



Civil Resolution Tribunal

Date Issued: May 23, 2018

File: ST-2017-006077

Type: Strata

Civil Resolution Tribunal

Indexed as: *Homewood v. The Owners, Strata LMS206* 2018 BCCRT 199

B E T W E E N :

Robert John Homewood

APPLICANT

A N D :

The Owners, Strata LMS206

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Catherine Sullivan

INTRODUCTION

1. The applicant Robert Homewood (applicant) owns a residential strata unit in the respondent strata corporation, The Owners, Strata Plan LMS206 (strata). The applicant is self-represented.

2. The respondent strata is a highrise strata corporation consisting of 146 residential strata lots located in Burnaby, British Columbia. The strata is represented by a strata council member.
3. The strata denied the applicant's request to install a glass windbreak on the balcony of his unit.
4. The applicant says the strata did not follow a fair or lawful process in denying his request to install the windbreak on his balcony. The applicant wants an order directing the strata to approve his windbreak request. He also wants a declaration that section 71 of the *Strata Property Act* (SPA) does not apply to his windbreak request and an order prohibiting the strata from referring his request to a $\frac{3}{4}$ vote. Alternatively, if section 71 does apply to his request and a vote is held, the applicant wants an order restraining the strata's behavior before and during a general meeting.
5. The strata say it acted honestly and in good faith at all times in response to the applicant's request. The issue was brought before the owners on two occasions. The applicant's request was denied for lawful and valid reasons and the dispute should be dismissed.
6. The applicant also filed a separate claim requesting reimbursement for expenses of \$225.00.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

12. The issue in this dispute is whether the strata treated the applicant fairly and lawfully in denying his request for a windbreak on his balcony. If the strata did not act fairly or lawfully, what is the appropriate remedy?

BACKGROUND AND EVIDENCE

13. On July 18, 2016, the applicant wrote to the strata council (council) requesting approval to install a glass windbreak on his balcony. The windbreak construction would be performed by a business that specializes in installing condominium patio enhancements (contractor). The applicant had personal experience with the contractor as it installed a previous windbreak system for him. The applicant suggested a representative could meet with council for a presentation and a portable showroom could be brought onsite for other owners to learn about the benefits, process and installation of the windbreak system.

14. The applicant and the contractor's representative were invited to attend the next council meeting on August 31, 2016. They were scheduled for a 15-minute presentation about the contractor windbreak system.
15. On September 7, 2016, the strata property manager wrote and thanked the applicant for the presentation at the August 31, 2016 council meeting. The property manager said council wanted the windbreak information to be presented to the owners. He asked the applicant to arrange for a representative to attend the next annual general meeting (AGM) in early 2017. He said council wanted to ensure the owners understand the benefits and liabilities of the windbreak system and that a full discussion at the AGM would avoid a situation at a later date where any owner might say there was non-compliance with section 71 of the SPA.
16. At its November 28, 2016 meeting, council decided to schedule a Town Hall meeting (town hall) with the owners in advance of the AGM. Council decided to move the windbreak system presentation and discussion with the owners from the AGM to the earlier town hall meeting on January 25, 2017. This information was communicated to the applicant. He was asked to arrange for the contractor to attend and make a presentation about the windbreak system at the town hall meeting. The agenda for the town hall meeting lists the "Contractor Presentation-Balcony Windbreak" presentation under the heading "Capital Projects".
17. For several days prior to the town hall meeting, council allowed the contractor to park a mobile display in the visitor's parking lot at the front of the strata building. The contractor was also permitted to set up an information table in the lobby prior to the meeting.
18. The contractor's representative attended and presented the contractor windbreak information to the owners at the town hall meeting.
19. The next discussion about the applicant's request occurred at the AGM meeting on March 2, 2017. The applicant did not attend the AGM. He gave his proxy vote to the contractor's representative to attend the meeting.

20. The AGM agenda listed the contractor windbreak issue under the heading “New Business”. The item reads “Town Hall Meeting Summary-Balcony Alteration (the Contractor) Presentation”.
21. When the representative showed up for the AGM, she says the property manager approached her and said the contractor was not on the agenda tonight and there was no point in her attending the meeting. She says she did not attend the AGM based on what the property manager told her.
22. The minutes from the March 2, 2017 AGM confirm the contractor windbreak issue was discussed during the “New Business” portion of the meeting and that no vote was taken regarding the applicant’s request to install the balcony windbreak.
23. On March 7, 2017, the applicant sent a letter to the property manager requesting an update from council about his windbreak request.
24. The property manager sent a reply email that same day and attached a copy of the March 2, 2017 AGM minutes. He referred the applicant to item 17, “New Business”. The AGM minutes under the sub-heading entitled “Balcony Alteration (The Contractor Product)” read: “the Council and the Owners discussed advantages and disadvantages of using the contractor’s Balcony Enclosure product. There appeared to be a general consensus amongst Owners present that based on the information available to date, the disadvantages outweighed the advantages”.
25. On August 1, 2017, the applicant asked the property manager to provide some updated information to council about the contractor windbreak system.
26. On August 10, 2017, the property manager wrote and told the applicant that his request to install the contractor windbreak on his balcony was denied by the council because the owners thought the alteration would have a negative effect on the exterior appearance of the building.

POSITION OF THE PARTIES

27. The applicant says the strata acted unfairly and unlawfully in denying his windbreak request. The applicant says he was told his request would be on the agenda of the next AGM as a voting resolution and it did not happen.
28. He says his proxy was wrongly told that the contractor windbreak issue was not on the AGM agenda. She left the meeting on that basis and was therefore not present when the windbreak issue was discussed. He says the information about the contractor system was not fairly presented by the strata at the AGM.
29. The applicant asks the tribunal to order the strata to approve his request for a windbreak. He seeks a declaration that the installation of the windbreak would not be a 'significant change" and requests an order prohibiting the strata from referring his request for a $\frac{3}{4}$ vote. Alternatively, if his request is referred for a $\frac{3}{4}$ vote, he seeks an order restraining the strata council's behavior before and during any general meeting. He also seeks a declaration that the strata's actions at the March 2, 2017 AGM meeting were unfair to him.
30. The respondent argues it acted fairly and lawfully at all times. It says the council discussed the applicant's request at the August council meeting. The issue was also discussed with the owners at the town hall meeting and at the AGM. The strata says the owners were canvassed and clearly indicated they did not want this alteration to the common property. The strata says this dispute should be dismissed.

ANALYSIS

Did the Strata comply with its duties under the SPA and the bylaws when it denied the applicant's request for a balcony windbreak?

31. As with any civil claim, the burden is on the applicant to prove his claim on a balance of probabilities.

32. Although not specifically stated, I have concluded from the applicant's submissions that he alleges the strata failed to comply with the obligations owed to him as an owner under the SPA and the bylaws.
33. The bylaws for Strata Plan LMS206 were filed with the Land Title office on March 5, 2012 (bylaws). It is undisputed the bylaws apply to the present claim.
34. Section 7 of the bylaws requires an owner to obtain the written approval of the strata corporation before making or authorizing an alteration to common property, including limited common property or common assets. It is undisputed the applicant's balcony is designated as limited common property.
35. The applicant complied with by-law 7. He submitted a written request to the strata for approval to install the contractor windbreak system on his balcony. He said representatives from the contractor could provide a presentation about the benefits, the process and the details about installation. He also said the contractor could supply a portable vehicle showroom that could be brought to the strata site.
36. The strata promptly responded and invited the applicant and the contractor's representative to the next council meeting on August 31, 2016. There are no minutes from that meeting before me but it is undisputed the presentation that had been scheduled for 15 minutes lasted for 40 minutes.
37. The property manager wrote to the applicant after the council meeting and asked him to arrange for the contractor's representative to attend the next AGM so the owners could understand the benefits and liabilities of the contractor windbreak system.
38. The parties are in disagreement about the meaning of the property manager's next statement. He said the contractor presentation to the owners at the AGM could avoid a later claim by any owner "citing non-compliance with Section 71 of the Strata Property Act".
39. The applicant says the statement meant that council thought section 71 applied. To him, it meant that his request would be on the agenda at the AGM as a resolution

and would require a $\frac{3}{4}$ vote pursuant to section 71 of the SPA. To him, it meant he was promised a vote.

40. He says his proxy did not stay for the AGM meeting because she was told “the contractor was not on the agenda”. To him, the contractor was not on the agenda because it was not presented as a voting resolution, which he believed he was promised.
41. The applicant’s proxy, through a written statement, says she also understood (from conversations with the property manager) there would be a vote at the AGM.
42. The respondent says the strata never promised the applicant there would be a vote at the AGM.
43. In September, 2016 the property manager asked the applicant to arrange for the contractor to ‘make a presentation” to the owners at the next AGM meeting. Council informed all owners after its November, 2016 meeting there would be a presentation by the contractor and a discussion about the windbreak system at the town hall meeting on January 25, 2017. For several days prior to the town hall meeting, the contractor was given permission to set up a mobile display parked in the visitor parking lot at the front of the building. There was also a contractor information table in the lobby prior to the town hall meeting. The contractor had a public and visible presence and access to the owners in the days leading up to the town hall.
44. I find that council and the property manager always used the words “presentation” and “information” in its correspondence with the applicant about the contractor windbreak system. I find the respondent took active steps after the applicant submitted his request to ensure that information about the contractor windbreak system was made available and accessible to all owners for their review and assessment.
45. At the town hall meeting, the applicant’s request was listed on the agenda as item number 1 “The Contractor Presentation-Balcony Windbreak”. Item number 4 was a

list of five 2017 proposed capital projects. Those five proposed capital projects later appeared on the AGM agenda as $\frac{3}{4}$ vote resolutions. The first capital project was one involving an expenditure for balcony glass. I will comment on the relevance of the balcony glass resolution at a later point in my decision.

46. There are no minutes from the Town Hall meeting but the contractor's representative confirms she gave a PowerPoint presentation and answered questions from the owners at the meeting. The respondent says in the discussion that followed the presentation, the owners indicated there was not enough interest in the windbreak installation for the matter to be included as a voting resolution on the AGM agenda.
47. The AGM agenda was distributed to all owners in advance of the meeting in compliance with the bylaws. It confirmed there were 5 voting resolutions for the 5 capital projects that had been discussed at the town hall meeting. The applicant's request and the contractor presentation are listed on the AGM agenda under item #15- "New Business". It reads "Town Hall meeting summary-Balcony Alteration (the contractor) presentation".
48. I find all owners including the applicant knew or can be presumed to know in advance of the AGM (when they received the AGM agenda) that a summary of the town hall discussion by the owners about the contractor windbreak issue would be reviewed at the AGM.
49. I find the applicant would also have known in advance of the AGM that his request was not scheduled for a vote.
50. No explanation was provided for the applicant's absence from the AGM. The applicant's proxy says she left before the start of the AGM because she was told the contractor was not on the agenda and the only discussion about balconies would be the resolution vote to replace the balcony glass. The applicant's proxy, who was also the contractor's representative says she spoke with some owners as she was leaving the meeting who expressed disappointment when she told them the contractor was not on the agenda.

51. No information was provided as to whether the applicant's proxy was given a copy of the AGM notice by the applicant or why she did not obtain or view one at the AGM. It is unfortunate that neither the applicant or his proxy was present at the AGM for the contractor discussion but it is a situation that arose as a direct result of decisions they each made.
52. I find it difficult to reconcile the evidence from the applicant's proxy (that she left because her item was not on the agenda) with the clear wording of the AGM agenda and the minutes. The contractor item was "on the agenda" and a discussion did take place at the AGM (in the absence of both the applicant and his proxy). I have made no finding about whether the property manager misled the applicant's proxy about the AGM agenda. I find it is more likely that comments were made in a particular context and either or both of them may have misunderstood what each was asking or saying.
53. The applicant was not present at the AGM. He has no firsthand knowledge but says he was told the contractor windbreak discussion was brief, mostly led by council members and it had a negative tone. He submitted notes from an owner who said there were some negative questions at the AGM. I do not find the owner's comment inconsistent with the AGM minutes that state there was a discussion about the advantages and disadvantages of the contractor system and the owners reached a consensus the disadvantages outweighed the advantages.
54. Until the claim was filed at the tribunal, the applicant did not follow-up with the strata about there being no vote at the AGM as he says he had been promised.
55. Based on my review of the evidence, I find the applicant misunderstood what the property manager told him. The property manager said that before making his decision about his request, council needed to fully consult with the owners and the AGM would provide that opportunity for consultation. The property manager referenced section 71 in the context of telling the applicant that evidence of a full discussion at the AGM would insulate council (after it made its decision) from any

later argument by an owner that the applicant's request should have been submitted to the owners for a $\frac{3}{4}$ vote.

56. The applicant's proxy said the applicant thought the balcony glass replacement resolution on the AGM agenda was a voting resolution for the contractor balcony windbreak. She says it was a reasonable assumption because the property manager had led the applicant to believe there would be a vote. I find it was not a reasonable assumption as the contractor presentation is clearly listed on the AGM agenda under Item 15 – New Business. Further, there should have been no confusion for the applicant between these two items as he had been present at the town hall meeting when the balcony glass replacement capital project was discussed. I find these two separate items were distinctly identified on the AGM agenda.
57. I have concluded the evidence presented by the applicant to support his claim is not sufficient or reliable for me to conclude on a balance of probabilities that he was promised a voting resolution at the AGM.
58. The strata is required by law to act honestly and make its decisions in good faith and with a view to representing the interests of the strata and all owners. The property manager's letter denying the applicant's request stated that council received a strong message from the owners at the town hall and at the AGM that they did not agree with the applicant's request.
59. I find the applicant has not proven his claim the respondent acted unlawfully or unfairly in its treatment of his request for a windbreak on his balcony. He was provided a full opportunity to present information about the contractor installation system to the owners and to seek their agreement and support for his request. The windbreak issue was canvassed at two meetings with the owners and the contractor was provided a full showcase opportunity to provide information about the system to all owners.
60. I find the respondent did not breach its duties owed to the strata and all owners when it denied the applicant's request. The applicant was not promised or owed a

resolution vote. The evidence established the respondent met with the applicant, learned about the contractor system and communicated that information to the owners for their views and opinions. The respondent facilitated the applicant and the contractor's contact with the owners. I conclude the respondent made its decision after full and fair consideration of the applicant's request.

61. For all these reasons, the applicant's claim is dismissed.
62. Because the applicant has not been successful in establishing a breach of the bylaws or statute, I do not need to consider the issue of remedies.
63. However, given the tribunal's mandate that includes being mindful of ongoing relationships, I make the following comments. Nothing in this decision prevents the applicant from making a future request to the strata for approval of a balcony windbreak including that the request be presented as a $\frac{3}{4}$ vote resolution to the strata owners. I have made my decision based on the information and evidence that was presented at this hearing. I was provided no photos or documents or any technical information about the size, appearance, height or details of the windbreak installation process. Based on the evidence I was provided, I would not have been able to decide whether the request would have been an alteration or a significant change to the common property. In the future, the owners and council may reach a different decision on the basis of new or different information or evidence. I also note that section 35 of the bylaws allow a party to refer a dispute to a strata dispute resolution committee. It may still be possible even at this late date for the applicant to ask the respondent for a section 35 referral.

DECISION AND ORDERS

64. I order that the applicant's dispute is dismissed.
65. The applicant has claimed \$225.00 in tribunal filing fees. Given the outcome of the dispute, I decline to order reimbursement for this amount.
66. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute tot the strata corporation's expenses

of defending the claim or in any monetary order issued against it. I order the strata ensure that no part of the expenses incurred by the strata in defending the owner's claims, are allocated to the owner.

67. 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.

Catherine Sullivan, Tribunal Member