



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141

B E T W E E N :

Robin Hamilton

APPLICANT

A N D :

The Owners, Strata Plan NWS 1018

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Robin Hamilton (owner) owns strata lot 65 (SL65) in the respondent strata corporation, The Owners, Strata Plan NWS 1018 (strata). This dispute is

about the owner's access to records held by the strata and its property manager, Premier Strata Services Inc. (Premier).

2. The owner is self-represented and the strata is represented by a council member.

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, and 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 that there are no significant issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested.
6. 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

7. The issues in this dispute are:
 - a. Has the strata failed to properly respond to the owner's requests for documents? If so, should I order the strata to grant the owner "full access to all records and documents" kept by Premier on behalf of the strata?
 - b. Should I order the strata to reimburse the owner \$225 in tribunal fees?

BACKGROUND

8. I have only commented upon the evidence and submissions as necessary to give context to my reasons.
9. The strata is a residential complex located in Surrey and is comprised of 11 buildings, with a total of 186 strata lots. The owner has co-owned SL65 since April 2015, and she and the co-owner live in Kelowna. As noted above, the strata has retained a property management company, Premier.
10. The strata's relevant bylaws, filed in October 2013, do not make any reference to sections 35 and 36 of the *Strata Property Act* (SPA) or how requests for documents are to be handled.
11. As noted above, in this dispute the parties are self-represented. I note the owner's concern that the strata appears to have had the benefit of legal representation, as it did before the owner commenced this proceeding. While section 20 of the Act and the tribunal's rules refer to a general rule of self-representation, nothing prevents a party from having the assistance of a 'helper', including a lawyer, in drafting submissions which I find to be the case here.

EVIDENCE & ANALYSIS

12. This dispute reflects the owner's ongoing dissatisfaction with the strata's governance since 2012 and the strata's contrary view that the owner has been unreasonably demanding and suspicious.
13. The owner alleges the strata has denied her access to certain strata records and documents, contrary to section 36 of the SPA, despite "numerous requests in the past 3 years". As noted above, the owner asks for an order requiring the strata grant her "full access to all records and documents" kept by Premier.
14. A strata corporation functions through its strata council. Section 31 of the SPA states that in exercising the powers and performing the duties of the strata, each council member must act honestly and in good faith with a view to the best interests of the strata, and, exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
15. Given the tribunal's mandate includes recognition of the ongoing relationship between parties, the following comments are warranted at the outset of my analysis. Strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753). However, this strata has the benefit of the assistance of a management company, Premier, which suggests that less latitude is necessary.
16. Based on the owner's submissions, she wanted to do her own financial audit of the strata. The owner's requests for records stem from her concern that the strata council since 2012 has been dominated by 2 owners holding over 51% of votes, given the proxies they held at general meetings. The owner submits that no one has ever seen the proxies and council will not let anyone see the sign-in sheets at the annual general meetings (AGMs). On this point, the strata says that it has not retained sign-in sheets and the SPA does not require them to do so. The evidence supports the strata's assertion that it retained independent legal counsel to oversee the 2015 AGM to validate proxies. Based on the evidence before me, I

cannot conclude that anything at that AGM was handled inappropriately. I will discuss the strata's obligations to produce documents below, which is the central issue in this dispute.

17. The owner further submits that the strata council has hired a company owned by one of the strata council members to provide many services and maintenance contracts. The strata acknowledges that Gary Surgrim, a council member, is the strata's "main contractor". It is not clear to me whether Mr. Surgrim's work for the strata was through his own name or through Surgrim Style Management, or a combination. So long as Mr. Surgrim does not participate in any council vote about his or his company's contract and with respect to any payments to his company, there is no conflict of interest per se. There is nothing in the SPA that prohibits the rest of the council giving Mr. Surgrim maintenance contracts, which the strata says has saved the strata money. I say this because those contracts would not appear to engage section 34 of the SPA as the contracts are not for Mr. Surgrim's exercise of council powers or the performance of council duties. The owner's underlying point is that she cannot determine herself whether the strata's funds have properly been spent until she sees the relevant records. I have addressed access to records involving Mr. Surgrim below.
18. The owner also submits that every month the strata pays a company called "Ceridian" a large amount of money for payroll services but Premier says they do not have any records from Ceridian or what Ceridian does with the strata's money. The strata denies that Premier made any such statement about Ceridian. Among other things, the owner particularly wants to review all Ceridian records and also asks for an order that Premier keep such records in future, available for her review.
19. In contrast, the strata says that there is nothing inappropriate occurring with the strata's governance policies, including with respect to proxies and voting. The strata submits that it does not have to provide the owner with access to any record that falls outside section 35 of the SPA, and in particular it says that Ceridian records are excluded and do not need to be produced.

Requests for documentation

20. I have detailed below the particular categories of records at issue under section 35 of the SPA. Section 36 of the SPA provides that on receiving a request, the strata must within 2 weeks make the records and documents referred to in section 35 available for inspection by, and provide copies to, an owner, within 2 weeks.
21. There is no limit in the SPA as to the number of “section 35” records an owner can request to see or how often the owner can make a request. As also discussed below, there is no requirement in the SPA for a strata to provide an owner with access to records other than what is set out in sections 35 and 36. That said, in my view parties should act reasonably and in good faith. If a party fails to act reasonably in the circumstances, it is possible they may not obtain their desired remedy from the tribunal process. In this case, I cannot conclude the owner’s requests have been so numerous or without reason so as to conclude they were vexatious, as suggested by the strata.
22. Section 36(4) of the SPA states the strata may charge a fee for providing a copy of a record, up to the maximum amount provided in the SPA Regulation, which is currently \$0.25 per page. The strata cannot charge a fee for the inspection of a record under section 36 of the SPA. I pause to note that in the underlying evidence and in the submissions there is reference to Premier charging an owner a “supervision fee” and a “preparation fee” with respect to records inspections. While Premier may charge the strata a supervision fee if its property management contract contains such a term, the strata and Premier cannot charge an owner any fee for inspecting the “section 35” records. In this dispute, the owner did not challenge or seek reimbursement of fees she has paid in the past to inspect “section 35” records, and so I make no order in that respect.
23. The strata produced a January 5, 2017 “strata council resolution”. There is no indication that this ‘rule’ was ever ratified at a general meeting. Among other things, the resolution stated that strata documents can never be emailed or mailed under any circumstances. The resolution states that hard copies of files and

documents can be obtained “after the viewing session is done” and after payment of fees as provided for under the SPA and the strata’s bylaws.

24. Bylaws cannot override obligations in the SPA. In any event, the strata has no bylaws that address records retention or access to records by owners. Therefore, under the SPA the strata’s obligation to make records available for inspection or provide copies of documents is limited to what is set out in section 36 of the SPA, within the timeframes specified in the SPA Regulation. Section 36 of the SPA does not mandate that a “viewing session” occur first, and I find this council resolution cannot override the SPA’s mandatory requirement that the strata provide copies of section 35 records to an owner on request. In other words, I find the strata must not require the owner to attend Premier’s offices to view records before she requests copies of them.
25. The strata submits that it has no obligation to mail section 35 documents to the owner, which is something the owner requested on at least one occasion. The strata says that section 36 simply requires the strata to “provide” copies. I agree that the SPA does not require the strata to mail records to an owner, bearing in mind an owner may live outside the strata as the applicant owner does. However, for the purposes of this decision, I find that the circumstances dictate what is appropriate. I have found the owner has acted reasonably in her requests. So long as the owner is acting reasonably in her requests, I find the strata must mail the section 35 documents to the owner if she so requests. The strata is entitled to charge the owner its actual cost of sending the owner the requested section 35 documents by mail.
26. I turn then to the categories of records that the strata must prepare (section 35(1) of the SPA) and retain (section 35(2) of the SPA). I have set out below the required records that are relevant to this dispute, and their applicable retention periods under the SPA Regulation:
 - a. *Prepare and retain for 6 years*: minutes of general meetings and council meetings, including the results of any votes [section 35(1)(a)],

- b. *Prepare & retain current copies*: a list of assignments of voting or other rights by landlords to tenants under sections 147 and 148 [section 35(1)(c)(iv)],
 - c. *Prepare & retain for 6 years*: books of account showing money received and spent and the reason for the receipt or expenditure [section 35(1)(d)],
 - d. *Retain for 6 years*: written contracts to which the strata is a party [section 35(2)(g)],
 - e. *Retain permanently*: any decision of an arbitrator or judge in a proceeding in which the strata was a party, and any legal opinions obtained by the strata [section 35(2)(h)],
 - f. *Retain for 6 years*: the budget and financial statement for the current year and for previous years [section 35(2)(i)],
 - g. *Retain for 2 years*: “correspondence sent or received by the strata” and council [section 35(2)(k)], and
 - h. *Retain for 6 years*: bank statements, cancelled cheques and certificates of deposit [section 35(2)(l)].
27. As set out in *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, while an owner is entitled to review books of account and financial statements, for the purposes of section 35 this does not include the underlying bills, invoices or receipts reflected in financial statements. The SPA also does not require that any particular form be used for the books of account. As noted in *Kayne*, the purpose of the SPA is to provide information as to how money has been spent, and the books of account must show money received and spent. As also set out in *Kayne*, emails between council members are not producible under section 35 of the SPA.
28. In one of the strata’s emails, one council member wrote to Premier that invoices are not included in the documents that need to be “or can be shown” under the SPA. This is incorrect. While the *Kayne* decision supports the conclusion that the strata is not required to produce invoices under sections 35 and 36 of the SPA, there is nothing in the SPA that states invoices cannot be shown to an owner. In

another email, the strata council member wrote Premier and indicated that the *Personal Information Protection Act* (PIPA) does not allow for invoices to be made public. I was not provided any authority to support this assertion about invoices, particularly with respect to an individual owner in the strata having access to it. Personal information is defined broadly under PIPA and includes any information about an identifiable individual, *other than* his or her contact information and work product information. In other words, I find that PIPA does not prevent the strata from disclosing the names of their employees or the names and business contact information of companies with which the strata contracts. PIPA also does not prevent the disclosure of contractors' invoices to owners within the strata. The parties may wish to review the guidelines produced by the Information and Privacy Office for strata corporations, most recently on June 22, 2015, found at this address: <https://www.oipc.bc.ca/guidance/guidance-documents/>.

29. Next, while section 35(2)(k) requires the strata to retain "correspondence sent or received by the strata corporation and council", communications between council members are not listed. I find the strata is not required to retain or produce such records, as set out in *Kayne* and for the same reasons given in my earlier decision in *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69 at paragraph 36. However, communications between the council and Premier do fall within section 35(2)(k) and must be provided on request.
30. I turn now to the specific records the owner has requested and whether the strata failed to properly provide them.
31. Based on the evidence before me, the owner made requests to inspect records at Premier on 6 distinct occasions between April 2015 and July 2017. For the most part, she asked for "all" of the strata's records. I find the strata was not required to produce "all" of its records, because section 35 of the SPA expressly identifies required records and documents. The owner's suggestion in the evidence that she is entitled to "view as many documents as I see fit" is incorrect.

32. Often the strata did not respond or make the records available within the 2 week period required. For the most part, until June 2017, the strata only provided the books of account, including the general ledger, balance sheet, and budget comparison. The strata took the position that invoices, credit card statements, cell phone bills (the strata says it does not have a cell phone), AGM sign-in sheets, proxies, all did not have to be provided under section 35 of the SPA. In November 2016, the strata refused to produce the strata's entire insurance contract as I find it was required to provide, but ultimately provided it in January 2017.
33. Following a March 16, 2017 request for documents, there was a back and forth between the owner, Premier and the strata. Ultimately, arrangements were made for the owner to attend Premier's offices on June 9, 2017 to view documents. In Premier's email to the owner in advance of that inspection, it stated that the owner was not permitted to make phone calls or take photos during her inspection of the documents. The basis for the phone call restriction was so that the inspection could proceed without interruption. The photos restriction was not explained other than Premier stated the owner could pay for hard copies. There is nothing in the SPA that would support those 2 restrictions and I do not consider them reasonable on the evidence before me. The strata is however entitled to have the records inspection supervised provided the owner is not charged a fee for such supervision.
34. For the June 9, 2017 inspection, the strata says it made 5 years of documents available to the owner. The strata refused to forward emails to the owner and refused to mail hard copies of them to her. The strata told the owner on May 4, 2017 that if she wanted to receive copies of documents, she had to schedule a viewing appointment at Premier first and select which documents she wanted printed. In April 2017, the strata had told the owner that an inspection appointment would be for a maximum of 2 hours. The owner attended Premier to inspect documents on June 9, 2017, and according to the strata spent only an hour reviewing 5 years of documents and only took print-outs of the 2014 general ledger and financials. The strata says the owner spent only an hour and only asked for copies of a few financial records. In contrast, the owner says she was

permitted to view only 37 emails, which she suspects is not the entirety of emails covering 3.5 years. In July 2017, the owner asked for copies of all communication between the strata council and Premier, which I find the strata was obliged to provide to the owner, under the SPA.

35. To some extent the owner asked the strata to create reports for her review, such as a “list of companies the strata has hired for services that cost over \$1000”. The strata is not obliged to create reports or lists for an owner, apart from any obligations set out in sections 35 and 36 of the SPA.
36. It does appear that some records the strata was obliged to provide it initially refused or at least delayed beyond the required 2 weeks, but ultimately made them available for inspection on June 9, 2017. One example is the bank statements the owner requested on January 5, 2017.
37. Bearing in mind the case law discussed above, I find that a number of the records the owner requested in the last couple of years fall outside the scope of sections 35 and 36 of the SPA, such as:
 - a. General meeting sign-in sheets.
 - b. General meeting proxies.
 - c. Cell phone bills (although I acknowledge the strata’s submission that there are no cell phone bills as the strata does not own a cell phone).
 - d. Invoices and receipts (however, I consider credit card statements to reasonably fall within “bank statements” that must be provided under section 35(2)(l)).
 - e. Employee personal information, although nothing prevents the strata from disclosing the names of employees (however, written contracts fall within section 35(2)(g)).
 - f. Worksafe BC remittance statements.

- g. Documentation related to Ceridian, save for what is a written contract under section 35(2)(g).
 - h. Payroll remittance statements.
- 38. For a number of the records requested by the owner, the strata was and is obliged to make them available for inspection or provide copies on request, under sections 35 and 36 of the SPA:
 - a. List of assignments of voting rights (section 36(1)(c)(iv))
 - b. AGM minutes, even though they may be otherwise mailed to owners or available on the website, (section 35(1)(a))
 - c. Cancelled cheques, written by the strata or by Premier on the strata's behalf, including those paid to Ceridian (section 35(2)(l))
 - d. Credit card statements, which I find are included within bank statements that must be provided under section 35(2)(l)
 - e. Correspondence between the strata and Premier, including emails (section 35(2)(k))
 - f. Insurance contracts (section 35(2)(g))
- 39. It is not clear from the owner's submissions whether she is seeking production of legal opinions, which the strata must retain permanently. While she referenced disclosure under section 35(2)(h), her submissions did not expressly touch on this issue. As noted in my *Pritchard* decision cited above, the strata does not have to produce legal opinions about the owner while litigation is being contemplated. However, now that the litigation is resolved given my decision, the strata must produce any legal opinions on request.

Access to records outside of section 35 obligations

40. Even if the AGM proxies and Ceridian records held by the strata or Premier are not records that must be produced under sections 35 and 36 of the SPA, that is not necessarily the end of the matter.
41. As noted above, the owner alleges that 2 owners have for several years controlled the strata council with more than 50% of the votes, which the strata does not deny. I accept the strata's evidence that it has not retained the sign-in sheets. I also accept the evidence before me that independent legal counsel properly validated the proxies at the 2015 AGM. I find I do not have sufficient evidence to conclude the proxies were improperly handled in the past. As such, I find the circumstances do not warrant an order that the owner review proxies. In any event, it may be that the strata does not have the proxies, as there is no requirement that the strata retain them. The owner is entitled to a list of assignment of voting rights, under section 35.
42. I do note one council member's April 6, 2015 email to Premier that states council was not concerned about any transparency to owners, "especially considering who is coming to your office tomorrow and the fact that we just got re-elected with a vast majority at the end of February". This comment suggests the strata is not taking its obligations seriously enough. The strata is expected to act with transparency, and that the strata council has a vast majority of votes does not change that obligation.
43. That said, I cannot conclude on the evidence before me that the strata has acted inappropriately with its finances. Nonetheless, there have been delays and some failures to produce required documents. There is also insufficient evidence before me on which I could conclude that Mr. Surgrim properly abstained from council decisions involving his maintenance contract.
44. I find the owner has a legitimate concern in wanting to know who is on the strata's payroll, as detailed in Ceridian's records. The strata acknowledges that council member Gary Surgrim is the strata's "main contractor". The strata's April 2015

letter to the owners repeats the unfounded assertion that ‘contractors’ invoices are considered privileged information under the Privacy Act’ and that owners cannot see them.

45. I find that in the circumstances, it is reasonable for the owner to have access to the names of the strata’s contractors and of the strata’s employees, along with copies of invoices from Mr. Surgrim and/or his company for the last and current fiscal years. Given the owner’s submissions, the council should also provide the relevant copies of council minutes that set out the council’s votes on decisions about Mr. Surgrim’s or his company’s maintenance contract, so that the owner may determine whether council voted with quorum without Mr. Surgrim’s participation on that issue. I also find the owner is entitled to know the names of the strata’s contractors and employees, which I find would not breach PIPA. I am not prepared to make an order beyond this, for the purposes of this decision. The strata remains obliged to provide documents required under section 36 of the SPA, which I have summarized to some extent above. Nothing in this decision prevents the owner from making future requests for documents.

Respondent’s claimed expenses

46. The strata claims \$4,646.25 for “document preparation costs” charged by Premier to make the strata’s records available for the owner’s “viewing”. The strata says it incurred these charges in the hopes of resolving this tribunal dispute, and that it would be unjust to require other strata lot owners to bear the costs of the owner’s numerous and continued requests for strata records. There is insufficient evidence before me that the strata provided the owner with anything other than “section 35” records.
47. Even if the respondent were substantially successful in this dispute, I would not allow this claimed expense. As noted above and as quoted in the strata’s submission in this dispute, the SPA and its Regulation prohibit charging an owner a fee to inspect the strata’s records. I dismiss the respondent’s request for reimbursement of \$4,646.25.

48. There was no counterclaim filed by the strata. However, bearing in mind the tribunal's mandate that includes being mindful of ongoing relationships, for the same reasons I expressly dismiss the strata's request that in future the owner pay in advance Premier's "preparation costs" for viewing strata documents. If Premier charges such fees to the strata under its contract with the strata, that is a cost the strata will have to bear, given section 36 of the SPA and the SPA Regulation.

Tribunal fees

49. Under section 49 of the Act, and tribunal rules 129 and 132, 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.
50. The owner was the more successful party in this dispute. I order the strata to reimburse the owner \$225 in tribunal fees.

DECISION AND ORDERS

51. I order that:
- a. The parties should act reasonably with respect to requests for documentation. In particular, the owner should make requests in good faith and only as necessary, and the strata must provide all of the required documents as requested, within the 2-week timeframe set out in the SPA.
 - b. The strata must mail documents the owner reasonably requests and which the strata is required to provide, if the owner requests mailing. In that instance the strata is entitled to charge the owner the associated mailing expense in addition to the copying charge allowed under the SPA Regulation.
 - c. Without limiting the generality of sections 35 and 36 of the SPA, the strata must provide the owner, on her request, with copies of the following records, within the time periods identified for retention in the SPA Regulation:

- i. General meeting minutes
- ii. Credit card statements
- iii. A list of assignment of voting rights
- iv. Cancelled cheques, paid by the strata or by Premier on behalf of the strata.
- v. Correspondence between the strata and Premier, including emails.
- vi. Written contracts, including insurance contracts and informal written agreements such as with Mr. Surgrim or his business and with Ceridian.

52. I also order the strata to provide the owner, for the current fiscal year and the last fiscal year, the following: all invoices from Mr. Surgrim and/or his business, the names of the strata's contractors and employees, and copies of council meeting minutes that reflect council's decision to approve contracts involving Mr. Surgim or his business.
53. For the balance of the owner's request for future access to all of the strata's documents, I dismiss those claims. I order the strata to reimburse the owner \$225 in tribunal fees, within 30 days of the date of this decision.
54. I dismiss the strata's request for reimbursement of \$4,646.25 in expenses. As provided by section 167 of the SPA, I order the strata to ensure that no part of the strata's expenses with respect to defending this dispute are allocated to the owner.
55. 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.

56. 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.

Shelley Lopez, Vice Chair