevant to the chronology of this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice in allowing the late evidence and allow it. In any event, my decision does not turn on the late evidence.

New Claims and Remedies Raised by Mr. Ericson in Submissions

11. In submissions Mr. Ericson raised additional issues and requested remedies not included in the Dispute Notice. The respondents object to the CRT deciding them. In particular, Mr. Ericson requested the following orders:
 - a. to remove Ms. Heath as a board member and to impose a lifetime ban against her holding any position at CLHPA,
 - b. to ban any contracting companies owned or known to be associated with Ms. Heath from conducting business at CLHPA,
 - c. to invalidate a special general meeting (SGM) with an unspecified date,
 - d. for evidence in this dispute to be made available in another CRT dispute Mr. Ericson brought against the CLHPA, and

- e. for the respondents to provide copies of annual audits conducted by a respected third-party auditor for the time period after Ms. Heath and Associa became involved in CLHPA matters.
12. The CRT has previously declined to consider claims or remedies not raised in the Dispute Notice. This is because raising a claim late deprives a party of an adequate opportunity to respond and undermines the purpose of the CRT's facilitation process. See *Lynden-Burch v. Skeena Senior Citizens Housing Society*, 2023 BCCRT 238 at paragraphs 11 to 15 and *Deyneko v. Avalon Housing Co-operative*, 2021 BCCRT 1196 at paragraphs 12 to 13.
13. CRT decisions are not binding but I find the same reasoning applies here. I find it would be procedurally unfair to consider the additional claims and remedies outlined above. Consistent with my conclusion, CRT rule 1.19 allows applicants to ask the CRT to amend the Dispute Notice. Under CRT rule 1.19(3), the CRT will not issue an amended Dispute Notice after the dispute has entered the CRT decision process, except where exceptional circumstances apply. Mr. Ericson has already amended the Dispute Notice once, so I find he is familiar with the process and chose not to include these claims or remedies.
14. In summary, I decline to consider these claims as they are not properly before me. However, I find that even if Mr. Ericson included these claims and remedies in the Dispute Notice, I would lack the jurisdiction to make most of the requested orders or would find the orders impractical to make. My reasons follow.
15. As stated above, Mr. Ericson says Ms. Heath should be removed as a director under SA section 102(2)(c). Section 102 falls under Part 8 of the SA. With the limited exception of "unfairly prejudicial" claims, CRTA section 130(1)(c) excludes the CRT's jurisdiction over claims that may be dealt with by the BC Supreme Court under SA Part 8. See *Kraus v. Nanaimo Hungarian Cultural Society*, 2021 BCCRT 1207 at paragraph 35. So, I am unable to make the requested order.
16. Similarly, CRTA section 130(2)(a) says the CRT lacks jurisdiction to terminate membership in a society. So, I find I am unable to order Ms. Heath's removal from

CLHPA as a member. See *Oakley v. Bridge River Valley Community Association*, 2021 BCCRT 1000.

17. Mr. Ericson also seeks orders banning companies associated with Ms. Heath from doing business with CLHPA. SA section 58 allows the BC Supreme Court to prohibit a society from entering into a proposed contract where there is a conflict of interest. However, CRTA section 130(1)(a)(ii) specifically states that the CRT has no jurisdiction over SA section 58. So, I am unable to decide this claim.
18. Mr. Ericson did not specify the date of the SGM that he says is invalid or explain why it is invalid. So, I would dismiss this claim had it been raised properly.
19. Mr. Ericson also asks for evidence in this dispute to be made available in his other CRT dispute. I find it unnecessary to make any order about this. I find there is nothing that prevents Mr. Ericson from providing the same evidence in that dispute. To the extent that he wishes to submit the same evidence late in the other dispute, I find that its admissibility should be decided by the CRT member in the other dispute.
20. Finally, Mr. Ericson requested copies of audits. I find he is entitled to make a request for such a document under SA section 27, which I discuss further below. However, there is no indication that Mr. Ericson asked CHLPA to provide the audits, apart from the request outlined in submissions. As I find it unproven that CHLPA either received or refused such a request by Mr. Ericson in the past, I find it unproven that CHLPA breached a legal obligation in connection with such a request. I would dismiss this claim for this reason if it had been properly raised. To the extent that Mr. Ericson is asking the CRT to appoint an auditor, I would have to refuse to resolve such a claim. Part 9 of the SA relates to society audits. Under CRTA section 130(2), the CRT has no jurisdiction over claims about Part 9 of the SA. See *Harvey v. Lynn Valley Community Association*, 2021 BCCRT 493 at paragraphs 10 to 11.

ISSUE

21. The remaining issue in this dispute is whether I should order the CLHPA to disclose any documents.

BACKGROUND, EVIDENCE AND ANALYSIS

22. In a civil proceeding like this one, the applicant Mr. Ericson must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
23. A BC Registries search shows that CLHPA is a society registered in BC since June 1976. A copy of its bylaws shows the following. CLHPA's members have the exclusive use of sites assigned to them under a purchase contract. Members pay dues to fund the CLHPA. The CLHPA is responsible for insuring its recreational buildings and facilities and for repairs and maintenance of roads, fences, building and other facilities. A January 17, 2019 insurance appraisal shows that CLHPA's property includes a recreational center, office, maintenance shop, pool shed, tractor shed, storage shed, and various site improvements.
24. The bylaws also show that CLHPA is managed by a board comprised of 7 members, elected at CLHPA's annual general meetings for a term of 2 years.
25. I turn to the chronology. The August 15, 2020 board meeting minutes shows that at the meeting, the board voted to hire Associa to handle more administrative duties. It is undisputed that Associa, a property management company, employed Ms. Heath at the time. The minutes say show Ms. Heath was a board member, and that she and another board member abstained from voting on the issue.
26. It is undisputed that in June 2021 Mr. Ericson became a CLHPA member. On May 19, 2022, Mr. Ericson emailed the CLHPA to request an inspection of accounts and books in connection with CLHPA's insurance company. CLHPA sent back a copy of its renewal and the policy document in emails dated June 1 and 17, 2022.
27. Mr. Ericson's relationship with the respondents deteriorated. CLHPA's lawyer sent a September 1, 2022 letter to Mr. Ericson and another member, GY. In the letter, CLHPA said the board was considering expelling them or suspending their membership. CLHPA alleged that the members engaged in unacceptable behaviour

that included verbally confronting Ms. Heath. CLHPA provided the members an opportunity to respond.

28. CLHPA held an SGM on November 26, 2022. As noted in the notice for the meeting, the purpose of the meeting was for members to vote to approve a 2/3 vote resolution to suspend Mr. Ericson and GY for a period of 1 year. In a December 7, 2022 letter, CLHPA's lawyer summarized the results of the SGM. The members voted 86 in favour of suspension and 34 opposed or abstained. This was sufficient to meet the threshold. CLHPA suspended Mr. Ericson and GY's membership from November 26, 2022 to November 26, 2023.
29. It is undisputed that on November 6, 2022, Ms. Heath sold her membership at the CLHPA and resigned from the board.

Should I order CLHPA to disclose further documents?

30. Sections 20(1) and 20(2) of the SA specifies which documents a society must keep. These include, for example, a society's financial statements under section 20(1)(k). Sections 24(1) and (2) of the SA generally allow a society member to inspect, without charge, a record the society must keep under section 20(1) and 20(2). SA section 27 says a person entitled under SA section 24 to inspect a record can request a copy of the record, and the society must provide the person with a copy of that record.
31. CHLPA's bylaws are in evidence. Bylaw H says that any CHLPA member in good standing may inspect its accounts and books upon 30 days' prior written notice, delivered to the board.
32. With that in mind, I turn to Mr. Ericson's request. He says that he believes there are multiple emails between the board, Associa, and the insurance company and broker about CHLPA's insurance premium.
33. In *Harvey*, cited above, the applicant asked the respondent to provide certain emails between it and another association. The CRT found that neither the SA nor the bylaws required the society to keep copies of its correspondence, including emails. The CRT held that as there was no requirement to keep these documents, there was no

requirement to provides copies to a member like the applicant. I reached a similar conclusion in my decision of *Wright v. Back Country Horsemen Society of British Columbia*, 2022 BCCRT 334.

34. Here, I find that neither the bylaws nor SA section 20 requires a society to keep the requested correspondence. As such, I find Mr. Ericson has no legal basis to request the emails at issue. So, I dismiss this part of his claim.
35. Mr. Ericson also requests the Board prove that Ms. Heath appropriately disclosed her conflict of interest and acted appropriately in each and every board meeting and each and every financial transaction. Mr. Ericson relies on SA sections 56(2)(a) and 56(3).
36. In general terms, SA section 56(1)(c) requires a society director to disclose any direct or indirect material interest in a contract or transaction or disclose if that interest could create conflict with that director's duty or interest as a society director. Section 56(2) generally prohibits a director from voting on resolutions about such matters. Section 56(3) provides for the particular manner that a director must disclose the direct or indirect materials interest. Documenting the conduct must be evidenced in the minutes of a directors' meeting, a consent resolution of directors, or under section 56(3)(c), a record addressed to the directors. SA section 20(1)(g) requires a society to keep a copy of each record described in section 56(3)(c).
37. Apart from what I have outlined above, I find that the SA does not require a society to "prove" that its directors comply with SA section 56. So, I find Mr. Ericson may, for example, validly claim for disclosure of the records described in section 56(3)(c). However, there is no evidence that Mr. Ericson sent such a request to CLHPA, outside of the Dispute Notice, or that CLHPA previously rejected such a request. So, I find it unproven that CLHPA breached any disclosure obligation. I dismiss this claim.
38. For all those reasons, I dismiss Mr. Ericson's claims.

CRT FEES AND EXPENSES

39. Under section 49 of the CRTA, 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. I see no reason in this case not to follow that general rule. I therefore dismiss Mr. Ericson's claims for reimbursement of CRT fees. The parties did not claim for any specific dispute-related expenses.

ORDERS

40. I dismiss Mr. Ericson's claims and this dispute.

David Jiang, Tribunal Member