



Civil Resolution Tribunal

Date Issued: July 25, 2017

File: ST-2017-00081-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *Grand-Clement v. The Owners, Strata Plan KAS2467*, 2017 BCCRT 45

B E T W E E N :

Maria Grand-Clement

APPLICANT

A N D :

The Owners, Strata Plan KAS2467

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Shannon Salter

INTRODUCTION

- 1) This is a summary decision of the Civil Resolution Tribunal (tribunal) about whether the owner's dispute should be withdrawn or dismissed. Only the evidence and submissions relevant to this issue is referenced below.

- 2) The applicant is self-represented. The respondent is represented by a lawyer, Anil Aggarwal. Both parties have provided submissions on this issue, which I have considered.
- 3) Tribunal rule 126 provides that a party can request permission to withdraw their claims before the end of facilitation by following the directions of the facilitator. The applicant strata owner (owner) has asked the tribunal's permission to withdraw her dispute, and the facilitator has referred this issue to me for a decision.
- 4) The respondent strata corporation, The Owners, Strata Plan KAS2467 (strata) opposes this request. Instead, the strata requests that the tribunal dismiss the owner's dispute under the *Civil Resolution Tribunal Act* (Act) and tribunal rules 128 and 129. Rule 128 states that the parties can request a consent dismissal of a dispute at any time before the tribunal resolves the dispute by decision. Rule 129 provides that a request to dismiss a dispute will normally be granted if it has been agreed upon by all parties in the dispute. The owner does not agree that the dispute should be dismissed.
- 5) The key difference between a withdrawal and a dismissal is that disputes which are withdrawn can be refiled with the tribunal at a later date, subject to the applicable limitation period. Disputes which are dismissed may not be refiled with the tribunal, or another tribunal or court.
- 6) For the reasons which follow, I order that the tribunal grant the owner's request to withdraw her dispute. I deny the strata's request that the owner's dispute be dismissed.

JURISDICTION AND PROCEDURE

- 7) These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the 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.

- 8) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that may require an oral hearing.
- 9) Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or as in this case, on recommendation by a tribunal facilitator.
- 10) 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

- 11) The issue in this dispute is whether the owner's dispute should be withdrawn or dismissed.

BACKGROUND AND EVIDENCE

- 12) In her application for dispute resolution, the owner made several claims against the strata, totalling \$500. Broadly speaking, these claims involve allegations about access to strata documents, collusion between strata council members and the strata property manager, failure to respond to correspondence or hearing requests, accounting and expenditure irregularities, and other governance issues. The strata denies these allegations.

- 13) At the time of the owner's request to withdraw her dispute, the dispute was in the tribunal's facilitation phase. The parties had not begun the tribunal decision process, in which the parties prepare their submissions and evidence which are provided to a tribunal member to make a binding decision.

POSITION OF THE PARTIES

- 14) The owner requests to withdraw her dispute. The owner submits that the dispute should not be dismissed.
- 15) The strata argues that the owner should not be permitted to withdraw her dispute, as this will not create finality in the resolution of this dispute. In this regard, the strata relies on the tribunal rule 2, which sets out the purposes of the rules, including the promotion of finality and certainty. The strata points out that the owner has already received extensions of time from tribunal staff for the purpose of consulting and retaining a lawyer. In addition, the strata says that the owner appears to have some legal training as a notary or paralegal.
- 16) The strata requests that I refuse the owner's request to withdraw her dispute, and dismiss the dispute instead. The strata argues that this matter has gone on for too long, and that this dispute has caused difficulties to other owners, particularly those who are trying to sell their strata lots. The strata says this ongoing dispute has been brought to the attention of prospective buyers and has caused potential sales to fail. Bringing certainty and finality to this dispute is in the best interests of the strata and its owners.

ANALYSIS

Should the owner be permitted to withdraw her dispute?

- 17) For the following reasons, I allow the owner's request to withdraw her dispute.
- 18) In exercising its discretion to permit an applicant to withdraw a dispute, the tribunal must balance the applicant's interest in deciding whether and how to pursue a dispute with any prejudice to the respondent.

- 19) The tribunal's rules do not provide guidance on how the tribunal should strike this balance. Though not binding on me, I have considered the factors used by other tribunals in exercising their discretion in this regard. Although these tribunals operate under different legislative frameworks, I find the factors identified by the tribunals provide helpful guidance on this issue.
- 20) Under item #8.5 (previously #5.60) of the Workers' Compensation Appeal Tribunal Manual of Rules of Practice and Procedures, a request for withdrawal will normally be granted, but the panel does have discretion to refuse the withdrawal where there is evidence of fraud or misrepresentation, or an error in law or policy that is in favour of the appellant. (See, *WCAT-2007-03006 (Re)*, 2007 CanLII 84984)
- 21) The Labour Relations Board's policy on withdrawal applications is set out in *Pacific Forest Products Limited*, BCLRB No. B327/97, summarized as follows:
- There is a policy in favour of granting withdrawal applications.
 - "Labour relations reasons" are not required to make out an application to withdraw. A bare request to withdraw is sufficient. However, an applicant seeking a withdrawal may want to augment its application by including supporting facts and argument which support the application to withdraw, particularly when it suspects the application may be opposed.
 - Where an application to withdraw is unopposed, the Board will normally exercise its discretion by granting the application. However, the Board may also exercise its discretion by refusing the request for withdrawal.
 - A respondent wishing to oppose a withdrawal application may do so by demonstrating prejudice if the withdrawal were granted, or by showing a valid purpose for adjudicating the application.
 - Where a party objecting to an application to withdraw cannot show real prejudice the Board will, as a general rule, grant the withdrawal. Where real prejudice can be shown by the respondent, the applicant will be given the opportunity to reply to the matters raised in the respondent's submission. The application to withdraw will then be considered in light of Section 2 and by weighing the potential prejudice to the respondent against the case put forward by the applicant.

- 22) I find that, like WCAT and the Labour Relations Board, the tribunal should generally grant an applicant's withdrawal application. Forcing an unwilling applicant to pursue a dispute before the tribunal is problematic for two reasons. First, requiring an applicant to invest additional time, energy, and possibly money, to pursue a dispute they no longer want to resolve does not meet the tribunal's statutory mandate to provide economical, informal, flexible, speedy and accessible dispute resolution services.
- 23) Second, given the adversarial nature of the adjudicative process, it will usually be inappropriate for the tribunal to take jurisdiction over a dispute against the wishes of the person who made the application for dispute resolution. This is because a fair hearing of the issues depends on motivated parties providing the tribunal with a full factual record and submissions. Where the applicant does not want to pursue their dispute, this can unbalance the tribunal's fact finding and decision-making functions, and impair the fairness of the process.
- 24) However, this general rule can be rebutted where the respondent demonstrates prejudice significant enough to outweigh the applicant's interest in deciding whether and how to pursue their own dispute.
- 25) In this regard, I find that any prejudice to the respondent in this case does not outweigh the applicant's interest in deciding whether to pursue her dispute. In making this finding, I put weight on the following:
- The strata has not paid any CRT fees,
 - At the time of the owner's withdrawal request, the dispute was in the facilitation phase, and the parties had not yet submitted evidence or arguments as part of the tribunal decision process, and
 - The financial aspect of the owner's claim is \$500, which is a relatively small amount.

The strata claims that the ongoing dispute is dissuading buyers from purchasing within the strata, however, the strata has not provided evidence to support its

assertion in this regard, and I therefore find that this argument is too speculative to be given weight.

- 26) I appreciate that the strata seeks certainty and finality in this dispute. However, I find that, overall, the nature of the owner's claims are not such that their delayed resolution will prevent the strata from fulfilling its responsibilities under the *Strata Property Act*. With respect to the need for finality, I also note the owner must pursue her disputes within the applicable limitation period, or her claims will be statute-barred under the *Limitation Act*. It is also open to the strata to apply for dispute resolution for any claims it may have within the tribunal's jurisdiction.
- 27) Finally, in support of its position, the strata relies on rule 2, which enumerates a number of purposes for the tribunal's rules. In particular, the strata relies on a subsection of that rule that says the rules must be applied in a way that recognizes the value of certainty and finality in the resolution of disputes and compliance with outcomes. However, I note that several other sections of rule 2 also require that the rules be applied in a way that:
- takes reasonable steps to recognize and address the needs of tribunal participants,
 - is appropriate in the circumstances of each dispute, including consideration of fairness and proportionality,
 - facilitates speedy, accessible, inexpensive, informal and flexible processes, and
 - makes reasonable accommodations for the diverse circumstances of persons using the tribunal.

For the foregoing reasons, in balancing all of these requirements, I find that the goals of fairness, proportionality, and reasonable accommodation outweigh the interests of certainty and finality in this case.

Should the owner's dispute be dismissed?

- 28) Under rule 136, a request to dismiss a dispute will normally be granted if it has been agreed upon by all parties in the dispute. The strata says this does not mean a request will be denied if asked for by one party. I agree, but find that absent consent from the parties, none of the other circumstances where the tribunal is authorized under the Act to order the dismissal of a dispute apply in this case. For example, the tribunal can dismiss claims where a claim is an abuse of process (section 35), a party is non-compliant party in case management phase (section 36) or if a party does not participate in a tribunal hearing (section 52).
- 29) I therefore deny the strata's request to dismiss the dispute.

DECISION AND ORDERS

- 30) I order that the owner be permitted to withdraw her dispute. I deny the strata's request to dismiss the dispute.
- 31) Under tribunal rule 131, the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The parties made no submissions about the payment of tribunal fees or expenses in this application. Therefore, I make no order as to the payment of tribunal fees or expenses.

Shannon Salter, Chair