



Civil Resolution Tribunal

Date Issued: February 20, 2017

File: ST-2016-00195

Civil Resolution Tribunal

Indexed as: *Deng v. The Owners, Strata Plan LMS 3904*, 2017 BCCRT 8 A1

B E T W E E N :

Qiu Lian Deng

APPLICANT

A N D :

The Owners, Strata Plan LMS 3904

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Shannon Salter

INTRODUCTION

1. The Owners, Strata Plan LMS 3904 (the strata) has 38 strata lots and was created on May 25, 1999. In July 2015, Cranberry Holdings Ltd. (Cranberry) purchased 36 of the strata lots from the strata's development company (the developer). The remaining 2 strata lots are owed by individuals. The applicant, Qui Lian Deng (the owner) owns one of these remaining 2 strata lots, Lot 10.

2. From its creation in 1999 until May 2016, the strata ignored many parts of the *Strata Property Act*, SBC 1998 c. 43 (SPA). Among other things, the strata never held an annual general meeting (AGM), elected a strata council, passed a budget, allocated strata fees, or obtained adequate insurance on strata property.
3. The developer, as the owner of almost all the strata lots, appears to have simply paid all of the strata's common expenses, including the share that would otherwise have been allocated to the owner. Cranberry, the new owner of the majority of the strata lots, appears to have continued this practice until May 2016, when the strata held an AGM and passed a budget. Cranberry now refuses to pay the owner's share of common strata expenses.

JURISDICTION

4. These are the formal written reasons of the Civil Resolution Tribunal (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 whether the owner is:
 - a. required to pay monthly strata fees, as of June 1, 2016; and

- b. entitled to copies of bank statements from June 1, 2016 through November 30, 2016.

POSITION OF THE PARTIES

7. The owner argues that she agreed with the strata, the developer, and Cranberry that she was not required to pay strata fees. Having never been required to pay strata fees or other strata-related expenses in the past, the owner argues she should not be required to do so now. The owner therefore asks the tribunal to order that she is exempt from paying strata fees. She also asks for an order that the strata produce certain bank statements, and reimburse her for CRT fees.
8. The strata argues that regardless of any agreement the owner may have had with Cranberry or the developer, the strata is not part of the agreement. The owner should therefore be required to pay her strata fees, like the strata's other owners. The strata also argues that the owner has access to the strata's financial statements, as she sits on the strata council, and these statements are presented regularly at strata council meetings.

EVIDENCE AND ANALYSIS

1. Is the owner required to pay monthly strata fees as of June 1, 2016?

9. At the May 12, 2016 AGM (the AGM), the strata elected a strata council and passed a budget. Following the AGM, a schedule of strata fees, dividing the strata fees among the strata lots according to unit entitlement, was sent to each owner identifying the amounts due.
10. The AGM minutes are detailed and state that a notice of the AGM was mailed to each owner within the timelines required in the SPA and also posted in the mail room. Despite this, the owner did not attend the AGM. The minutes also

note that a budget was passed at the AGM, effective June 1, 2016, consistent with the requirements of the SPA.

11. The AGM minutes state that since the strata has less than 4 owners, all owners, including Ms. Deng, are members of the strata council, as provided in the strata's bylaws, which are the Schedule of Standard Bylaws of the SPA (the bylaws). Minutes of a subsequent strata council meeting show the owner told the council that she did not want to participate in the strata council. However, the minutes note that another council member was to speak with the owner about the importance of voicing her opinions at strata council meetings, to see if the owner would change her mind.
12. I find, and the applicant does not appear to dispute, that the AGM was called and conducted in accordance with the SPA's requirements.
13. The SPA, section 99, provides that owners must contribute their strata lot's share of the strata's budget for the operating fund and contingency reserve fund. Owners must make these contributions through strata fees, usually calculated by dividing the total contribution according to each owner's unit entitlement. Under section 100 of SPA, this method for calculating strata fees can be changed through a unanimous vote at an AGM or special general meeting. However, there is no evidence the strata held such a meeting after its first AGM.
14. Rather, the schedule of strata fees relating to the budget approved at the AGM shows that strata fees are allocated according to unit entitlement. The owner's strata fees were set at \$281.38 each month. I find that the strata's calculation of strata fees on the basis of unit entitlement was consistent with section 99 of the SPA. On June 7, 2016, the strata sent the owner an invoice for her June 2016 strata fees and requested post-dated cheques for the following year's monthly strata fees.
15. The owner argues she is not required to pay these fees, and has refused to do so. She argues that she has never been required to pay strata fees because of

an agreement she has with some or all of the strata, the developer, and Cranberry. The owner has not provided a copy of this agreement, despite being asked for one.

16. I accept the owner's evidence that she has not paid any common strata expenses from the time she bought her strata lot, and that she believes she had an agreement to this effect with the strata, the developer, and later, Cranberry.
17. However, I find that, despite this belief, the owner did not have an agreement with the strata which exempted her from paying strata fees. Nor would it have been open to the strata to reach such an agreement with the owner.
18. This is because, under section 4 of the SPA, a strata must operate through the strata council. I find that no strata council was in place before May 12, 2016, when the strata held the AGM. This means that before May 2016, there was no strata council which could have authorized any agreement on behalf of the strata.
19. I have also considered the owner's argument that she should be excused from paying strata fees because of an agreement she had with the developer, and later Cranberry.
20. I note that private agreements between owners are outside the tribunal's jurisdiction, set out in section 3.6 of the Act. I therefore make no finding with respect to the existence or provisions of any agreement among the owner, the developer, and Cranberry.
21. However, I note that any agreement the owner made with the developer or Cranberry would be a private contract between owners, and would neither bind the strata nor relieve the owner of her statutory obligations under the SPA. Regardless of who actually paid the owner's share of common strata expenses, the owner has a legal responsibility to contribute to the strata her proportion of strata fees under section 99 of the SPA.

22. I also note that there is a conflict in the evidence about when the owner purchased her strata lot. She states that she bought Lot 10 in April 1999. However, land title documents show that she became the strata lot's registered owner in summer 2012. The owner has offered no explanation for this difference. Further, the owner states that the 2 previous owners of Lot 10 also did not have to pay strata fees. The strata was created in May 1999, and it seems unlikely that if the owner bought her lot in April 1999, before the strata was created, there would have been an opportunity for 2 other owners to purchase it before her.
23. In any event, in light of my finding that the owner had no agreement with the strata with respect to the payment of strata fees, I do not need to resolve this conflict. I find that, regardless of when she bought her strata lot, or the existence of agreements with other owners, the owner is responsible under the SPA for paying monthly strata fees as set out in the schedule of strata fees that relate to the budget passed at the AGM.
24. I therefore find that the owner is responsible for paying strata fees from June 1, 2016 onward, and I order her to do so. I make no finding with respect to the owner's liability for strata fees prior to June 1, 2016.
25. I note that the strata's bylaws do not contain provisions for charging interest on late strata fees. However, section 48 of the Act provides that interest applies to tribunal orders under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

2. Is the owner entitled to copies of the strata's bank statements from June 1, 2016 through November 30, 2016?

26. The owner asks for an order that the strata provide her with copies of bank statements from June 1, 2016 through November 30, 2016 (the bank statements). The strata argues that partial bank statements from June 2016 through September 2016 were provided to the owner in October 2016. The

strata says that other statements were reviewed at a November 24, 2016 strata council meeting, to which the owner was invited, but did not attend.

27. I find the strata has not provided the owner with the bank statements, as requested. Section 35 of the SPA requires the strata to retain copies of bank statements and other records. Section 36 requires the strata to provide copies of these records to an owner, within 2 weeks of their request. The strata may charge a fee for these copies, which is set at a maximum of \$0.25 per page, under the *Strata Property Regulation*, B.C. Reg. 43/2000.
28. I find that the owner requested copies of the bank statements over 2 weeks ago, in the course of the tribunal dispute resolution process, as evidenced by the parties' submissions. The strata has not provided copies of these records to the owner, contrary to section 36 of the Act. I order the strata to provide the owner with copies of the requested bank statements, subject to any copying fees the strata ordinarily charges.

DECISION AND ORDERS

29. I order:
 - a. The owner to pay the strata monthly strata fees of \$281.38 per month for Lot 10, as set out in the strata fee schedule relating to the budget passed at the May 12, 2016 Annual General Meeting;
 - b. The owner to pay the strata the strata fees owing for the 9 months from June 1, 2016 to February 28, 2017 totaling \$2,532.42, along with interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. The owner must pay the strata this amount no later than 30 days from the date of this order; and

- c. The strata to provide the owner with copies of the strata's bank statements from June 1, 2016 through November 30, 2016, subject to the owner's payment of any copying fees that the strata ordinarily charges, consistent with the maximum set out in the *Strata Property Regulation*.
30. The owner requested that I order the strata to reimburse her payment of CRT fees. Under section 49 of the Act, and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. The owner's primary claim in this dispute was that she has no obligation to pay strata fees. While she was successful with respect to the claim for bank statements, she was unsuccessful with respect to her primary claim. For this reason, I decline the owner's request with respect to the reimbursement of CRT fees.
31. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
32. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the Small Claims Act (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order

has the same force and effect as an order of the Provincial Court of British Columbia.

Shannon Salter, Chair