



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhen v. The Owners, Strata Plan BCS 1772*, 2017 BCCRT 87

**B E T W E E N :**

Yan Juan Zhen

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 1772

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Maureen Abraham

## **INTRODUCTION**

1. The applicant is an owner of a strata lot in the 178-unit strata corporation at issue and is represented by Zsolt Kiss.
2. The respondent (strata) is represented by strata council president Ms. V.

3. The applicant alleges gross misconduct and negligence on the part of the strata council and its property manager with respect to governance of the strata and maintenance and repair of the building.

## **JURISDICTION AND PROCEDURE**

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 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.
6. 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.
7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 48.1 of the Act and the tribunal rules, 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**

9. The issues in this dispute are:
  - a. Did the strata act improperly in hiring or paying a contractor to complete building exterior work in 2015?
  - b. Did the strata fail to provide documents or information as required under the *Strata Property Act (SPA)*?
  - c. Did the strata fail to hold a special general meeting as required under the SPA?
  - d. Did the strata council or the strata's property manager fail to act in the best interests of the owners or otherwise act improperly or in bad faith?

## **BACKGROUND AND EVIDENCE**

10. The strata is approximately 10 years old and has 27 floors. Three warranty reports were done for the strata building when it was at two, five and ten years old. Since at least 2014, the strata has been assisted by a property manager (the manager).
11. Since the requirement to obtain a depreciation report brought into force under the SPA in 2013, the owners have voted by a very high majority at their annual general meetings (AGM) to waive getting a depreciation report. The strata has been undertaking proactive maintenance, and was able to obtain a lower annual insurance rate as a result.
12. By 2013, the strata had obtained a building exterior services report from contractor X, who had previously done some work on the strata's common property. The report included a quote to provide a wide scope of exterior work at a cost of approximately \$360,000. Some of the owners in the strata were reporting water ingress issues, and there were some cracks in the building's exterior and at some caulked areas.

13. In addition to representing the applicant in this dispute, Mr. Kiss is the applicant's common law spouse and also holds her power of attorney.
14. Mr. Kiss's involvement in the strata began in or about 2011, when he moved into the building with the applicant owner and since that time, he has represented the applicant with respect to strata matters as her authorized agent. Given Mr. Kiss' relationship to the applicant, I accept that Mr. Kiss's actions represented those of the applicant at all material times.
15. The strata says that Mr. Kiss immediately breached the strata rules and bylaws by failing to make any arrangements for his move-in and by repeatedly violating parking bylaws. Evidence in the form of photographs and correspondence were provided in support of this assertion. By June 2014, Mr. Kiss presented an unsolicited proposal to take over as the strata's resident caretaker. No evidence with respect to a need to replace the current caretaker was apparent.
16. In August 2014, the strata requested proposals for some exterior building work from three contractors for some of the services covered by X's 2013 report.
17. It did not request a quote from X. The strata provided evidence that X had previously failed to respond to requests for service from the strata, and had failed to provide information and declined warranty coverage for past work. The strata also says X was not agreeable to providing a quote for a reduced scope of work than it had set out in its 2013 report.
18. At the strata's AGM held August 13, 2014, the owners duly approved an expenditure from the strata's contingency reserve fund for exterior building work to be done.
19. Upon receipt of the quotes for that work, the strata council reviewed them and decided that contractor R would be hired, as it had a lower price for the greatest scope of work and the strata had obtained positive references from third parties about the quality of R's work. R was the same company through which the strata's caretaking services were provided. Evidence that R had Worksafe BC coverage

and commercial liability insurance was provided by the respondent, although Mr. Kiss asserts that this coverage does not exist.

20. The applicant says that R did not have a business license. The respondent says that R was licensed with the municipality where R's office was located, and that it also obtained a business license from the strata's municipality because of Mr. Kiss's objection.
21. By March 2015, the strata council was receiving complaints from its caretaker that Mr. Kiss was harassing its worker, his spouse, council members and others. Work had commenced on the exterior by R, and the strata says its contractors were also subject to threats and harassment by Mr. Kiss. The strata council wrote Mr. Kiss and demanded that he cease contact with the contractors and others. Correspondence evidencing that Mr. Kiss continued to photograph and follow contractors and the caretaker in July 2015 was provided. A police complaint was filed against Mr. Kiss by the individual resident caretaker, who then resigned and was replaced by another individual.
22. Around this same time, Mr. Kiss made complaints about R and the caretaker to the Fraser Health Authority and WorkSafe BC. He also made a complaint about the manager to the Real Estate Council of British Columbia. The applicant says the subcontractor used by R violated WorkSafe BC rules and his complaints had merit. He has provided copies of WorkSafe reports indicating that they reviewed the working conditions at the strata from 2015 – 2017. His evidence indicates that, with the exception of a direction to put written safety procedures in place, better ear protection for workers doing power-washing, and to institute a policy to address bullying and harassment, the complaints were closed.
23. R completed the exterior building work by the end of September 2015, and was paid. In October 2015, Mr. Kiss wrote the property manager and strata council members critiquing the work done and demanding documents and information about the project and contractor. The manager responded by providing Mr. Kiss the information and documents he had requested.

24. On July 5, 2016, Mr. Kiss emailed the manager five times demanding documents and information and critiquing what was provided to him. Most of his requests were the same as ones that he had made (and which had been responded to by the strata) in October 2015. Nevertheless, each email was responded to promptly by the manager with the requested information and documents, along with copies of the October 2015 responses. Mr. Kiss requested and received a list of all strata owners within one week of making a request. This did not satisfy Mr. Kiss, who then refused to deal with the manager and demanded further responses from the managing brokers of the manager's firm the following week. In his correspondence to them, he accused the manager of deliberately misunderstanding his requests, and referred to him as a "con artist" and "scam artist" to the managing brokers.
25. By late July 2016, the strata received complaints from owners that Mr. Kiss was going door-to-door with a petition to replace the property manager and caretaker. On July 25, 2016, an owner emailed the property manager advising that Mr. Kiss had approached her mother advising that he was the property manager's representative and required her signature on a document, which she declined to provide.
26. On August 10, 2016, the strata received a petition signed by 48 owners demanding that a special general meeting be called for the purpose of firing the property manager and R and removing the strata council members (petition).
27. The strata says it immediately began to consider whether it could move up the AGM scheduled for September 2016 and hold it along with a special general meeting to avoid the need to hold more than one meeting. It says it learned then that many of the owners who signed the petition did not read English and did not know what they were signing, but thought it was a document the strata council members were endorsing. On August 12, 2016, the strata council sent a letter to the owners explaining that they were not involved with the petition and alleging the difficulties they said they had with Mr. Kiss. As a result, on August 14, 2016, 18 of the owners who had signed the petition revoked in writing their request for a special general meeting.

28. The strata said that even though they were not obligated to hold a special general meeting, the council decided hold an information session to discuss the issues raised by Mr. Kiss in the petition, in advance of the AGM. Many of the owners attended the session, and Mr. Kiss attended and was provided an opportunity to present his concerns to the owners directly.
29. Mr. Kiss provided a video excerpt from the information session as part of his evidence, along with a report dated August 29, 2016 from X stating that it had inspected R's work and that the work done had a lower value than what was paid by the strata. He says that the video evidences the manager and council member's negative attitude towards him and that the manager made misleading statements to the owners generally about the building.
30. Shortly thereafter, prior to the scheduled AGM, Mr. Kiss retained a lawyer who wrote the strata council detailing Mr. Kiss's various complaints (which are the same as the position he has taken in this claim). The strata's lawyer responded promptly, and provided further explanation for the council's decision not to continue with X for exterior building work.
31. The strata's AGM went ahead September 13, 2016 (2016 AGM). At the 2016 AGM, the strata council president reported to the owners that the council and others felt harassed by Mr. Kiss and reviewed the council's actions, decisions and the rationale for their decisions with respect to maintenance and repair. The owners then voted unanimously to ratify the strata council's actions with respect to "building governance" actions. A majority also voted to again waive the requirement for a depreciation report.
32. Throughout the material time, Mr. Kiss was invited to attend strata council meetings to discuss his concerns, but failed to respond to those invitations. Although not on the agenda, Mr. Kiss was permitted by the strata council to make presentations critical of the council members, property manager, contractors and caretakers directly to the owners at an AGM and the information session. Mr. Kiss made representations to the effect that R was qualified only to provide janitorial

services and that the work done to the building was incomplete, too expensive and shoddily done.

33. No action was taken by the owners following his presentations, who then voted to ratify the strata council's actions at the 2016 AGM. After the 2016 AGM, Mr. Kiss engaged a lawyer, and correspondence echoing the positions of the parties in this dispute was engaged through their respective lawyers. Mr. Kiss also submitted a complaint to the strata alleging that the building caretaker was breaching the strata's parking bylaws. The strata provided evidence that it investigated the complaints and found them without merit, and that the complaints were about cars which were not R or the caretaker's vehicles.

## **POSITION OF THE PARTIES**

34. The applicant argues that:

- The strata hired an unqualified, unlicensed, uninsured contractor who they overpaid for incomplete work on the strata's exterior, and the strata should have first obtained a depreciation report in order to do exterior work;
- Strata council members and the strata's property manager misled owners at their meetings, annual general meeting, an information session and in correspondence about the work being done and Mr. Kiss's role;
- Strata council members and the property manager refused to disclose documents and information upon his request; and,
- Strata council members and the property manager failed to act in the strata's best interests and instead acted negligently and in bad faith.

35. The applicant requests that I order:

- (a) the respondent not use contractor R for building envelope Work;



- (b) the respondent to confirm that the applicant's strata lot is covered under warranty;
- (c) the respondent to recover the \$88,000.00 paid to contractor R who completed building exterior work in 2015;
- (d) the Respondent to hire a qualified contractor to repair the building envelope, at an approximate cost of \$30,000.00 and sue R for the cost of that work; and,
- (e) the Respondent to terminate its relationship with its property management firm.

36. The respondent argues that:

- The necessary work to repair and maintain the strata's exterior building envelope is complete and a warranty has been provided by the contractor;
- The strata had surveyed the owners various times to obtain information about water ingress and other maintenance issues both before and after the exterior work, and since the work has been done no further water ingress has been reported;
- The applicant was provided with all documents and information upon request and the strata has been open, honest and transparent;
- The applicant, through Mr. Kiss, has been harassing the council members, property manager, strata caretaker and contractors and has caused expense, delay and inconvenience to the strata as a result;
- The applicant's representative is motivated by self-interest and personal financial gain.

37. The respondent requests that I dismiss the applicant's claim. It also requests that the tribunal fine or sanction the applicant, as well as an order prohibiting Mr. Kiss from ever applying for employment with the strata.

## **ANALYSIS**

### **Did the strata act improperly in hiring or paying a contractor to complete building exterior work in 2015?**

38. A strata corporation operates through its strata council. Each council member is obligated to act honestly and in good faith with a view to the best interests of the strata, and to exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
39. If repair or maintenance that usually occurs less than once per year is needed for the common property, the strata must use money from its contingency reserve fund, rather than its operating fund. In order to spend money from the contingency reserve, the SPA generally requires the strata to first hold a vote amongst the owners to get permission. Unless at least 75% of the owners approve the expenditure amount and purpose, the strata cannot spend the money.
40. The evidence is that by 2013, exterior work was needed to repair cracks in the exterior and caulking which were causing leaks. X had provided a report detailing a wide scope of work which could be done. The council recommended that the owners prioritize some of it in order to address the leaks. Over 75% of the owners approved the work to be done and the money to be spent from the contingency reserve. The council had the authority to then go ahead and hire a contractor and pay the contractor to the work.
41. The strata council members obtained three quotes and reviewed them. They obtained and checked references with respect to quality of work. They decided to proceed with a contractor who was licensed and insured, and who offered to do a wider scope of work for a price less than the other bidders. I find that a reasonably prudent person in similar circumstances would have done just what the strata council members did in this case, and that the strata did not act improperly in hiring R to do the exterior work.
42. The applicant says that X's report shows that the sealant work done by R was substandard and that it should have cost less. He says that the competing bids

were shams and the bidders likely do not exist or were manufactured. No evidence to prove the non-existence of those companies has been provided, and so I do not accept that the competing bids submitted were manufactured by the strata.

43. X's report indicates that it was not done until a year after the work by R had been completed, and was done with limited review of the property. The strata says that X had previously been responsible for exterior maintenance and had failed to sufficiently do the work at first instance, which led to the need for some of the exterior work. After the work was done, no further water ingress has occurred. It also provided an excerpt from an engineer's review of the building setting out that sealant work must be reviewed and maintained annually. In light of this evidence and the passage of time between the work and X's report, I cannot accept that X's report is sufficient evidence of substandard work being done in 2015.
44. I find that the strata did not act improperly in hiring and paying R to undertake the exterior building work, and that the applicant's claims of substandard work and overpayment are without merit.

**Did the strata fail to provide documents or information as required under the Strata Property Act (SPA)?**

45. The evidence provided by the parties shows that Mr. Kiss requested and was provided information and documents in October 2015 and July 2016 in a prompt manner, and within the 2-week time limit set out in the SPA.
46. I find that the applicant's complaint in this respect is without any reasonable basis.

**Did the strata fail to hold a special general meeting as required under the SPA?**

47. Under section 43 of the SPA, a strata must hold a special general meeting within four weeks after receiving a written demand signed by at least 20% of the owners. On August 10, 2016, Mr. Kiss provided his petition to the strata council members, which was signed by 48 owners. This was approximately 26% of the owners.

Under the SPA, the special general meeting would have had to be held by September 11, 2016. An AGM was already scheduled for September 13, 2016.

48. On August 14, 2016, 18 of those owners rescinded, in writing, their request for a special general meeting. This left 30 owners who had signed the petition, or approximately 16% of the owners. This was not a sufficient number to require the strata to hold a special general meeting.
49. The SPA is silent on whether or how a request for a special general meeting can be revoked by an owner. The applicant has not provided any evidence to explain how the original signatures were obtained, and so I find their signatures were not validly obtained and the 20% threshold was not met.
50. In the circumstances, the strata was not obliged to hold a special general meeting, and did not breach the requirements of the SPA.

**Did the strata council or the strata's property manager fail to act in the best interests of the owners or otherwise act improperly or in bad faith?**

51. The applicant has not provided evidence of bad faith or improper motivation on the part of the property manager or council members. Although the video excerpts he has provided show that some council members were frustrated with him, it also demonstrates that he was provided an opportunity to make his case to the owners and that they were aware of his position and were prepared to consider whether his allegations were true.
52. The applicant has not established that the contractor R was negligent or unqualified, or that the strata failed to comply in any way with its obligations under the SPA. The various complaints detailed by the applicant's representative have been addressed by the strata and property manager, with the evidence indicating that both the council and property manager have acted quickly and in a transparent, cooperative and straightforward manner as his complaints and demands were received by them.

53. The correspondence indicates that Mr. K, in particular, has acted with a great deal of patience and restraint in the face of very serious allegations against him. I find that the applicant's continuous allegations of bad faith and misconduct are entirely without merit.
54. The evidence submitted by both parties suggests that it is Mr. Kiss who fundamentally misunderstands the obligations and duties of the strata council and property manager. It indicates that he has resorted to any possible avenue to challenge or interfere with work being done to the strata building and the strata's governance. When he has raised these concerns to the owners, they have considered his position and ultimately disagreed with him. This is reflected in the owners' unanimous ratification of the council's conduct at the 2016 AGM.
55. Mr. Kiss's motivation is unclear, and it may be that he is genuinely concerned about the strata's conduct. The strata suggests that he was acting in bad faith, and that his actions have been aimed at gaining control of the strata in order to obtain the contract as resident caretaker. I do not find it necessary to make any finding on Mr. Kiss's motivations. He is not a party to this dispute in his personal capacity, and I decline to make any order against him personally.
56. I find that the strata council and property manager have not failed to act in the strata's best interest and have acted appropriately throughout this dispute.

## **DECISION AND ORDERS**

57. I order that the applicant's claims are dismissed.

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Maureen Abraham, Tribunal Member