



Civil Resolution Tribunal

Date Issued: April 24, 2018

File: ST-2017-003167

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fisher v. The Owners, Strata Plan VR 1420*, 2018 BCCRT 151

B E T W E E N :

Dawn Fisher

APPLICANT

A N D :

The Owners, Strata Plan VR 1420

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal). The respondent strata corporation, The Owners, Strata Plan VR 1420 (strata), asks the tribunal to refuse to resolve this dispute on the basis that it is too complex or

impractical for the tribunal to case manage or resolve, and that it may be outside the tribunal's jurisdiction. These are my reasons.

2. Only the evidence and submissions relevant to this decision are referenced below. This is not a final decision on the substance or the merits of this dispute.
3. The applicant, Dawn Fischer (owner), owns strata lot 12 (unit 212) in the strata. This dispute is about who must pay for unit 212's exterior window replacement and a previous owner's enclosure of unit 212's balcony for use as a second bedroom.
4. Lawyers represent both parties. Paul Mendes represents the applicant. Lisa Mackie represents the respondent.
5. For the reasons stated below, I dismiss the strata's request that I refuse to resolve this dispute. I order that the tribunal will hear the dispute and that it be directed back to the facilitation process.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
9. In addition, section 11 of the Act provides that the tribunal has discretion to refuse to resolve a claim within its jurisdiction. In particular, the tribunal may refuse to resolve a claim if issues in the claim or dispute are too complex for the tribunal's process or otherwise impractical for the tribunal to case manage or resolve. The tribunal can also refuse to resolve a strata property dispute under section 11 of the Act if the tribunal is satisfied that the BC Supreme Court would grant an order that the tribunal not resolve the claim or dispute. The tribunal may exercise its authority under section 11 of the Act at any time before the tribunal makes a final decision resolving the dispute.
10. 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).
11. 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.

ISSUE

12. The issue I must decide is whether the tribunal should refuse to resolve the applicant's dispute on the basis that it is too complex for the dispute resolution process, impractical for the tribunal to case manage or resolve, or outside the tribunal's jurisdiction.

BACKGROUND AND EVIDENCE

13. The strata is a 23-unit residential strata corporation located in Vancouver, British Columbia, established under the predecessor to the *Strata Property Act* (SPA), the *Condominium Act*. The strata plan identifies balconies located adjacent to individual strata lots as limited common property (LCP).
14. The owner purchased unit 212 in April 2000 and rents the unit. A previous owner had enclosed the LCP balcony designated to unit 212 (enclosure) in 1988 apparently with the strata's permission, having obtained development and building permits from the City of Vancouver.
15. The previous owner did not provide an indemnity agreement with respect to the enclosure.
16. In June 2016, the strata approved a special levy for replacing all exterior windows of the strata's building and some related interior repairs. In December 2016, during the course of the exterior window replacement work, the strata discovered rotted wood on the subfloor in unit 212 as well as on the enclosure wall of unit 212.
17. There are two substantive issues in the owner's dispute.
18. First, the strata wants the owner to reimburse it for window replacement and other costs relating to damage allegedly caused by the enclosure, totalling approximately \$32,425. Conversely, the owner says the strata is responsible for the cost to repair such damage.
19. Second, the owner decided to sell unit 212 in April 2017 and requested a Form B Information Certificate under section 59 of the SPA from the strata (Form B). The Form B contained a notation "Possible Legal Action Regarding unauthorized enclosure. Additional money may be charged back to this strata lot." The strata says it was obligated to notify prospective purchasers of any agreements relating to alterations to the strata lot as well as possible legal proceedings. The owner

says the issued Form B caused a prospective sale of unit 212 to collapse and she seeks \$21,500 in damages from the strata.

POSITION OF THE PARTIES

20. The strata says the owner's claims are much more complex than they appear, and are too complex or impractical for the tribunal to resolve. The strata also says that resolution of this dispute necessarily involves its own claims, not yet brought by the strata, including:
 - a. responsibility for past and prospective enclosure repair costs,
 - b. the owner's authority to use the enclosed balcony area as a bedroom,
 - c. potential claims against unit 212's previous owners about:
 - i. possible building code issues about construction of the original enclosure, and
 - ii. failing to inform the owner of obligations surrounding the enclosure and its use, and
 - d. potential claims against others involved in the purchase and sale of unit 212.
21. The strata says the tribunal is not set up for in-person hearings to accommodate witness testimony or assist in making decisions on credibility.
22. Finally, the strata also says some of the additional claims may be outside the tribunal's jurisdiction because of the need to add additional parties. The strata argues that all claims, claims the owner has made and the additional claims the strata intends to raise, should be heard together by the British Columbia Supreme Court. The strata says that allowing the tribunal to hear some, but not all related claims, could lead to inconsistent findings between the tribunal and the Supreme Court.

23. The owner argues that her claims are within the tribunal's jurisdiction and are not too complex, as they essentially involve:
 - a. Interpretation of the strata's bylaws to determine responsibility for the alleged additional costs of repairing the enclosure,
 - b. Determination if the strata acted in a significantly unfair manner when it included the notation of potential legal action on the Form B and, if so, what is an appropriate remedy?
24. The owner asks the tribunal to hear the dispute.

ANALYSIS AND DECISION

25. In considering whether to refuse to resolve this dispute, it is important to bear the following points in mind. First, the claims in this dispute are the claims put forward by the owner and do not include the additional claims suggested by the strata. The Dispute Notice was issued on July 17, 2017, and the strata has not filed a counterclaim. Second, the owner's claims are a direct result of the strata's actions. Third, the strata's proposed additional claims are not currently before the British Columbia Supreme Court. Fourth, the tribunal's mandate is to provide dispute resolution services in a speedy and economical manner recognizing the relationship between parties that is likely to continue. Finally, prior to the tribunal's creation, many strata property disputes were not resolved given the associated cost of seeking resolution in the BC Supreme Court.
26. I will first address the claims within the dispute that is before the tribunal.
27. The owner argues that she applied to the tribunal for dispute resolution services in order to achieve resolution in a speedy, economical, informal and flexible manner.
28. I accept the owner's argument that the substance of her claims relate to matters that involve the interpretation of the SPA and strata bylaws, the determination of significant unfairness, and related remedies.

29. The interpretation of the SPA and the strata's bylaws falls squarely within the tribunal's jurisdiction under section 3.6(1)(a) of the Act. Additionally, section 48.1 of the Act permits the tribunal to make an order directed at the strata or its council if the order is necessary to remedy a significantly unfair action, akin to section 164 of the SPA. The tribunal has resolved numerous disputes involving claims similar to all the owner's claims and I find that the tribunal has clear jurisdiction to do so.
30. As for the claim arising from the strata's notation on the Form B, the strata correctly notes that the owner will have to prove that she actually incurred damages as a result of the notation. By this admission, I do not see the Form B issue as too complex for tribunal to resolve.
31. I find the owner's claims are within the tribunal's jurisdiction under the Act and on their face, I find they are not too complex or impractical for the tribunal to resolve.
32. I turn now to the additional claims that the strata argues form part of its request that I refuse to resolve this dispute. Again, the strata has not filed a counterclaim nor has it commenced an action in the BC Supreme Court for these additional claims.
33. The strata argues that its claim for past and prospective enclosure repair costs is necessary in order to resolve the owner's dispute. I disagree. Prior to this dispute, the strata asked the owner to pay additional repair costs for the balcony enclosure, costs the strata incurred during remediation of its building envelope. The strata did not ask the owner to pay for repair costs that it may have incurred prior to the building envelope remediation. The strata's ability to collect the money from the owner lies in the SPA, its bylaws and any indemnity agreement the owner may have signed. Given there is no signed indemnity agreement, or any requirement that the owner provide such an agreement, the SPA and bylaws and the decision-maker's judgement will dictate who is responsible to pay for any additional enclosure repair costs related to the building envelope repair.

34. Further, I find that prospective repair costs are not relevant to this dispute since the strata's bylaws are open to change at any time in the future.
35. I agree with the owner that any argument about the use of the balcony enclosure as a bedroom is not relevant to this dispute. This dispute is about recent repair costs to the enclosure and that the strata placed a notation on the Form B. I fail to see how the use of the enclosure may have affected the actual amount of repair costs the strata has attempted to charge to the owner's strata lot. Further, it is that the strata placed a notation on the Form B that is relevant and not the content of the notation that alleges the strata lot may be the subject of future litigation.
36. The strata argues that other parties, such as previous owners of unit 212 and real estate professionals, may be necessary and could not be added to the dispute, suggesting that the strata's jurisdiction does not permit those parties to be added.
37. The owner's claims in this dispute are only against the strata. Namely, the actual repair costs associated with the enclosure and the strata adding a notation to the prescribed Form B. Any claims the strata may have against other parties with respect to faulty enclosure construction by a previous owner, or the withholding of information from the applicant owner are not relevant to this dispute.
38. Given my finding that the strata's proposed additional parties are not relevant to this dispute, I need not determine if the tribunal has jurisdiction to add them. However, I note that, whereas section 189.1 of the *Strata Property Act* (SPA) expressly limits applicants of a tribunal claim to strata corporations (and sections), owners, and tenants, there is no similar restriction on respondents. Further, in a recent tribunal decision where this tribunal exercised its discretion to refuse to resolve a similar dispute to this, the ability to add other parties under a strata property dispute in a counterclaim or third party claim was not argued. (See *Turenne v. The Owners, Strata Plan NW 1370*, 2017 BCCRT 44.)

39. Further, the owner submits that she does not hold the previous owner responsible, even if the tribunal dismisses her claims. It would be to her benefit to add those parties and she has chosen not to do so.
40. The strata argues the British Columbia Supreme Court is the only court of jurisdiction to hear this dispute, because the tribunal's electronic hearing processes are inadequate to assess credibility and that it is unable to conduct in-person hearings. While the tribunal's main hearing method is on the basis of written submissions, it is not true that the tribunal is unable to conduct in-person hearings, which could include videoconference. As the court noted at paragraph 35 in *Yas v. Pope*, 2018 BCSC 282, issues of credibility are routinely addressed on written records by a host of administrative boards, tribunals and commissions across multiple disciplines and areas of legal authority in British Columbia. The court rejected concerns about the tribunal's alleged inability to assess credibility, given sections 39(3) and 42 of the Act give the tribunal discretion to tailor its procedures to suit a given dispute, which includes asking questions of parties and witnesses.
41. I therefore find that the strata's concerns about the tribunal's ability to assess credibility or conduct in-person hearings to be unfounded.
42. I acknowledge the strata's arguments are primarily based on the potential complexity of the claims, including the additional claims. However, it has also argued that separating the owner's claims from the additional claims would offend the principles of natural justice and lead to inconsistent findings between the tribunal and the court. Given these arguments, I find I must consider exercising the tribunal's discretion under section 11(f) of the Act.
43. I do not agree that the principles of natural justice would be offended.
44. In *Yas*, the court considered an application under section 12.3 of the Act that it was not in the interests of justice and fairness for the tribunal to resolve the claims before it. The dispute before the court involved, among other things, the interpretation of the SPA and the strata's noise bylaws, which the court found

were not too complex for the tribunal to resolve. I acknowledge that the issues before the court in *Yas* differ from those before me here. However, the underlying need to interpret the SPA and strata's bylaws to resolve a non-complex dispute is the same. The court essentially found that the applicants had not given the tribunal adequate opportunity to resolve their dispute. I reach the same conclusion here, except it is the respondents that have requested the tribunal refuse to resolve this dispute.

45. I also do not agree that allowing the tribunal to hear this dispute would lead to inconsistent findings between the tribunal and court. If the strata is not successful in this dispute, it can seek leave to appeal the tribunal's decision. In that event, it would be open to the strata to seek permission of the Supreme Court to add other potential parties. Further, nothing prevents the strata from filing a counterclaim in this dispute, or seeks permission to do so given the time that has passed, to the extent the tribunal has jurisdiction. For other claims that might fall outside the tribunal's strata property jurisdiction, I do not agree that the outcome of the owner's dispute adversely impacts the strata's ability to pursue those other claims.
46. Therefore, I am not satisfied that if a claim were made under section 12.3 of the Act, the court would grant an order that the tribunal not resolve the claims or dispute.
47. For these reasons, I decline the strata's request that I refuse to resolve this dispute and find the tribunal must hear the owner's claims.

ORDERS

48. I order the strata's request that the tribunal refuse to resolve this dispute dismissed.
49. It follows that I order this dispute referred back to facilitation.
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.

J. Garth Cambrey, Vice Chair