



# Civil Resolution Tribunal

Date Issued: February 15, 2017

File: ST-2016-00025

Civil Resolution Tribunal

Indexed as: *Betuzzi v. The Owners, Strata Plan K350*, 2017 BCCRT 6

BETWEEN:

Mark Betuzzi

**APPLICANT**

AND:

The Owners, Strata Plan K350

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maureen Abraham

### INTRODUCTION

- 1) The applicant Mark Betuzzi (the Owner) is an owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan K350 (the strata). The Owner asks the Civil Resolution Tribunal (tribunal) to order the respondent strata to do the following:
  - a. Provide the Owner unedited copies of certain letters and notes;
  - b. Remove letters dated July 10, 2013, and February 6, 2014, from the strata's

files;

- c. Write a letter of apology to the Owner; and,
- d. Explain why the election of strata council members at the strata's 2015 Annual General Meeting was conducted as it was.

2) The Owner also asks the tribunal to:

- a. Declare that the strata council members acted in a conflict of interest in issuing letters to the Owner; and,
- b. Order that a bylaw (proposed bylaw 12.3) regarding election of strata council be added to the strata's bylaws.

3) The Owner provided the strata with a copy of the Dispute Notice on or about July 26, 2016. The strata filed its Dispute Response Form. The strata is represented by strata council member Aaron Coehlo. Both parties have filed submissions and provided evidence with respect to the orders requested by the Owner.

## **JURISDICTION**

- 4) These are the formal written reasons of the Tribunal. The Tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 5) The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

## **ISSUES**

6) The issues in this dispute are:

- a. Did the strata council act unreasonably and/or in a conflict of interest in sending its July 10, 2013, letter (2013 Letter) and revised letter of February 2014 (2014 Letter)?
- b. Did the strata council act unreasonably in refusing to remove the 2013 Letter and 2014 Letter from its file records?
- c. Does the Owner have a right to a copy of the original, unedited complaint letter of July 3, 2013?
- d. Has there been an unfair action or decision of the strata such that it is necessary to amend the strata bylaws to include proposed bylaw 12.3 to prevent or remedy the unfairness?

The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.

## **BACKGROUND AND EVIDENCE**

- 7) The Owner and the strata provided evidence in the form of photographs, emails, and other correspondence exchanged between the parties, the property manager, and third parties. The Owner also provided evidence that he has been an owner in the strata for approximately twenty-five years and had been a member of strata council numerous times.
- 8) The strata's bylaws are those standard bylaws contained in the *Strata Property Act* (SPA), plus various additional bylaws registered in the Land Title Office. Unless noted otherwise, all references in this decision are to the standard bylaws.
- 9) On July 10, 2013, the strata council (through its property manager) wrote the Owner. The strata council stated that the purpose of its letter was to communicate their concerns. The 2013 Letter noted that several owners had made complaints to the strata, both written and verbal, about being confronted by the Owner and alleging that he "continuously [walks] around the complex taking pictures and leaving notes identifying bylaws in mailboxes". The strata told the Owner that, while it understood his genuine concern for the strata community, these actions must stop immediately. The

Owner was reminded that all strata related concerns must be handled through strata council and was invited to contact the property manager or a council member with any strata related concerns or if he noticed bylaw infractions.

- 10) The evidence shows that, during this time, the strata had been paying the Owner to provide some maintenance services. Emails provided by the Owner show that he sometimes directly took action on behalf of the strata without consulting the strata council, such as requesting repairs to common property, and that he photographed the common property and some strata units. It is unclear from his photographs whether they were taken from common property, or if he went onto other owner's property.
- 11) The Owner responded to the 2013 Letter by emailing the property manager on July 17, 2013. He was upset that he was not consulted before the letter was sent, and said he left bylaw notices only while he was on strata council. He said he took photographs only when there was vandalism or messy areas on common property. He said he was disappointed in council and the property manager for sending the letter and how they were handling strata maintenance and other matters.
- 12) The Owner emailed the property manager again on July 20, 2013 and demanded a meeting with her to discuss the 2013 Letter. The property manager responded by telling the Owner that he should meet with strata council, and offered to set up a meeting. She said she was concerned about the privacy of the complainant. The Owner requested the property manager provide him with information underlying the complaints, and said that the information could be provided in edited form. The Owner denied that he had placed bylaw notices on anyone's property. He stated that the "simple way to make this all go away is to simply apologize for the letter you sent and drop that accusation, as well as remove the letter from the K350 file."
- 13) On July 29, 2013, after the Owner again contacts the property manager, the strata council had the property manager write the Owner and tell him that the strata council would not be providing a letter of apology and that their concerns were valid and not intended to be malicious. The strata council said that they are concerned about liability and offer to meet with the Owner. An edited copy of the written complaint dated July 3,

2013 (the "Complaint"), which prompted them to write the 2013 Letter, is enclosed with that letter.

- 14) The Complaint consisted of a two-page email sent to the property manager with a request to provide it to the strata council. The sender and "cc" information were blacked out, as were various paragraphs and portions of the email. The complainant says they want to "file a formal complaint" about another owner and that they have written the strata council on numerous occasions previously about their concerns. They say they have received letters with pictures taken from on their property. They say someone has put a document identifying bylaws in their mailbox, and describe someone "hanging around" both the front and back of their property. They say they feel harassed and violated. They point out that these bylaw enforcement measures are by an owner who is not on strata council, and request the strata "restrict this person from taking on any maintenance or other such duties to do with the property".
- 15) On August 3, 2013, the Owner emailed the property manager. He said that after meeting with her, he has decided to let the matter go despite the allegations in the Complaint being untrue.
- 16) On January 7, 2014, the Owner emailed the property manager and requested a meeting with her. He said the allegations in the Complaint were untrue, and that he was being persecuted. He suggested that actions mentioned in the Complaint may have been by another owner. He indicated that the edited Complaint prevents him from confronting the complainant directly. He requested copies of the other written complaints referred to in the 2013 Letter.
- 17) On January 9, 2014, the property manager wrote the Owner and advised that the strata council would revise the 2013 Letter to say that the complaints consisted of one written complaint and verbal complaints. A letter dated January 8, 2014, was sent to the Owner with those changes.
- 18) In January and February 2014, the Owner repeatedly wrote the property manager and the strata council demanding that proof of the allegations in the Complaint be provided to him, and arguing that the allegations were untrue. When offered a meeting or a

hearing with strata council, he said he would not meet unless evidence proving the allegations is provided. He demanded that the 2013 Letter and 2014 Letter were removed from the strata's files, threatened legal action, and demanded an apology.

- 19) On February 6, 2014, the property manager wrote the Owner and advised that the strata council would not remove the 2013 Letter and 2014 Letter from its file. He was told that the matter was closed and no further discussion would take place.
- 20) On February 13, 2014, the property manager did respond again to the Owner's emails and told him that she had not kept a record of the dates and times of the verbal complaints received in 2013.
- 21) In support of his claim, the Owner provided emails showing that he had been on council when Mr. Coehlo was fined for bylaw infractions in 2011/2012. The Owner also provided emails with another owner discussing that he would attend the strata's 2015 Annual General Meeting as a proxy for that owner, and that the property manager had welcomed him to sit on strata council around 2013.
- 22) The parties agreed that at the strata's Annual General Meeting held February 15, 2015, five owners, including the Owner, put their names forward to serve on strata council. The owners voted to elect strata council members by majority vote, with only those receiving majority approval to serve on council.
- 23) The Owner indicates the voting was held by secret ballot at Mr. Coehlo's request, and that Mr. Coehlo had also proposed voting on the candidates. This voting process was not typically how strata council elections occurred at previous Annual General Meetings. This voting process was not used in subsequent Annual General Meetings. There is no evidence that Mr. Coehlo was an ineligible voter at the time.

## **POSITION OF THE PARTIES**

### The Owner's Position

- 24) The Owner says he was denied due process with respect to the 2013 Letter because the strata did not provide proof of the allegations underlying the Complaint. He believes

the Complaint was made in retaliation for council fining another owner while the Owner was on strata council a couple years prior. He denies the allegations set out in the Complaint. He says that no other owner ever complained to him directly.

- 25) The Owner also says that it was suspicious for the strata to have a secret ballot and majority vote to elect council members, as this resulted in newer or less experienced owners elected to council instead of him. He says that this voting process was poorly understood by the voters and their confusion affected the result. He suggests, though had not sought as a remedy, that the owner who requested this voting process ought to be suspended from holding a position on strata council for one year.
- 26) The Owner asks for a finding that the council acted in a conflict of interest by sending him the 2013 Letter and 2014 Letter, and that the strata provide him evidence of the allegations referred to in the Complaint, that the 2013 Letter and 2014 Letter be permanently removed from the strata files, and that the strata provide a letter of apology. He also asks that the strata's bylaws be amended to prevent voting on council members unless there are more than seven candidates nominated and to make only resident owners eligible to sit on council.

#### The Strata's Position

- 27) The strata says the 2013 Letter was sent to the Owner to outline how council wanted strata-related matters to be handled. The strata says the Owner was given opportunities to respond or discuss his concerns in-person, but he chose not to do so. The strata says the Complaint was provided on a confidential basis.
- 28) The strata says that the vote was held by secret ballot to provide the owners an opportunity to choose the council members they thought could best represent them, without outside interference. The strata says that the proposed bylaw has not been considered by the owners, and would cause practical difficulties in obtaining enough willing members to sit on council. The strata says that the vote speaks for itself and composition of the strata council represents the majority decision of the owners.

#### Costs

- 29) The Owner asks for reimbursement of the costs associated with filing this claim on the basis that “if council was fair and equitable, this [dispute] would not have been commenced”. The strata says that the past and current actions by the strata council were and are fair.

## **ANALYSIS**

- 30) Section 3.6 of the Act says the tribunal has jurisdiction over actions and decisions of the strata in relation to an owner, and interpretation and application of the SPA.
- 31) Section 48.1 of the Act says that the tribunal can order a party to do something or to stop doing something in order to resolve a strata property claim. Section 48.1(2) of the Act, however, says that the tribunal should only make those orders where it is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.
- 32) I do not think that an apology is an action that can be ordered under the Act, as an apology is not something that can legally resolve a strata property claim.
- 33) Given the limits set out in the SPA on interfering with a strata’s decisions and actions, the tribunal ought not make the rest of the orders requested by the Owner under s.48.1 of the Act unless the strata either acted significantly unfairly towards him or breached its obligations under the legislation, strata bylaws or rules.

### **Did the strata council act unreasonably and/or in a conflict of interest in sending its July 10, 2013, letter (2013 Letter) and revised letter of February 2014 (2014 Letter)?**

#### Conflict of Interest

- 34) The standard of care for members of strata council is set out in s.31 of the SPA. Council members must act honestly and in good faith with a view to the best interests of the strata. They must act with the care, diligence and skill of a reasonably prudent person in



similar circumstances.

- 35) Section 32 of the SPA requires a council member who has a direct or indirect interest in a matter before council that could conflict with their duty or interest as council member to disclose the conflict and recuse themselves from discussions and votes pertaining to that matter.
- 36) The Owner says that the 2013 Letter and 2014 Letter were sent when the strata council was in a conflict of interest. This is because the likely complainant later became a council member and was involved in the 2015 AGM vote which resulted in the Owner not getting elected to strata council.
- 37) There is no evidence that the strata council members at the time the 2013 Letter and 2014 Letter were sent had a personal interest in the matter which was in conflict with their duties to the strata.
- 38) As the complainant was not a member of strata council or involved in the decision of council to prepare and send the 2013 Letter, I find there is no reasonable basis to find that the strata acted in a conflict of interest.

#### Unreasonableness

- 39) Section 48.1(2) of the Act says that the tribunal may make an order directed at the strata corporation or strata council if necessary to prevent or remedy a significantly unfair action or decision. This means that the tribunal should only make an order if the Owner proves that the strata's decision-making or action resulted in significant unfairness.
- 40) The wording used in s.3.6(1)(e),(f) and (g) of the Act and the reference to "significantly unfair" are identical to the language used in sections 164 and 165 of the SPA, and so Court decisions interpreting the SPA are relevant.
- 41) The fact that strata council members must exercise their discretion in making decisions is recognized in the requirement for an action or decision to be "significantly unfair". A strata is obligated to act in the best interests of the owners as a whole, and sometimes

may be unfair to a particular owner as long as the unfairness is not significant (*Gentis v. Strata Plan VR368*, 2003 BCSC 120).

- 42) The Courts interpret “significantly unfair” to mean conduct that is oppressive or unfairly prejudicial. “Oppressive” conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. “Prejudicial” conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503* 2001 BCSC 1578, aff’d 2003 BCCA 126).
- 43) In *Dollan v. Strata Plan BCS 1589*, 2012 BCCA 44, the Court of Appeal states that the test for “significant unfairness” is:
  - a. Examined objectively, does the evidence support the asserted reasonable expectations of the [Owner]?
  - b. Does the evidence establish that the reasonable expectation of the [Owner] was violated by action that was significantly unfair?
- 44) Section 135 of the SPA sets out a minimum standard for procedural fairness before taking certain actions against an owner. The strata must have received a complaint, given details of the complaint to an owner and an opportunity to respond (including a hearing, if requested).
- 45) While sending the 2013 Letter and 2014 Letter are not actions captured by s.135, this section is helpful in considering whether the Owner was treated fairly by the strata.
- 46) Strata Bylaw 3(1) states that an owner is not allowed to use a strata lot or common property in a way causes a nuisance or hazard or unreasonably interferes with someone else’s right to use and enjoy the common property or another strata lot.
- 47) Strata Bylaw 10, as amended, states that the first violation of a bylaw, rule or regulation will result in a written warning, with escalating fines then applied for subsequent breaches. Bylaw 20 prevents the strata council from delegating their responsibility to determine enforcement measures.
- 48) The council was obligated to take an action upon receiving the Complaint. The nature of

the Complaint was that an owner was appropriating the strata council's role with respect to bylaw enforcement, as well as trespassing or interfering with another owner's use and enjoyment of their own property in a way that may contravene Bylaw 3(1).

- 49) The emails provided by the Owner in support of his claim confirm that he sent numerous letters to both council members and the property manager denying the allegations and pointing out the inconsistencies and inaccuracies in the Complaint.
- 50) The evidence provided by the Owner is inconsistent as to his activities. He initially acknowledges leaving notes or bylaws in mailboxes while a council member. It is not clear whether these were independent actions, or with the authorization of the council at the time. He states that his movements on the property and taking photographs were only to document vandalism and maintenance issues.
- 51) The photographs he provided, and explanations as why they were taken, do not support this characterization. They show that photographs were taken even when there was little relevance to necessary maintenance. For example, photographs were taken of owner's patios, their use of common property, visitor parking, and to suggest changes to the common property or confirm that it was being maintained in a state accepted to the Owner. I also note that the Owner's evidence showed that in July 2013 he had arranged for work to be done by third parties on common property directly, without advising council or the property manager.
- 52) The evidence supports that a reasonably prudent person serving on strata council would be concerned about the strata's exposure to liability and its obligation to enforce bylaws in light of the Complaint, the Owner's responses, and activities reflected in the photographs and correspondence pertaining to maintenance.
- 53) The emails indicate that the Owner was offered an in-person hearing with strata council at various times, which he ultimately declined.
- 54) The Owner was provided with an edited copy of the Complaint setting out the particulars of the allegations against him. He was advised that records and particulars did not exist with respect to the telephone calls. He was provided various opportunities to respond to

the strata council's concerns, which he did. I find that his insistence that the strata council must investigate and produce evidence was not reasonable in the circumstances.

- 55) The strata took no further enforcement measures with respect to the conduct alleged in the Complaint.
- 56) Section 135 of SPA requires that an owner facing action from a strata council will receive particulars of the complaint and an opportunity to answer it. The Owner received the same process afforded an owner being facing action by the strata, despite the informal nature of the 2013 Letter.
- 57) The objective effect of the 2013 Letter was not substantial. If the allegations were untrue, the Owner was not being asked to alter his behavior. If the allegations were true, the Owner was being asked to stop potentially breaching the strata's bylaws.
- 58) Sending the letter was a minimally intrusive action: the strata was not attempting to fine the Owner or prevent him from using and enjoying his own property. The tone of the letter was not harsh, and clearly stated that it was being sent because of liability concerns should the Owner be acting inappropriately. There is no evidence that the strata council was acting maliciously.
- 59) The strata council corrected the 2013 Letter's inaccurate reference to the number of complaints received. As a result, the strata's file records would accurately reflect the complaints received, as well as showing that it had dealt with the Complaint, and that the Owner had denied the allegations in the Complaint. Although the Owner feels it was unfair, it was in the best interest of the strata owners as a whole that the strata council take action to avoid liability and enforce the bylaws.
- 60) Objectively, the evidence is that the Owner's expectation was that the strata council would consult him before taking any action. His expectation is not one which is

supported by the process set out in the strata bylaws and SPA, or the strata's duty to act in the best interest of the owners as a whole.

- 61) I find the strata council was initially obligated to take action to address the matters set out in the Complaint, and acted reasonably by alerting the Owner to its concerns by sending the 2013 Letter.
- 62) I find that the Owner was provided due process and that strata council's actions with respect to the Complaint, 2013 Letter and 2014 Letter were not a significantly unfair action or decision of the strata.

**Did the strata council act unreasonably in refusing to remove the 2013 Letter and 2014 Letter from its file records?**

- 63) Section 35(2)(k) of the SPA and Strata Property Regulation 4.1(5) require the strata to retain copies of all correspondence sent or received by the strata and council for at least two years.
- 64) The Owner requested that the strata remove certain correspondence from its file. As the strata was obligated to keep correspondence for at least two years, removing the documents would have put the strata in breach of its obligations under the SPA. The strata could not reasonably comply with the Owner's demands at the times they were made.
- 65) The Owner's personal expectation that the strata should breach its duties under the SPA in order to avoid unfairness to him as an individual owner is not a reasonable expectation.
- 66) The Owner's reasonable expectation is that the strata will comply with its obligations under the SPA to keep certain records. It is also his reasonable expectation that the strata will take steps to correct the inaccurate number of complaints received about him. By sending the 2014 Letter and keeping it on file, the strata was complying with its obligation under the SPA and ensuring that its records would show that less complaints

about the Owner were received than initially stated.

- 67) I find that the strata did not act unreasonably in refusing to remove the 2013 Letter and 2014 Letter from the strata files. There is no significant unfairness to the Owner as a result of the letters remaining on file.

**Does the Owner have a right to a copy of the original, unedited complaint letter of July 3, 2013?**

- 68) Section 35 of the SPA requires the strata to prepare and maintain certain kinds of records and documents (the “s.35 records”).
- 69) Section 35(2)(k) of the SPA and Regulation 4.1 require the strata to keep copies of all correspondence sent or received by the strata and council for at least two years.
- 70) The SPA also sets out the rights of individuals to access s.35 records. When a request for access is made by an owner for documents other than copies of bylaws or rules, s.36 of the SPA requires the strata to make them available to the owner within two weeks.
- 71) British Columbia’s *Personal Information Protection Act* (PIPA) sets out how private organizations such as strata corporations can collect, use or disclose an individual’s personal information. Section 18(1)(o) of PIPA states that an organization may disclose personal information about an individual without the consent of that individual if the disclosure is required or authorized by law.
- 72) Section 36 of the SPA authorizes disclosure of records which may contain personal information if the record is one that the strata is required under s.35 of SPA to maintain. It does not authorize the strata to refuse access to a record (or to censor parts of a record) when a s.36 access request is made, except in very limited circumstances.
- 73) The email evidence provided by the Owner indicates that his requests for original documents were for original, unedited evidence to prove the allegations underlying the Complaint and the 2013 Letter.

- 74) The evidence submitted by the parties, particularly the correspondence exchanged between the property manager and the Owner, confirms that the records being sought by the Owner (other than the Complaint) were not in the strata's possession.
- 75) Until initiating this dispute, the Owner told to the property manager on at least two occasions that he was comfortable with the strata removing personally identifying information from the Complaint. On that basis, I find he did not make a request for access to the unedited Complaint document prior to July 26, 2016.
- 76) If the Owner had requested a full, unedited copy of the Complaint within two years of the Strata Council receiving it in July 2013, the Strata would have been obliged to provide it to him. As he agreed that the strata could edit the Complaint, it was not unfair for the strata to remove personal information before sending the Owner a copy.
- 77) The effect of the Owner's delay in making his request for an unedited copy is that he is no longer requesting access to a document which is required by the strata to be kept under s.35 of the SPA. If a strata has correspondence older than two years in its files, it must comply with the PIPA rules.
- 78) I find the Owner is not entitled to an unedited copy of the Complaint in light of the delay in making his request, and his previous statements to the property manager that provision of an edited Complaint was acceptable to him.

**Has there been an unfair action or decision of the strata such that it is necessary to amend the strata bylaws to include proposed bylaw 12.3 to prevent or remedy the unfairness?**

- 79) Section 25 of the SPA requires a strata to elect a strata council each year. Strata Bylaw 9(1) provides that the strata council must have between 3 and 7 members. Bylaw 27(7) specifically requires voting by secret ballot if requested by an eligible voter.
- 80) The strata bylaws do not require the strata owners to forgo voting in strata council members where there are 7 or less nominees. The ability of the owners to decide whether they want a certain individual on strata council is underscored by Bylaw 11,

which permits the owners to remove a council member by majority vote, provided they are replaced by another council member.

- 81) The strata bylaws allow voting by secret ballot and reflect that the owners get to choose who they want to represent them on council. The Owner was not elected to council because the majority of voters at the meeting chose to not elect him as their strata council member.
- 82) The Owner says the other voters found the vote confusing, and so the results of the vote did not actually reflect the owner's wishes. However, the Owner has not presented any evidence to establish that other owners were actually confused or did not intend to vote as they did at the time. There is no evidence that the election does not reflect the wishes of the majority of the owners.
- 83) I find that the strata's voting process at the 2015 Annual General Meeting did not contravene its bylaws or the SPA, and the proposed bylaw amendment is not necessary to prevent or remedy an unfair act.

### **Conclusion**

- 84) Having reviewed the evidence and submissions made by the parties, I find that there is not a basis to order remedies sought by the Owner.

### **DECISION AND ORDERS**

- 85) I order that the Applicant's claim is dismissed.

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Maureen Abraham, Tribunal Member