



Civil Resolution Tribunal

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Civil Resolution Tribunal

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2018 BCCRT 84

B E T W E E N :

542456 BC Ltd.

APPLICANT

A N D :

Section 2 of The Owners, Strata Plan VIS 5030, The Owners, Strata
Plan VIS 5030, and Section 1 of The Owners, Strata Plan VIS 5030

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a summary decision following the parties' submissions about whether the Civil Resolution Tribunal (tribunal) should resolve this dispute and/or whether the applicant's claims should be dismissed for having been filed out of time.
2. The parties are self-represented, although both have had the assistance of legal counsel.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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. The issues in this dispute can fairly be resolved on the basis of the written documentation before me.
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 decision are whether the tribunal should refuse to resolve the applicant's revised claims for lack of jurisdiction and/or dismiss any of them based on their having been filed out of time.

EVIDENCE & ANALYSIS

- 8. I have only commented upon the evidence and submissions as necessary to give context to my reasons.
- 9. The applicant owned several commercial strata lots in the respondent strata corporation (strata). The strata is sectioned, with the respondent Section 2 being the commercial section, and the respondent Section 1 being the residential section.
- 10. The tribunal issued a Dispute Notice in November 2016, when the applicant still owned several strata lots, with Section 2 as the only named respondent. At the tribunal facilitator's suggestion, the applicant obtained an Amended Dispute Notice in September 2017, in order to add the strata and Section 1 as respondents, in addition to Section 2.
- 11. The applicant sold its strata lots in May 2017. Thus, when the Amended Dispute Notice was issued, the applicant was no longer an "owner" as defined in the *Strata Property Act* (SPA).
- 12. Based on a "revised claims" document prepared in November 2017 with the assistance of a tribunal facilitator, the applicant now has 4 substantive claims, summarized below:

- a. **Claim 1:** The strata placed liens on the applicant's property, which the applicant says were unreasonable and inaccurate. The applicant says it was overcharged for interest and legal fees for use of common areas, which the strata improperly treated as limited common property. The applicant wants the strata to reimburse it \$30,000 for interest and legal fees, because the strata and/or Section 2 acted in bad faith and refused to attend a hearing or mediation, causing the legal expenses. The applicant also wants another \$30,000 repaid for strata fees it says were overcharged during the period the strata refused access to common property.
- b. **Claim 2:** The applicant wants reimbursement of invoices for damages the strata caused to the applicant's property, when the strata restricted the applicant's use of common property. The applicant wants the strata to reimburse it \$25,000, which it says were caused by the strata's restrictions on use of common property that damaged the applicant's equipment and business.
- c. **Claim 3:** The strata refused to provide a proper accounting on which the applicant could pay and settle disputed amounts of strata fees, contrary to the BC Supreme Court's rulings. The applicant wants the applicant to provide that accounting of strata fees in accordance with the BC Supreme Court's orders, and wants the \$10,000 holdback ordered by the BC Supreme Court released. The applicant also wants the tribunal to assess the fairness of the strata's charges.
- d. **Claim 4:** The strata, the section executives, and their agents interfered with the applicant's right to properly occupy, or benefit from a full market value sale of its property, resulting in a \$150,000 loss, plus \$20,000 in legal expenses and "additional expenses of \$25,000". The applicant wants reimbursement of those amounts.

13. The respondents jointly make a number of submissions about why the tribunal should not continue to hear this dispute. I have addressed the parties' positions below.

Former owner status

14. The respondents say the tribunal does not have jurisdiction over former owners, citing prior tribunal decisions. This is true. However, as noted above, the applicant was an owner in November 2016, when the Dispute Notice was originally issued.
15. As referenced above, the applicant sold its strata lots in May 2017. In September 2017, an Amended Dispute Notice was issued after the applicant ceased being an owner in the strata.
16. Generally speaking, where the substantive claims have not changed, the fact that an Amended Dispute Notice was issued adding parties does not change the applicant's status. In other words, what matters is that when the original Dispute Notice was filed the applicant was an owner as defined in the SPA. This conclusion is consistent with section 189.1(1) of the SPA that requires that a person requesting resolution under section 4 of the Act must be a strata corporation, owner, or tenant. An "owner" is defined in section 1 of the SPA as being someone who is on title with the Land Title Office at the date of the request for resolution. Further, section 114(1)(b) of the SPA contemplates a party starting a tribunal dispute about money owing, then selling their strata lot, and then proceeding to determine whether the money at issue is owing.
17. Section 4 of the Act refers to a person "who has a claim" within the tribunal's jurisdiction may ask the tribunal to "resolve the claim". There can be multiple claims in a single dispute.
18. As noted above, Claims 1 to 4 set out above are the applicant's claims as of November 2017, revised during the facilitation phase of the dispute proceeding. Revision of claims, including the addition or removal of claims, is permitted by

section 61 of the Act and tribunal rule 95. In other words, Claims 1 to 4 are the consolidated claims currently before the tribunal.

19. Two of the claims that were revised in November 2017 were not contained in the original Dispute Notice or in the Amended Dispute Notice. In particular, Claim 3, which relates to the requested accounting and release of the \$10,000 holdback and the alleged failure to comply with the BC Supreme Court rulings, is new. Claim 4, that the applicant did not benefit from a full market value sale and sustained almost \$200,000 in damages, is also new.
20. For these new claims, Claims 3 and 4, I find the applicant's status is relevant because at the time they were first advanced the applicant was a former owner. The new claims specifically relate to matters that arose either as part of the applicant's sale of its strata lots or after the applicant sold them. They are wholly different from the original claims in the Dispute Notice when the applicant was an owner.
21. Given sections 4 and 189.1(1) of the Act, at the time the new Claims 3 and 4 were first made I find the applicant was not an "owner" within the meaning of the SPA. I therefore find that Claims 3 and 4 are not within the tribunal's strata property jurisdiction under section 3.6 of the Act. Moreover, the tribunal does not have enforcement powers, which appears to be an issue in Claim 3. I therefore refuse to resolve Claims 3 and 4, under section 10 of the Act.

Limitation defence

22. The applicant's original Dispute Notice was issued on November 15, 2016. There is a 2-year limitation period set out in the *Limitation Act*. Therefore, any claims that arose and were discoverable before November 15, 2014 were filed out of time.
23. The underlying claim in Claim 2 above relates to an incident that occurred around March 20, 2014, when the strata's common property furnace was shut off. It is undisputed that the issues in Claim 2 were not raised in the BC Supreme Court proceeding, although the respondents say it should have been.

24. To the extent the applicant argues that the respondents have waived their right to claim a limitation defence, I do not agree. None of the documentation or submissions before me supports that allegation, including the BC Supreme Court's Order that expressly states the respondents reserve the right to raise any relevant limitation defence.
25. The applicant has not provided any substantive defence to the allegation that its claims about the March 2014 property damage were filed out of time. Instead, the applicant relies upon arguments that the respondents have acted unfairly. I find those arguments are unsupported on this issue. The applicant's March 20, 2014 letter to the strata (or its agent) is clear that the applicant at that time knew it had a claim it could advance in court.
26. I find the applicant's claim for \$25,000 arising from the March 2014 property damage, as set out in Claim 2, is statute barred as it was filed out of time. I therefore dismiss Claim 2.

Subject areas outside tribunal's jurisdiction

27. I turn then to the 4th and final remaining claim before the tribunal, which is set out in Claim 1 above.
28. The respondent properly notes the tribunal cannot decide matters that are within the BC Supreme Court's exclusive jurisdiction, which matters are listed in section 3.6(2) of the Act.
29. I pause to note that any agreement by the parties that a matter could be heard by the tribunal is not determinative. The tribunal must determine its own jurisdiction, based on section 3.6 of the Act.
30. As noted, in May 2017 the applicant's lots were sold and certain sums were paid out to the respondents on the basis of a June 1, 2017 "Order Made After Application", which simply appends a May 10, 2017 settlement agreement as being the court's order. There were actually two Orders, relating to two separate Petitions

filed by the strata and Section 2, but each Order appends the same settlement agreement.

31. The May 10, 2017 settlement agreement was between the strata and Section 2 as petitioners (and not Section 1), with the applicant, a bank and 2 other corporate entities as respondents. The parties before me do not agree about what was agreed to in the settlement agreement that concluded the proceedings in the BC Supreme Court.
32. Claim 1 includes a claim the strata improperly filed liens against the applicant's property. It also includes the allegation that the strata overcharged the applicant for interest, and, for legal fees arising out of the strata's alleged bad faith in refusing to attend a hearing or mediation.
33. Section 116 of the SPA sets out how a strata can register a lien against a strata lot. Section 117 of the SPA addresses the strata's ability to force the sale of an owner's strata lot to collect money owing, through the BC Supreme Court. Here, the strata applied to the BC Supreme Court to do so, but based on the evidence before me the parties ended up settling without the Court deciding the matter on the merits.
34. Section 118 of the SPA addresses the strata's ability to claim "reasonable legal costs" and land title and court registry fees as, in addition to the amount claimed under a Certificate of Lien.
35. I agree with the respondents that the tribunal does not have jurisdiction to decide whether the liens were placed properly, given section 3.6(2)(e) and (f) of the Act. In the circumstances, I find that this includes whether the strata properly included amounts for legal fees and interest in the charges added to the Certificate of Lien. I find that all of the elements of Claim 1 are captured within the BC Supreme Court's exclusive jurisdiction to determine whether a lien or related charges should be removed from the property's title.

36. However, in the event I am incorrect about my conclusion above that Claim 1 falls within the BC Supreme Court's exclusive jurisdiction, I have addressed below the issue of whether Claim 1 has already been decided in the BC Supreme Court, also known as *res judicata*.

Res judicata argument & multiplicity of proceedings

37. The applicant in its submissions acknowledges that the issue of liens and priority charges are not before the tribunal. It is unclear to me why then those matters were included in the framing of Claim 1. In any event, it appears the applicant here says it claims non-priority legal fees and interest that the strata charged it. Under Claim 1, the applicant also wants \$30,000 as reimbursement for strata fees it says it was overcharged.

38. As noted above, the May 10, 2017 settlement agreement formed the basis for the BC Supreme Court's June 1, 2017 Order. The settlement agreement's terms relevant to Claim 1 may be summarized as follows:

- a. The applicant will pay "the usual" strata fees in the "normal course" until the sale of its strata lots, "with any arrears" of strata fees to be paid out of the sale proceeds.
- b. The applicant will pay \$15,000 from sale proceeds to the strata "for reasonable legal costs" and disbursements, collectively defined as "the priority fees and disbursements". The applicant will have the right to ask the Supreme Court Registrar to determine the amount of priority fees and disbursements payable.
- c. The strata will provide an accounting of the allocation of \$15,000 for priority fees and disbursements.
- d. The applicant will irrevocably direct its counsel acting on the sale of its strata lots to put \$10,000 from sale proceeds in trust, which is only to be released by binding agreement, Order of the Supreme Court, or Order of the tribunal.

- e. The applicant and the strata agree that any remaining issue of non-priority legal costs will be determined by the tribunal, “despite any wording that could be interpreted to the contrary in the Order filed November 25, 2016 in the Second Petition”.
 - f. Nothing in the settlement agreement prevents the applicant from “carrying on its claims” against the strata in the tribunal or disputing any claim of the strata.
 - g. Nothing in the settlement agreement prevents the strata from applying to the tribunal for non-priority costs under the strata’s bylaws or from raising any defences to claims made against it by the applicant, with the exception that the strata may not claim res judicata in the tribunal because of this settlement agreement.
39. The respondents submit that allegations of overcharging for strata fees, interest and other charges were resolved in the BC Supreme Court. I agree, in terms of priority fees and disbursements and for strata fees. Alternatively, at least to the extent those amounts are not settled, I find that is an issue for the BC Supreme Court Registrar.
40. I find the remaining issue in Claim 1 is whether non-priority legal fees and the claim for \$30,000 for “interest and legal fees” arising out of the respondents’ alleged bad faith, has already been raised and/or addressed in the BC Supreme Court. Based on the face of the settlement agreement that forms part of the court’s Order, I find that issue has not yet been addressed.
41. However, that is not the end of the matter. The respondents submit that there is a question about the extent to which res judicata applies given email correspondence between counsel. The respondents submit that if an interpretation of the BC Supreme Court Orders is required, then directions must be sought from the BC Supreme Court. I agree.

42. More significantly, even if Claim 1 involved undecided issues that fall within the tribunal's jurisdiction, I find I must consider the valid goal of avoiding multiplicity of proceedings. Given my conclusions about Claims 3 and 4 that I find must be heard by the BC Supreme Court, and the apparent intertwined nature of the various claims, I find the tribunal should refuse to resolve Claim 1 under section 11 of the Act, on the basis that it would be impractical to do so given the other matters that must be heard by the BC Supreme Court.

Tribunal fees and dispute-related expenses

43. 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 dispute-related expenses. I see no reason in this case to deviate from the general rule. Here, while I have refused to resolve Claims 1, 3, and 4, the applicant was not successful in Claim 2, which I have dismissed as it is statute-barred because it was filed out of time. I find the applicant is not entitled to reimbursement of its tribunal fees. For the same reasons, I find the applicant is not entitled to reimbursement of any dispute-related expenses.
44. The respondents claim reimbursement of their "non-priority legal costs" on a full indemnity basis, based on the BC Supreme Court Orders and the strata's bylaws. The respondents say this is an extraordinary case that warrants reimbursement, in the amount of \$21,237.25.
45. I decline to make the order requested by the respondents. First, as noted in the tribunal's rules, generally speaking the tribunal does not award reimbursement of legal expenses. I am not satisfied the facts of this dispute are extraordinary as submitted by the respondents. However, given my conclusions above about Claims 1, 3, and 4, nothing in this decision prevents the respondents from raising their claim for reimbursement of non-priority legal fees with the BC Supreme Court.

DECISION AND ORDERS

46. I order that the tribunal refuses to resolve the applicant's Claims 3 and 4, based on section 10(1) of the Act.
47. I order that the tribunal refuses to resolve the applicant's Claim 1, based on section 11(c) of the Act in that it is impractical for the tribunal to resolve.
48. Nothing in this decision prevents the applicant from pursuing its Claims 1, 3, and 4 in the BC Supreme Court.
49. I dismiss the applicant's Claim 2 as being statute-barred, because it was filed out of time.
50. 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.

Shelley Lopez, Vice Chair