



Civil Resolution Tribunal

Date Issued: November 1, 2017

File: ST-2016-00739

Type: Strata

Civil Resolution Tribunal

Indexed as: *Masse et al v. The Owners, Strata Plan VIS 6348*, 2017 BCCRT 103

B E T W E E N :

Paul Masse and Tomas Remington

APPLICANTS

A N D :

The Owners, Strata Plan VIS 6348

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen Abraham

INTRODUCTION

1. This is a decision of the Civil Resolution Tribunal (tribunal) about a procedural issue that arose in the course of the tribunal decision process regarding the addition of a party to this dispute.

2. In exercising my discretion under section 61 of the Civil Resolution Tribunal Act (Act), I have decided that it is necessary to add an individual owner as a respondent to this dispute.
3. Only the evidence and submissions relevant to this decision are referenced below. This is not a final decision as to the substance or merits of the tribunal dispute.

BACKGROUND

4. Paul Masse and Tomas Remington (applicants) are each owners of a strata lots in the respondent strata corporation. They are self-represented.
5. The Owners, Strata Plan VIS 6348 (respondent) is represented through strata council member Mr. D, who is a lawyer.
6. This dispute was filed December 23, 2016, and is about the use of common property by an individual owner and the strata's failure to address or resolve the issues arising from his actions.
7. The strata is a 22 unit mixed use (commercial and residential) strata complex, and its common property includes a guest suite intended to accommodate visitors of the strata's owners.
8. The substantive issues in this dispute revolve around an allegation that an owner in the strata continuously occupied the guest suite to the prejudice of the other strata owners. The applicants allege that an owner, Mr. Magnus, contravened the strata's rules and bylaws because he rented the guest suite to sex workers for the purpose of their commercial activities. They also allege that the strata failed to appropriately deal with his infractions and that Mr. Magnus, who was a strata council member, interfered with the strata owner's vote at the strata's annual general meeting.
9. Mr. Magnus is an owner of multiple strata lots (directly and through corporations), and who has also been strata council president throughout the relevant time. The applicants allege that Mr. Magnus's use of the common property was for personal

gain and unethical and he should be punished for his actions as an owner, proxy holder and council member. They have said that orders should be made against Mr. Magnus even though he is not named as a respondent.

10. The respondent's submissions state that Mr. Magnus participated in preparing the response submissions it filed, but he is not named as a respondent to this dispute. The strata says it would be unjust to make orders against Mr. Magnus because he is not a party to this dispute.
11. The parties provided their positions on whether Mr. Magnus ought to be added as a respondent. The applicants say it would be appropriate given the substantive issues arise out of Mr. Magnus' conduct. The respondent takes the position that the tribunal lacks the authority to add Mr. Magnus or resolve the applicants' complaints generally. It says adding him would be contrary to procedural fairness and the tribunal's governing legislation and regulations, although it has not referred to any specific section in support of its position.
12. I make no findings of fact about the applicants' claims or the strata's defence and, in particular, whether Mr. Magnus contravened the strata's rules, bylaws or otherwise acted improperly.

JURISDICTION AND PROCEDURE

13. 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.
14. 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 on recommendation by a case manager (also known as a tribunal facilitator).

ISSUE

15. The issue to be decided in this preliminary decision is whether the tribunal should exercise its discretion to order that Mr. Magnus be added as a party to this dispute.

DECISION AND ORDERS

16. Under section 3.6(1) of the Act, strata property claims within the jurisdiction of the tribunal include claims involving the common property of the strata, an action of the strata in relation to an owner, and the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual general meeting. Specific exceptions to the tribunal's jurisdiction are set out in s. 3.7(2) of the Act, none of which apply in this case. Under s. 10 of the Act, the tribunal must refuse to resolve claims that are outside the tribunal's jurisdiction. The tribunal only has authority to refuse to resolve a claim that is within its jurisdiction when one of the circumstances set out in s.11 of the Act apply.
17. The tribunal has the authority to raise the issue of adding a party on its own motion. Section 61 of the Act permits the addition of a party either on the tribunal's own initiative or at the request of a party. Nothing turns on whether the addition of Mr. Magnus is on the tribunal's initiative or at an applicants' request.
18. In light of section 61, it is clear that the respondent's position that the tribunal does not have the authority to order Mr. Magnus added as a party is without a reasonable basis.
19. This issues in this dispute fall within the kind set out in s. 3.6 and are not captured as an exception to the tribunal's jurisdiction. The respondent's position that the tribunal lacks jurisdiction to resolve the dispute generally is without merit. To that end, the tribunal does not have the authority to refuse to resolve the dispute.

20. The respondent also asserts that it would be procedurally unfair to add Mr. Magnus. I disagree. There are differences between the obligations of a strata and an owner. The respondents have asked for final orders which include orders against Mr. Magnus personally or which might affect him more than the other owners. I agree with the applicants that some of their claims could appropriately have been brought against Mr. Magnus directly.
21. If Mr. Magnus is not added as a party to this dispute and the claims that are properly against him are severed and left unresolved, nothing would prevent the applicants from starting a separate dispute naming him. Mr. Magnus has provided evidence and was involved in preparing the respondent's submissions in this proceeding despite not being a named party, and so the evidence available in a second proceeding would be the same as the current dispute.
22. Whether adding Mr. Magnus would cause prejudice to the parties is a factor that should be considered. Neither party has indicated that they would be prejudiced. Although adding Mr. Magnus may increase the complexity of the dispute or lead to a slight delay to allow him to make submissions, I find that any prejudice is outweighed by the benefit to the parties in avoiding a separate dispute involving the same allegations in this claim.
23. Addressing Mr. Magnus's involvement by way of a separate dispute would only lead to increased delay, expense and be inefficient. The tribunal's statutory mandate is to provide accessible, speedy, economical, informal and flexible dispute resolution services, and split processes do not serve those purposes. Fairness would suggest that Mr. Magnus should be entitled to provide submissions on his own behalf in his personal capacity given the allegations made against him.
24. Mr. Magnus is entitled to provide a response and submissions to the original Dispute Notice, and I order that he has two weeks from the date of this order to do so. I will leave it to the tribunal facilitator to set the exact timelines.

25. I order that Terry Magnus be added as a named respondent in this dispute. The final decision in this dispute will reflect the addition of Mr. Magnus in the style of cause.

Maureen Abraham, Tribunal Member