



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Pamudja v. The Owners, Strata Plan VR 35*, 2017 BCCRT 60

B E T W E E N :

Argus Pamudja

APPLICANT

A N D :

The Owners, Strata Plan VR 35

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen E. Baird

INTRODUCTION

- 1) The applicant, Argus Pamudja (owner), owns, jointly with one other person, strata lot 3 (Unit 103) in a strata corporation known as The Owners, Strata Plan VR 35

(strata). The owner claims damages from the strata arising from collections proceedings authorized and pursued against the owner by the strata.

- 2) The owner also asks the Civil Resolution Tribunal (tribunal) for orders requiring the law firm retained by the strata to conduct the collections proceedings to apologize to him, requiring the strata council to clear his and his wife's name, requiring the strata to send a letter confirming that it did not register a lien against the owner's strata lot and confirming correct account information relating to his payment of strata fees, reimbursement of expenses of \$2,500 and reimbursement of tribunal fees paid in the amount of \$225. For the purpose of these reasons I consider that the owner is requesting one letter from the law firm and one letter from the strata, through its council, to address the other orders he seeks.
- 3) The strata does not agree to any of the orders sought by the owner.
- 4) Both the owner and the strata are self-represented. The strata is represented by an authorized member of the strata council.

JURISDICTION AND PROCEDURE

- 5) 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.
- 6) 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 might require an oral hearing.

- 7) 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. The burden of proof is on the applicant and the evidence must be established on the balance of probabilities.
- 8) The applicable tribunal rules are those that were in place at the time this dispute was commenced.
- 9) Under section 48.1 and tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 10) The issues in this dispute are:
 - a. Is there a legal basis for the owner's claim for reimbursement against the strata? If so, what amount should be awarded?
 - b. Should the strata be required to instruct its legal counsel to provide a letter of apology to the owner?
 - c. Should the strata be required to provide a letter or other document to the owner confirming that no lien was ever registered against his strata lot and/or a corrected statement of account?
 - d. Should the owner be reimbursed for tribunal fees paid?

BACKGROUND AND EVIDENCE

- 11) The chronology set out below sets out the factual foundation of this claim.
- 12) Mr. Pamudja has owned the strata lot since July, 2010. I will refer to Mr. Pamudja as the owner although the Land Title Registry records show that he jointly owns the property with one other person.
- 13) On or about June 19, 2016, the owner received an account statement from Kazawest Management Company (Kazawest), the strata managers of the strata. Kazawest replaced a predecessor strata management firm but the exact date of that change was not provided. The statement of account showed charges and payments up to and including June 1, 2016. It showed an outstanding balance of strata fees of \$355.72 overdue 1 -30 days, a balance of \$.01 overdue 31 – 60 days and a balance of \$.01 overdue 61 – 90 days.
- 14) On June 27, 2016, the owner emailed Kazawest asking for an explanation of what appeared from the statement of account to be a \$.01 increase in his monthly strata fees. He asked that the account statement be corrected to remove the two \$.01 amounts which he disputed. He did not dispute that \$355.72 was overdue as at June 1, 2016 because it was undisputed that the owner had received permission from the strata council to pay his strata fees on the fourth of the month. He was told to contact the accounts receivable department for an explanation. He did so on or about June 26, 2016 but did not receive any response about the \$.01 discrepancies.
- 15) On July 27, 2016 the owner received a letter dated July 26, 2016 from a law firm representing the strata. The letter stated that he was in arrears of strata fees in the amount of \$735.84. To that was added \$40.00 described as a “fine or other charge” and \$725.00 for legal fees for a total of \$1,500.84. The letter demanded payment of the total within 21 days to prevent legal proceedings being taken. The letter served notice that the \$735.84 (and other amounts owing pursuant to s. 116 of the *Strata Property Act* (SPA)) were “lienable amounts” and that if payment was

not received within the 21 day period that a lien might be registered against the owner's property. The letter was copied to the Toronto-Dominion Bank who were registered on title as mortgagee. Attached to the letter was a statement of account up to and including July 1, 2016.

- 16) On July 27, 2016, the owner wrote by email to Kazawest and the strata council attaching a document detailing the payments that he had made demonstrating that by July 13, 2016 he was not in arrears in his strata fees. He asked for a response and for clarification.
- 17) On August 5, 2016, Kazawest wrote by email to the owner advising that there had been a mistake in the ledgers it had received from the predecessor strata manager firm. The email advised that "Liens will be dropped you will not be charged by the lawyer". The letter apologized on behalf of the strata council and Kazawest. The email did not disclose that on August 3, 2016 the strata had instructed the law firm to discontinue collections proceedings against the owner.
- 18) The owner did not accept the apology as offered. On August 5, 2016 he emailed Kazawest demanding a formal apology letter. By email later that day, Kazawest responded, advising that the lien had been placed by the strata council and not by Kazawest who did not have authority to take such steps. Kazawest confirmed that a formal letter of apology would be mailed out on the next business day. The email reiterated that the strata's lawyer would be "...dismissing everything" and repeated the apology. The formal apology letter of Kazawest was delivered to the owner on August 8, 2016 as promised. That letter incorrectly stated that a lien had been placed on the owner's property.
- 19) The law firm wrote to Kazawest on September 1, 2016 confirming the instructions it had received from Kazawest on August 3, 2016 to take no further steps in respect of collection from the owner. That letter attached correspondence to the Toronto-Dominion Bank dated August 31, 2016 returning the \$1,500.84 payment it had received in response to its letter of July 26, 2016. This correspondence was forwarded to the owner by Kazawest on September 6, 2016.

- 20) On September 6, 2016, the owner received a letter dated August 22, 2016 from TD Canada Trust advising that his property tax account with that institution had been debited \$1,500.84 to prevent the registration of a lien on his property. The owner immediately wrote to Kazawest referring to the communication from TD Canada Trust and demanding an explanation in light of the August 8, 2016 apology. On the same day the owner took the Kazawest apology letter to a branch of TD Canada Trust who confirmed that his property tax account had been debited. The owner then emailed Kazawest and the strata council demanding a letter from the law firm formally apologizing, clearing his name with the bank and Equifax to remedy any bad credit. He demanded an unspecified amount of compensation for “..damaging my name.”. He said that if these demands were not met he would pursue legal action. This email appears to have prompted Kazawest to forward the September 1, 2016 letter from the law firm to the owner by way of explanation.
- 21) In response to the owner’s letter to strata council, one council member emailed him asking if he could fill her in on what was happening with the lien and asking if he had received a lien for money that was already paid.
- 22) Also on September 6, 2016 Kazawest advised the owner that the law firm was acting on behalf of the strata council and would not be issuing an apology, confirming that all legal proceedings had been stopped and that his property tax account funds would be returned to him.
- 23) On September 21, 2016 the owner consulted a lawyer. A letter account from the lawyer consulted by the owner shows that he was not charged for that initial consultation. The account issued on November 2, 2016, in the amount of \$571.20, relates to professional services between October 4, 2016 through October 31, 2016.
- 24) On October 1, 2016, the owner wrote to members of the strata council advising that he had taken legal action against them for their decision to take legal action against him.

- 25) On October 7, 2016, the owner wrote to the Property Tax Department of the Toronto-Dominion Bank asking for confirmation that it had received the \$1,500.84 from the law firm and requesting an explanation for the payment it had made to the law firm. The letter advised that the owner had taken legal action against the strata in relation to this matter. The owner did not receive a response to this letter.
- 26) The owner says that on October 27, 2016, he and his wife took time off work as holiday time and went to the main branch of the Toronto-Dominion Bank in Vancouver where he was finally able to obtain a print-out of his property tax account that confirmed that the \$1,500.84 had been refunded to that account on September 23, 2016.
- 27) On October 31, 2016 the owner's legal counsel wrote to the law firm for the strata corporation demanding an apology and compensation from the strata council both to be delivered no later than November 14, 2016. No response was received. On or about November 19, 2016 it came to the attention of the owner that members of council had not received the October 31, 2016 letter from his legal counsel and so he delivered a copy of it to members of council and extended the date for a response for one week. This did not result in any response.
- 28) On December 6, 2016, the owner wrote to members of council and to Kazawest giving one more week for a response failing which he would take legal action.
- 29) The owner's Notice of Dispute with this tribunal is dated December 16, 2016.
- 30) The above chronology is not contested.
- 31) The evidence of the strata corporation confirms that it made a decision at a council meeting in July, 2016 to hire legal counsel to pursue collection against the owner. This decision was based on account information it received from Kazawest. No notice was given to the owner that the strata council considered him to be in arrears of strata fees and would be considering taking collection proceedings against him and imposing a fine.

POSITION OF THE PARTIES

- 32) The owner submits that the collection proceedings brought against him were entirely without merit or justification. He says that he has incurred expense and suffered stress as a result of the collection proceedings. In particular, the owner says he has incurred legal expense and loss for time he took from work to deal with the consequences of the collections proceedings. In addition to damages and reimbursement of tribunal and legal fees, the owner seeks written confirmation from the strata that no lien had been placed on his property, correction of his statement of account with the strata, and an apology from the law firm for the strata.
- 33) The strata submits that it did nothing wrong. It says that it relied on financial information prepared by the strata management company and that it was entitled to do so. The strata says that if anyone should be liable to the owner it is the strata management company for its negligence in providing incorrect accounting information to it. The strata says it does not owe anything to the owner.
- 34) The strata requests that I dismiss the owner's claim.

ANALYSIS

Is there a legal basis for damages against the strata?

- 35) The owner says that the collection proceedings brought against him ought never to have occurred. He provided documentation that was not disputed, that at the time the collection proceedings were authorized by the strata council and advanced by the law firm that he was not in arrears of strata or other fees. The first time that he was advised of the strata position that he was in arrears was when he received the July 26, 2016 demand from the law firm retained by the strata. He immediately contacted both Kazawest and the strata council with documentation to prove that he was current in all financial aspects.

- 36) After receiving the owner's correspondence and documents proving that he was not in arrears, Kazawest issued an apology to him on its own behalf and on behalf of the strata council. It took responsibility for the error although it blamed the incorrect accounting on the previous strata management company. On August 3, 2016 Kazawest, on behalf of the strata council, instructed the law firm to immediately cease the collection proceedings against the owner and to return him to his original position.
- 37) The strata says that it was entitled to rely on the calculations that it had been provided by its strata management firm and that its decision in July, 2016 to pursue collections proceedings against the owner was done in good faith but based on incorrect information. It points to the apology issued upon receipt of proof that the owner was not in arrears and its instructions to the law firm to cease collection proceedings and to restore the owner to his original position. Its position is that the owner ought to have accepted its apology and understood that it would take some time for monies that had been paid by the Toronto-Dominion Bank to the law firm to be repaid. Essentially the strata says that a mistake was made, it was admitted and corrected, and that the owner has not suffered any loss.
- 38) The starting point for this analysis is the bylaws of the strata. Bylaw 2.1 requires an owner to pay strata fees on or before the first day of the month to which the strata fees relate. Bylaw 2.2 permits the strata to impose an interest charge and a fine of \$50 for each contravention of Bylaw 2.1.
- 39) The law firm letter of July 26, 2016 demands payment not only of the amount of alleged arrears of \$735.84 but added to that amount a "fine or other charge" of \$40.00 and "legal costs" of \$725.00. In other words, the owner was being required to pay both a fine and the costs of remedying the alleged breach of bylaw 2.1 that had been imposed by the strata.
- 40) Section 135 (1) of the SPA requires that before a strata can impose a fine or require a person to pay the costs of remedying a contravention of a bylaw that it must provide notice to the owner and give him a reasonable opportunity to answer

the complaint, including a hearing if requested by the owner. This was not done in this case. The fine and the costs were imposed by the strata without notice to the owner and without him having the opportunity to request a hearing. The following excerpt from the *British Columbia Strata Property Practice Manual* sets out the applicable legal principle that applies in this case:

“In *Terry v. Strata Plan NW 309*, 2016 BCSC 237, the court held that a strata corporation had validly imposed fines. The petitioner Terry successfully appealed; in *Terry v. Strata Plan NW 309*, 2016 BCCA 449, the court determined there was no evidence that the strata corporation had complied with the requirements of s. 135 (1) before imposing fines. Past letters advising the alleged contravener that her “mother should be well aware of the fact” were insufficient. In this situation, the fines preceded the giving of notice. It should be noted that the significant amount of the fines in Terry were due to non-payment of strata fees and special levies; this underscores the need to send a s. 135 letter, even if the contravention is arrears of strata fees as opposed to more significant unlawful conduct.”

(L. Joy Tataryn, ed., *British Columbia Strata Property Practice Manual*, looseleaf (Vancouver: The Continuing Legal Education Society of British Columbia, 2008) at §9.43)

- 41) In this case, I find that the strata imposed the fine and authorized the enforcement costs set out in the law firm letter without giving notice to the owner as required by section 135 (1) of the SPA. In doing so, I find that it was in breach of its statutory duty under section 135 of the SPA.
- 42) The question that arises from this finding of breach of section 135 of the SPA is whether the owner is entitled to reimbursement of any costs flowing from the breach. Had proper notice under the legislation been given it is reasonable to expect that the accounting error, which is admitted by the strata, would have been detected and corrected before collection proceedings were commenced. The owner has demonstrated that he was attentive to matters concerning his strata lot and so it is reasonable to expect that he would have either requested a hearing, as he was entitled to do, or he would have produced proof to the strata that he was not indebted for strata fees as he has done here.

- 43) I appreciate that the receipt of the letter from the law firm and learning that his property tax account had been debited by the Toronto-Dominion Bank was unpleasant and stressful for the owner. I accept that he had to invest time to prove to the strata that it was in error in its accounting. The strata's acknowledgement of the error and apology were timely. By August 3, 2016 it had advised the law firm to take no further actions against the owner. Within 10 days it had issued an apology which was formalized a few days later. I also note that the wording of the apology was unfortunate. It apologized for the error which caused a lien to be placed on the owner's property. This is not correct. No lien had been placed, and no lien was ever placed, on the owner's property. However, it is easy to see how this language would have led the owner to believe that notwithstanding the apology for the error of the strata that a lien had been registered.
- 44) It is also unfortunate that the Toronto-Dominion Bank sent monies from the owner's property tax account after the error had been detected because this fact exacerbated the frustration of the owner. The reason why the bank was notified earlier is not known. All that is before me is a letter dated August 31, 2016 from the law firm to the bank referring to "...our recent email advising you that our client asked us to discontinue the collection process for the above unit" and returning the \$1,500.84 for deposit to the owner's account. This letter was provided to the owner on September 6, 2016, the same day that he was notified by the bank that the monies had been paid out to the law firm. By October 27, 2016 the owner was able to confirm, through his own efforts, that those monies had been deposited back to his property tax account.
- 45) The evidence discloses that the owner consulted a lawyer on September 27, 2016. A letter account from legal counsel consulted by the owner is for professional fees and services rendered from October 4, 2017 through October 31, 2017 in the amount of \$571.20. The owner says that he retained a lawyer "...to help solve this problem". At the time he did so, he had no proof that the \$1,500.84 had been returned to his property tax account at the Toronto-Dominion Bank. Further, given the wording of the apology and the email from the strata council member, both of

which referred to liens being placed on his property, I find that it was reasonable in the circumstances for the owner to retain a lawyer to ensure that his property interests were protected and that he was made whole by the strata. I find that the \$571.20 that he paid to the lawyer was a direct consequence of the breach by the strata and I order the strata to reimburse the owner for this amount.

- 46) I accept that the owner believes that the actions of the strata have damaged his good name. However, there is no evidence before me that this has occurred other than his stated belief. There is no evidence of Equifax having been notified or of any notation on his credit record. There is no evidence that he has applied for credit and been denied. There is no evidence that the Toronto-Dominion Bank has asked him to repay or reduce his mortgage with it or has indicated that it would not renew the mortgage. On the evidence, I cannot find that the owner's reputation has been damaged by the actions of the strata.
- 47) The owner says that he took a day off as holiday to visit the downtown branch of the Toronto-Dominion Bank for confirmation that the \$1,500.84 had been repaid to his property tax account. While I accept that he took time off to do so, I was not given any reason why this required a full day or why it was not something that his legal counsel could confirm with the bank. In the circumstances, I do not find that this is a cost for which the strata should be responsible.
- 48) The owner's requested remedy in respect of monetary compensation is "An order that the respondent pay the applicant's expenses totaling \$2,500". The only evidence of expense incurred by the owner, other than tribunal fees paid by the owner, is the cost of legal representation described above. I am not prepared therefore to order payment of \$2,500. I do order reimbursement of legal fees totaling \$571.20.

Should the strata be required to instruct its legal counsel to provide a letter of apology to the owner? Should the strata council be required to provide a letter or other document to the owner as requested?

- 49) Section 48.1 of the SPA gives me the jurisdiction to order terms or conditions that I consider appropriate, in accordance with the tribunal rules. I will deal with requests for orders for letters together under this section.
- 50) The owner asks for a letter of apology from the law firm that wrote the letter of July 26, 2016. It is important to remember that the law firm acted on the instructions of its client, the strata, through the agency of Kazawest. The lawyer was presented with information upon which it was entitled to rely. The letter that it wrote to the owner was upsetting to him but there was nothing inappropriate or unethical about its content. When the law firm was instructed to cease any collection activity against the owner it did so. While ideally it might have notified the Toronto-Dominion Bank in a more expeditious manner which might have resulted in the \$1,500.84 not being sent, those funds were returned promptly. The law firm did not, in my opinion, conduct itself in a manner that requires an apology and I decline to order that one be provided.
- 51) The owner also requests an order for the strata council to clear his name and that of his wife. As discussed above, I have been provided no evidence that the owner's reputation has been damaged in any way. Accordingly, I decline to make this order.
- 52) The owner requests an order that the strata provide a letter stating that it did not register a lien against his property. The land title search printed on June 13, 2017 and provided to the owner as part of the tribunal process clearly demonstrates that no lien was ever registered against his property. For this reason, I consider this request of the owner to be unnecessary and decline to order it.
- 53) Lastly, the owner seeks a corrected account statement for fees paid to the strata. Although the owner has a right under section 59 of the SPA to request an Information Certificate which must be provided within one week of the request and

which must disclose (among other matters) any amount that the owner owes to the strata corporation, I believe that is a reasonable request in the circumstances. I understand the owner to want the historical record to be corrected and I find that it is reasonable that the strata provide him with such a statement. If he is not content with what he receives, or there is an error, he can request a hearing before the council under s. 34.1 of the SPA. I order that within 7 days of the date of this decision, the strata deliver by email to the owner a statement of fees paid to the strata from June 1, 2016 to July 31, 2017 inclusive.

DECISION AND ORDERS

- 54) The owner has been successful in his claim against the strata. As a result, I order that the strata reimburse the owner the tribunal fees paid in the amount of \$225.
- 55) I order that:
 - a. within 14 days of the date of this decision, the strata reimburse the owner for legal fees in the amount of \$571.20 and for tribunal fees paid in the amount of \$225 for a total of \$796.20; and
 - b. within 7 days of the date of this decision the strata deliver by email to the owner a statement of fees paid to the strata from June 1, 2016 to July 31, 2017, inclusive.
- 56) 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.
- 57) 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.

- 58) 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 E. Baird, Tribunal Member