



Civil Resolution Tribunal

Date Issued: August 15, 2017

File: ST-2016-00406

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lawrence v. The Owners, Strata Plan VIS86*, 2017 BCCRT 58

B E T W E E N :

H. John Lawrence

APPLICANT

A N D :

The Owners, Strata Plan VIS86

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen Abraham

INTRODUCTION

- 1) The applicant owner H. John Lawrence (the owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS86 (the strata). The

owner seeks declarations that the Strata Council of VIS86 (the council) have breached the *Strata Property Act* (the SPA) and the strata bylaws. The owner says the council has acted improperly by spending money from the strata's contingency reserve fund without authorization and by removing the owner from council.

- 2) The owner is self-represented. The strata is self-represented through council members Chris Molland and Chuck Grote.

JURISDICTION AND PROCEDURE

- 3) 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. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 4) 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.
- 5) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
- 6) Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do something;
 - b. order a party to refrain from doing something;

- c. order a party to pay money.

ISSUES

- 7) The issues in this dispute are:
 - a. Did the council breach its bylaws by removing a council member by council vote?
 - b. Did the council breach its bylaws or the SPA by spending money from the strata's contingency reserve fund without first obtaining the approval of owners?
 - c. Did the council breach the SPA by failing to disclose documents requested by an owner?
 - d. Did the council breach its bylaws by failing to hold a council meeting after it was called?
 - e. Did the strata treat the owner in a significantly unfair manner in breach s.164 of the SPA?
 - f. If the answer to any of the above is yes, what is the appropriate remedy? The owner seeks the following remedies:
 - i. That Chris Molland and Pat Baxter are barred from serving on council going forward;
 - ii. That the owner be reinstated as a council member; and/or,
 - iii. That the strata be directed to hire a property manager to work with council.

BACKGROUND AND EVIDENCE

- 8) While I have reviewed all of the evidence and submissions provided, I have only set out what is necessary to give context to my decision.

- 9) The strata is an older 42-unit apartment style building for adults 50 years of age and older, some of whom only occupy their strata lots on a part-time basis. The strata is self-managed and owner-volunteers do some of the regular maintenance necessary to maintain the building.
- 10) The strata had amended its bylaws on three occasions, and the individual bylaws relevant to this dispute are those registered on May 18, 2007. The bylaws provide that all terms used have the meanings set out in the SPA.
- 11) Bylaw 4.24 prohibits residents from using profane or obscene language, threatening use of force, or interfering with the rights of other owners detailed in the bylaws. Council is responsible for investigating complaints that allege a breach of Bylaw 4.24.
- 12) Bylaw 14.1 says that the owners can vote to remove a council member by a 2/3 vote at an annual or special general meeting. Bylaw 16 deals with the offices held by council members, provides that a person may hold more than one office at a time (other than the offices of president and vice president), and 16.3 provides that the council members may vote to remove an officer.
- 13) Bylaw 17.1 provides that any council member may call a council meeting by giving the other council members at least one week's notice and specifying the reason for calling the meeting.
- 14) Bylaw 24.2 provides that the strata council must not, except in emergencies, spend \$3,500 on an expenditure unless the expenditure is authorized by a $\frac{3}{4}$ vote of the owners or was set out in an annual budget approved by the owners at a general meeting.
- 15) In 2015, the strata was obtaining a depreciation report recommending a variety of different interior and exterior work to the building.
- 16) At the strata's annual general meeting held March 28, 2015, 31 of 26 voting owners approved a schedule for maintenance priorities presented by council,

which set out components of building work to be done in each of the following nine fiscal years and estimates of cost taken from the depreciation report.

- 17) The strata council meeting minutes of June 23, 2015, indicate that Mr. Molland had obtained quotes for parking lot repair and the council voted to proceed with awarding a contract for work in the parking lot. The minutes reflect that the majority of council intended that the strata act as its own general contractor for the renovation project, though no vote was taken.
- 18) The strata council's meeting minutes of August 18, 2015, state that paving work will commence August 19. No minutes evidencing approval of this expenditure by the owners or council were provided. A "contingency fund statement" dated September 30, 2015, indicates that \$5,118.75 had been spent on parking lot maintenance.
- 19) At a special general meeting held October 6, 2015, 28 of 37 voting owners approved the following expenditures from the strata's contingency reserve fund:
 - a. Upgrade of the east entrance door structure at a cost of no more than \$15,000;
 - b. Upgrade of the north entrance door structure at a cost of no more than \$5,000;
 - c. Upgrades to the interior of the building, including painting and replacement of handrails, unit door boxes, moldings and paneling, at a cost of no more than \$49,000;
 - d. Replacement of common area flooring at a cost of no more than \$42,000; and,
 - e. "TOTAL COST FOR THE ABOVE WORK TO BE NO MORE THAN \$111,000.00".
- 20) The council sought the owner's approval for those expenditures on the basis that contractors had not been willing to provide detailed specifications unless owners had approved the expenditure. Council also advised that detailed plans and colour

choices would be presented to owners, and that replacement of lighting fixtures was outside current scope.

- 21) At its council meeting held October 20, 2015, council made decisions about flooring and directed its “color committee” to obtain paint colour and carpet options for council to decide upon. Various emails exchanged between owners and council members indicate that any input owners had into design elements was undertaken on an informal or ad hoc basis, was not necessarily considered binding on council by the council members.
- 22) Over the next few weeks, a contractor retained by the council commenced work on the interior. No minutes evidencing council discussion or voting on a contractor to undertake the interior upgrades were provided by either party. No minutes evidencing that designs for significant changes to the common areas of the strata were presented to the owners for their approval and voting were provided by either party.
- 23) Commencing November 23, 2015, a then-owner contacted council, writing them emails voicing her concern with the lack of input given owners over design choices, plans, and information. She voiced concern about the contractor hired by council, who appeared to be undertaking work in a haphazard or disorganized fashion and without being insured with WorkSafe BC. Her emails request disclosure of plan details and documents. Her ensuing emails of December 1, 5 and 14, 2015, confirm that no response has been received from council nor had the requested document disclosure had been provided.
- 24) She pointed out to council that they were proceeding without necessary authorizations from the owners on matters such a handrail replacement, and specifically referred them to the disclosure obligations set out in s.36 of the SPA..
- 25) On December 6, 2015, another owner wrote council expressing concern over the lack of information about and input into the renovation costs and design, particularly design elements which would significantly alter the appearance of the

common property or impact the budget. She requested access to and disclosure of the contracts entered into by the strata and of the quotes obtained.

- 26) Both of the above owners sold their strata lots, and provided written statements confirming that no responses or disclosure of documents and information was forthcoming to their requests.
- 27) On December 15, 2015, a further owner wrote council, again citing concerns over the lack of information for, and input from, owners with respect to steps being taken in the renovation project. He referred to issues with the work being done and contractor selected by council and requested information and documents with respect to the project plans and budget. No evidence was provided by the strata to indicate that this owner received a response to his requests.
- 28) On December 15, 2015, the council met. Mr. Molland criticized the color committee for informally polling owners on design choices, and advised that the owners had approved the plan already and could not rescind their decision unless they could prove that they were misled. The minutes of that meeting also note that the contract for the door renovations for the sum of \$19,646 had been awarded and signed, drywall work was complete and that council had “fulfilled all Worksafe BC orders”. Finally, the minutes note that council reviewed drawings for a new main entrance path and have a preferred contractor for that work.
- 29) By early 2016, council had received a number of other letters from owners voicing their own concerns about the lack of insight and control they were afforded in the renovation project. Both the owner and one other council member, Philip Thompson, were sympathetic to their concerns and were not in agreement with council’s actions. The owner provided an email of January 19, 2016, from Mr. Thompson evidencing that he intended to make a motion at their council meeting to review the process in place to ensure compliance with the strata’s disclosure obligations under s.36 of the SPA and to provide access to its records. His correspondence reflects that although he, Ms. Ball, and the owner had all

requested access to records (including correspondence and documents pertaining to the renovation) and been refused.

- 30) On March 3, 2016, Mr. Thompson resigned from council, citing the council's continuing breach of its disclosure obligations, exclusion from decision-making and lack of openness and transparency.
- 31) The council meeting minutes of February 16, 2016, mention that hallway lights had been replaced, as it "was decided" to replace all lights with new ones before painting the ceilings. No minutes evidencing that this expenditure had been discussed and voted upon by the owners or council were provided.
- 32) By June 6, 2016, the claimant owner had been voted onto the strata council. On June 6, 2016, he emailed the other council members requesting that council meet on June 14, 2016. He set out the various reasons for the meeting, including the need to distribute keys and discuss safety and management issues. On June 10, 2016, Mr. Molland responded to the owner's request, indicating that although there were enough council members available for a quorum on that date, the owner's request to meet was refused.
- 33) On July 12, 2016, council met. The owner recorded the discussion held for that portion of the meeting while he was in attendance, and provided a transcript. The transcript, along with the minutes of that meeting, evidence that there was tension between the owner and the other council members with respect to how council was proceeding with building maintenance and upgrades. The owner expressed his concern with respect to the council's ongoing failure to comply with bylaws and the SPA, and that he perceived significant management issues. He pointed out that decisions were being made by council members without any involvement of council as a whole or without undertaking any due process such as council motions and voting. The transcript also reflects some discussion of bullying and harassment, including a complaint received that Mr. Molland's wife had harassed another owner and the claimant owner's complaint of bullying by Mr. Molland. Mr. Molland did not recuse himself from that discussion. The response of the other

council members to the claimant owner's concerns was to vote to approve a motion brought by Mr. Baxter to remove the owner as a member-at-large from council. Mr. Molland advised them that they had the authority to do so under strata bylaw 16.3. Council then sent a letter to the owners advising that the claimant had been removed from council, and that Bylaw 16.3 was "intended to allow council to remove a council member who continually disrupts the smooth working of elected council.

- 34) In its minutes of September 9, 2016, council refers to a renovation being underway of the building's social room. No minutes evidencing prior owner or council discussion and voting on this project were provided.
- 35) The parties provided 'contingency reserve statements' prepared by council and provided to the owners, as well as what appears to be a summary of all cheques written with respect to the renovation project and a 'cost summary'. The statements and cheque summary documents do not indicate the amount of funds spent from the contingency reserve with respect to the discrete elements of the project. The cost summary does not include all expenditures from the contingency reserve fund, and appears to break out some expenses from the total project expense by allocating them to general 'maintenance' rather than forming part of the project.
- 36) The financial summaries provided by the parties do indicate that more than \$110,000 was spent on the renovation project, with the strata indicating the final project cost was \$122,982.17 and that a further \$39,036.43 in "non-project expenses" was spent from the contingency reserve from March 1, 2015 to May 18, 2016. Of that figure, \$5,118.75 is attributed to parking lot maintenance.
- 37) The strata provided numerous letters from various owners expressing satisfaction about the outcome of the renovation and their positive views about Mr. Molland.
- 38) The strata also submitted informal minutes of meetings between the strata and the owner held after this dispute was filed, where the strata was willing to

acknowledge to the owner various breaches of the SPA with respect to expenditures from the strata's contingency reserve fund and willingness to abide by the SPA moving forward.

POSITION OF THE PARTIES

- 39) The owner says that the strata, through its council, acted unfairly towards him and with blatant disregard to its obligations under the bylaws and SPA. The owner says, with reference to the minutes, that decisions were made by certain council members without any council involvement. The owner describes a pattern of conduct which included removing access to council email accounts, changing office locks and otherwise restricting access to strata records and information. The owner's submissions and the documents evidence that his views were often in dispute with those of the majority of other council members.
- 40) The strata says that if it breached the bylaws or the SPA, that it did so in good faith and with a view to the best interests of the strata. It says that cost overruns are common in renovations, and maintains that removal of the owner from council is authorized under the bylaws.
- 41) The strata says that the reference in bylaw 16.3 to removal of "an officer" by council must refer to council's right to remove a council member because strata bylaw 13.1 states that a council member's "term of office" ends at the conclusion of the annual general meeting at which a new council is elected.

ANALYSIS

Issue: Did the council breach its bylaws by removing a council member by council vote?

- 42) The strata bylaws explicitly provide the mechanism for removal of a council member: a resolution of the owners passed by a 2/3 majority. Bylaw 14 is headed "removal of a council member" and addresses in detail the process for removing

an elected council member, including how to address removal of multiple council members.

- 43) In contrast, the bylaw relied upon by the strata council is headed “officers” and generally deals with council’s ability to elect its officers from amongst the council members and how the duties of a particular officer will be discharged in the event of absence or removal. Bylaw 16.3 is authority only for the council to remove a member from their position as an officer, and is not authority to remove a council member generally.
- 44) Council members are voted onto council by the owners, and can only be removed by the owners. The strata’s interpretation of bylaw 16.3 was unreasonable, and its decision to unilaterally remove the owner for the purpose of eliminating a dissenting opinion was improper and contrary to strata bylaws.

Issue: Did the council breach its bylaws or the SPA by spending money from the strata’s contingency reserve fund without first obtaining the approval of owners?

- 45) Under the SPA, the contingency reserve fund is intended for paying common expenses which occur less than once per year. Section 96(b)(i)(B) of the SPA says that in order to spend money from the contingency reserve, the expenditure must have been authorized by a $\frac{3}{4}$ majority vote of the owners (or majority vote of the owners if the expense is to address a recommendation made in a depreciation report).
- 46) Under s.98 of the SPA, unapproved expenditures are not permitted unless there are reasonable grounds to believe an immediate expenditure is necessary to ensure safety or prevent significant loss or damage.
- 47) Strata bylaw 24.2 provides that the strata council may not, except in emergencies, authorize expenditures in excess of \$3,500 unless the expenditure was set out in an annual budget approved by the owners or authorized by a $\frac{3}{4}$ vote resolution of the owners.

- 48) The strata asserts that there was some urgency in undertaking the parking lot repairs. This is not borne out by the minutes, which suggest that there was time to call a special general meeting to obtain owner approval, and which do not refer to any urgent need to undertake repairs.
- 49) The strata also suggests that the owners' approval of the proposed maintenance schedule should be considered authorization for both expenditures, and that it was a convenient time to undertake the work. The strata says that the owners understood that the proposed expenditures were estimates, and that cost overruns are a common issue in renovation projects. This position is contrary to the express language used by the owners when authorizing a maximum amount that could be spent on the project.
- 50) The strata has not submitted any evidence to indicate that an emergency necessitated the strata's actions, or that owners understood the expenditures they approved could be exceeded if deemed necessary by council. There is also no evidence that the strata council took steps to obtain the authorization of the owners to incur additional expenditures or with respect to allocating approved expenditures amongst the project elements, despite having time and opportunity to do so.
- 51) I find that the council's decision to make expenditures for parking lot maintenance in the amount of \$5,118.75 and replacement of light fixtures at a cost of \$4,325.45, contravened both the SPA and the strata bylaws. I also find that the council's decision to make expenditures on the renovation project in excess of \$110,000 contravened both the SPA and the strata bylaws.

Issue: Did the council breach the SPA by failing to disclose documents requested by an owner?

- 52) Section 35 of the SPA requires the strata to maintain various classes of documents, including contracts, correspondence, and documents relevant to the renovation project. Section 36 of the SPA obligates the strata to make its records

and documents available to owners upon request. This obligation to provide access is echoed in strata bylaw 20.2(e), which provides that the strata must provide owner's access to its books of account at all reasonable times.

- 53) The owner has provided various emails and statements evidencing that requests for access to strata records were made by owners to council pursuant to s.36 of SPA and that these requests were ignored by the strata through its council. The strata has not provided any evidence to the contrary or explanation for its failure in this respect.
- 54) I find that the strata, though its council, contravened the SPA and its bylaws by refusing access to strata records and documents made by owners throughout 2015 and 2016.

Issue: Did the council breach its bylaws by failing to hold a council meeting after it was called?

- 55) Strata bylaw 21.1 provide that council must meet if a member gives them at least one week's notice and provides the reason for meeting.
- 56) The owner has provided emails confirming that he met the requirements of the bylaw, and that available council members simply refused to comply with his request. The strata indicated that it provided some of the information requested by the owner as part of his basis for calling the meeting and did not think the meeting would be productive. The bylaws do not permit the council to forgo meeting for those reasons, and so the available council members were obligated to attend June 14, 2016.
- 57) I find that the council, by refusing to hold a council meeting on June 14, 2016, as had been requested by the owner, breached its bylaws.

Issue: Did the strata treat the owner in a significantly unfair manner in breach s.164 of the SPA?

- 58) The phrase “significantly unfair” has been interpreted to be simply a plain language version of earlier terms “oppressive or unfairly prejudicial” (*Chow v. Strata Plan LMS 1277*, 2006 BCSC 335).
- 59) “Significantly unfair” encompasses oppressive conduct and unfairly prejudicial conduct. Oppressive conduct is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”. Conduct that is “unfairly prejudicial” is unjust and inequitable conduct.
- 60) In *Dollan v. Strata Plan BCS 1589*, 2012 BCCA 44 (CanLii) the test to determine significant unfairness under s. 164 is set out as follows:
- i. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?
 - ii. Does the evidence establish that the reasonable expectation of the owner was violated by action that was significantly unfair?
- 61) Section 48.1(2) of the Act mirrors the “significantly unfair” language set out in section 164 of the SPA, and the same test applies.
- 62) In these circumstances, the owner’s expectations were that the strata would:
- a. comply with its statutory obligations under the SPA prior to spending money from the contingency reserve fund;
 - b. comply with its statutory obligations under the SPA to permit an owner access to records and documents upon request;
 - c. permit an individual elected to council by the owners to sit on council; and,

- d. comply with the strata's own bylaws with respect to the above and with respect to a council member's ability to call a council meeting.
- 63) The owner's expectations that the strata would comply with its bylaws and the SPA are objectively reasonable. The evidence demonstrates that the strata willfully and without reasonable explanation disregarded its obligations and spent money without authorization, to the prejudice of the owners as a whole. The strata then failed to permit owners access to the records and documents, and acted with a view to avoiding openness and transparency in the expenditure of owners' money from the contingency reserve fund, again to the prejudice of the owners as a whole.
- 64) The strata council members are elected by the owners, and their presence on council reflects the wishes of the owners. If the owners wish to remove a particular member, they can do so, failing which the owner must continue to be permitted to sit on council and represent the owners who voted him in.
- 65) The strata council, in unilaterally removing a member of council duly elected by the owners acted unreasonably. That the council's purpose in doing so was to stifle dissent or minority opposition to its ongoing breaches of the SPA and strata bylaws, indicates that it was done with bad faith and with a view to oppressing the views of the owner and avoiding the wishes of the owners as a whole.
- 66) The refusal to hold a council meeting when called by the owner in accord with the bylaws was likewise with a view to stifling dissent and avoiding the owner's reasonable participation in council matters. As a result, the owners as a whole were treated in a prejudicial and oppressive manner by failing to have their elected member reasonably participate in council matters.

67) As a result, I find that the strata, through council, acted in a significantly unfair manner towards the owners generally, and the claimant owner in particular.

Issue: what is the appropriate remedy?

68) The owner seeks remedies that include his reinstatement to council and the barring of Mr. Molland and Mr. Baxter from holding positions on council.

69) I find that it is not appropriate to order that the owner be reinstated as a council member, as the term on council to which the owner had been elected would have ended at the strata's 2017 annual general meeting. Effective reinstatement of the owner to council is not possible as a result.

70) I also find that it is not appropriate to order that certain individuals cannot sit on council by the owners, should the owners wish to elect them. Although the evidence suggests that the owners should be wary of those individuals' willingness to abide by the SPA and bylaws given their previous conduct, the strata owners ought to have the ability to decide who they wish to represent them on council going forward. I also note that, although Mr. Molland represents the strata in this dispute, he and Mr. Baxter are not parties to it and accordingly have not had the opportunity to participate and it would be inappropriate in these circumstances to make an order against a non-party.

71) The final remedy sought by the owner is that the strata be ordered to hire a property manager. The strata's plan is to continue doing the work recommended in its depreciation report, which will involve significant expenditures from the contingency reserve fund over time and the need to ensure that the budget and work being done is appropriately managed in an open and transparent manner.

- 72) The numerous past failures of the strata council to act in accordance with its bylaws and the SPA, without excuse and without recognizing the prejudice caused the owners, suggests that there is a substantial risk that it will continue to act in the same fashion and this places the strata owners at risk of further prejudice and loss. Having the assistance of a property manager to set up the orderly management and control of the owners funds going forward, to ensure free access of the owners (or any dissenting council member) to information and reasonable participation in authorizing the work to be done is necessary.
- 73) Pursuant to s.48.1 of the Act, I have the authority to order the strata to do something or refrain from doing something.
- 74) I order the strata to cease contravening its bylaws and the SPA.
- 75) I also find that ordering the strata to hire a property manager is an appropriate remedy. To be clear: this remedy is necessitated by the actions of the strata, through its council, and the increased expense or inconvenience that hiring a property manager may cause is a result of the actions of the council members in 2015 and 2016. I make this comment given the antipathy expressed towards the owner by council members and certain owners, with a view to avoiding any further antagonism being directed towards the owner as a result of my decision.
- 76) Although the strata would continue to function through its elected council, it would no longer be self-managed and instead the owners would have some assurance that council's operation is with the assistance and guidance of a neutral party familiar with the strata's obligations to the owners. The manager does not have the ability to substitute its own decisions for those of council.

DECISION AND ORDERS

77) I order that:

(a) The strata has breached its bylaws and the SPA by illegally removing a council member, refusing access to strata records and documents, and by spending funds from the contingency reserve fund without authorization; and,

(b) the strata council must, within 60 days of the date of this decision, convene a special general meeting for the purpose of presenting a minimum of three options for property managers to the owners for their vote. The owners must then select the property manager they wish the strata to hire by way of majority vote.

78) 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. I see no reason in this case to deviate from the general rule. I therefore order the strata to reimburse the owner for tribunal fees of \$225.

79) Under section 167 of the *Strata Property Act* SBC 1998 c.43, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the owner.

80) 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.

81) 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.

Maureen Abraham, Tribunal Member