



Civil Resolution Tribunal

Date Issued: June 6, 2018

File: ST-2017-002202

Type: Strata

Civil Resolution Tribunal

Indexed as: *C.2K Holdings Ltd. v. The Owners, Strata Plan K 577*, 2018 BCCRT 236

B E T W E E N :

C.2K Holdings Ltd.

APPLICANT

A N D :

The Owners, Strata Plan K 577

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Ashley Syer

INTRODUCTION

1. The applicant, C.2K Holdings Ltd. (owner), owns a commercial strata lot in the respondent strata corporation, The Owners, Strata Plan K 577 (strata), which contains both commercial and residential strata lots.

2. This is a dispute about bylaw amendments and the division of certain common expenses.
3. The owner is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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.
8. 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). Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 577, whereas, based on the filed strata plan, the correct legal name of the strata is The Owners, Strata Plan K 577. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

9. The issues in this dispute are:
 - a. Were the bylaw amendments properly approved at the special general meeting on April 28, 2016 (SGM)? If not, should the bylaw amendments be canceled? If so, are the amended bylaws enforceable?
 - b. Should I order that all future votes be held in accordance with the *Strata Property Act* (SPA)?
 - c. Are the common expenses of the strata corporation being divided in a way that is significantly unfair to the owner? If so, should I order them to be divided differently?
 - d. Should I order that the strata be divided into commercial and residential sections? If not, should I order that the strata hold an SGM and direct it to approve the creation of sections at that SGM?
 - e. Has the strata allocated parking spaces in a way that is significantly unfair to the owner?
 - f. Should I order the strata to change its accounting or other practices relating to Goods and Services Tax (GST)?

BACKGROUND AND EVIDENCE

10. I have considered all the evidence submitted by the owner and the strata, even if I do not refer to it in this decision.
11. The strata corporation is made up of 20 units. Two units are commercial, and 18 units are residential. The owner's unit is the largest commercial unit.
12. The relevant strata bylaws are those filed at the Land Title Office on October 18, 2011, and amended May 27, 2016 and December 5, 2016 (bylaws).
13. The owner has a unit entitlement of 13,157 out of 100,000, and has a voting entitlement of three votes in any annual or special general meeting.
14. On April 28, 2016, the strata passed bylaw amendments at the SGM by a $\frac{3}{4}$ vote (bylaw amendments). The bylaw amendments became enforceable on December 5, 2016, the date they were filed at the Land Title office, and were as follows:
 - (a) Strata Corporation KAS577 amends its bylaw to prohibit the rental or lease of any strata lot for a period of time less than two days.
 - (b) Any owner renting or leasing their unit for less than 6 months will be required to contribute a once yearly fee to the short term/vacation rental program as set forth by strata council, and abide by all the rules and regulations of this program.
 - (c) Owners leasing for 6 month terms or longer, must fill out a form K (Notice of Tenants Responsibility) and provide tenants rules and regulations as set forth by Strata Council. Failure to provide Form K within ten (10) days of commencement of a tenancy shall be cause for a \$200.00 fine against the Strata lot Owner.
 - (d) Move in fees for unfurnished 6 month or longer terms are \$200 on move in (non-refundable). Move in/move out fees for fully furnished 6 month or longer terms do not apply. New owners also need to pay a non-refundable \$200.00 move in fee.

15. The owner provided a proxy for his vote in favour of the bylaw amendments, on certain conditions. The conditions were to add language to clarify that the commercial owners would not be affected by the bylaw amendments.
16. The owner withdrew his proxy when the language he asked for was not included in the bylaw amendments. The owner sent an email to a strata council member, saying he was withdrawing his proxy because he felt uncomfortable voting on the bylaw amendments because they primarily affected the residential strata lots.
17. The owner says that, before the SGM a strata council member misrepresented his voting entitlement, and made the owner believe he only had 1 vote, and not 3. The owner says that he withdrew his proxy because of the misrepresentation, and that he would have voted against the bylaw amendments if the council member did not make the misrepresentation.
18. The other commercial unit owner, who has 1.5 votes, voted by proxy at the SGM. The other commercial owner's vote was cast in favour of the bylaw amendment.
19. The vote on the bylaw amendment was held by giving each strata lot owner present at the SGM in person or by proxy, 1 vote. The bylaw amendment passed with 14 votes in favour and 4 votes against.
20. The parties agree that the other commercial unit owner was not given the 1.5 votes that he was entitled to. The parties also agree that the vote was not held in compliance with section 128(1)(c) of the SPA, which requires a separate $\frac{3}{4}$ vote by both the residential and non-residential strata lots to pass.
21. The parties agree that the portion of the bylaw amendment that says owners must pay a short term/vacation rental fee is not enforceable.
22. The owner says that the common expenses are not being divided fairly between the residential and commercial owners. The owner has submitted as evidence minutes of some strata meetings held in 2001 and 2002 that he says suggest that, at some stage, the way common expenses were being divided changed.

POSITION OF THE PARTIES

23. The owner says that a vote approving bylaw amendments at a special general meeting was not held according to s. 128(1)(c) of the SPA, and that the bylaw amendments are invalid. The owner wants the bylaw amendments canceled, and an order that the strata hold all future votes according to the SPA.
24. The strata says that the bylaw vote did not technically comply with the SPA, but that the outcome of the vote would not have changed if it had complied. The strata also says that the bylaw amendment does not affect the owner, because it is a bylaw that affects only residential units. The strata says that it will hold all future votes according to the SPA.
25. The owner says that parking spaces are allocated, and certain common expenses are divided in a way that is significantly unfair to the owner and the other commercial owner. The owner wants more parking spaces allocated to his unit, separate sections created for residential and commercial strata lots, and common expenses to be allocated differently.
26. The strata says that the parking spaces and common expenses are divided fairly, and that sections should not be ordered.
27. The owner also asks for the strata to change its accounting practices relating to GST. The strata says the tribunal has no jurisdiction to make an order about GST.

ANALYSIS

Were the bylaw amendments properly approved at the SGM? If not, should the bylaw amendments be canceled? If so, are the amended bylaws enforceable?

28. Section 128(1)(c) of the SPA says that for strata corporations with both residential and non-residential strata lots, separate $\frac{3}{4}$ votes must be held for residential and non-residential strata lots. The strata did not do this at the SGM.

29. I accept that the owner had originally provided his proxy with instructions to vote in favour of the bylaw amendments, albeit with a proposed change of wording.
30. I find that the owner had the right to vote at the SGM, and declined to exercise his right to vote. I find, on a balance of probabilities, that the owner chose not to vote for the reason in his email, because the proposed bylaw amendments primarily affected residential owners and not commercial owners, and not because he was misled about his voting entitlement.
31. The other commercial owner voted in favour of the bylaw amendments. If a separate $\frac{3}{4}$ vote had been held for residential and commercial strata lots present at the SGM, I find that the bylaw amendments would have been approved by both the commercial and the residential owners.
32. I find, as the Court did in *Yang v Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, that even though the vote was not divided into separate votes, the residential and non-residential strata lots had the opportunity to vote.
33. I find that not holding 2 separate $\frac{3}{4}$ votes did not invalidate the result of the vote. In the result, I decline to order the bylaw amendments canceled.
34. The parties agree that the portion of the bylaw amendments that require strata lot owners to pay a rental fee for short term rentals is unenforceable.
35. The owner says the bylaw amendment for short term rentals is contrary to section 141 of the SPA. Section 141(2) of the SPA says that a strata corporation may restrict rentals in residential strata lots. Section 141 of the SPA does not apply to non-residential strata lots.
36. Section 121 of the SPA says that a bylaw is not enforceable if it contravenes the SPA or restricts the right of an owner to sell, lease, or otherwise deal with their strata lot. I find that the bylaw amendments restricting short term rentals are not enforceable against the non-residential strata lots.

37. I direct the strata to address the unenforceable provisions of the bylaw amendments at its next general or special general meeting.

Should I order that all future votes be held in accordance with the SPA?

38. The owner asks for an order that the all future votes comply with the SPA and abide by the voting rights of each unit. The strata has agreed that all future votes will comply with the SPA.

39. I order that the strata conduct all future votes in a way that complies with the provisions of the SPA based on the strata's Schedule of Voting Rights.

Are the common expenses of the strata corporation being divided in a way that is significantly unfair to the owner?

40. The owner says that the way the strata divides common expenses is significantly unfair to the owner.

41. Generally, in strata corporations, common expenses are shared by all strata lots, according to unit entitlement, which is based on the size of the strata lot. This means that sometimes, the division of common expenses will be unfair to some strata lot owners.

42. Section 48.1 of the Act contains language similar to section 164 of the SPA, which allows me to make an order to remedy a significantly unfair act by council (see *The Owners Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119). In order for me to find that something is significantly unfair, I have to find that it is oppressive, and goes beyond ordinary unfairness. One way something can be significantly unfair is if the strata or its council is acting in bad faith, or is doing something unjust or inequitable.

43. The owner has provided some evidence of what he says is the unfair allocation of expenses. Specifically, the owner pays his unit entitlement share of:

- (a) garbage and recycling common expenses, but also is required to have separate garbage and recycling pickup at his own expense;

- (b) gas utilities for hot water heat, but only benefits from three sinks in the common area washroom, and is required to have separate gas utilities in his unit at his own expense;
 - (c) electrical utilities, but only benefits from heat and light in the common area washroom, and is required to have separate electrical utilities in his unit at his own expense;
 - (d) HVAC and hot water boiler maintenance and replacement costs but derives no benefit from the HVAC system, and is required to have his own similar systems; and,
 - (e) Elevator repair and maintenance for an elevator that exclusively benefits the residential units.
44. I find that, where the owner is paying his unit entitlement for common expenses that he derives some but not much benefit from, the division is unfair but not significantly unfair. My conclusion is supported by the British Columbia Court of Appeal's decision in *Ernest & Twins Ventures (PP) Ltd. v Strata Plan LMS 3259*, 2004 BCCA 597. Expenses which benefit all strata lots, albeit to different degrees, must be paid by all strata lots.
45. I find that it is inequitable that the owner is required to pay for certain of his own expenses, while also paying his unit entitlement for common expenses that the owner derives no benefit from. I find that the division of those expenses is significantly unfair.
46. I order the strata, with input from the commercial owners, to review the division of common expenses to determine those that do not in any way benefit the commercial strata lots, particularly those that the commercial owners pay a separate service provider for, and those that the commercial strata lots cannot access.

Should I order that the strata be divided into commercial and residential sections?

47. Ordering the strata to create separate sections is a rare and drastic step. It is a step that should be reserved only for situations where costs are being allocated in a way that is significantly unfair, and where an order under section 48.1 of the Act would not resolve the problem.
48. However, I am not convinced, on the evidence before me, that ordering sections is the only reasonable remedy. For example, the creation of different “types” of strata lots may also be reasonable. The strata can also change the basis for calculating strata fees by a unanimous vote under section 100 of the SPA, and section 6.4 of the SPA Regulations. Further, given my order that the strata identify common expenses that do not benefit the commercial strata lots, I am not convinced the strata and all owners have had the opportunity to consider fully a different allocation of expenses.
49. For these reasons, I am reluctant to interfere with the democratic rights of the all owners. I therefore decline to order that the strata corporation create commercial and residential sections.
50. However, I direct the strata to hold a special general meeting within 6 months to consider and vote on a different method of allocating strata fees, such as the creation of sections or different types of strata lots, or a unanimous resolution as I have described above. Should the strata be unable to agree on a method of allocating its common expenses, it will be open to the owner to reapply to the tribunal for an order on a specific method of allocating common expenses.

Has the strata allocated parking spaces in a way that is significantly unfair to the owner?

51. There are 24 parking spaces and 20 strata lots in the strata. No strata lot, regardless of size, has more than 1 parking space assigned to it. The additional 4 spaces are rented out to unit owners or tenants for a fee, which is part of the strata’s income.

52. The owner argues that, because of his unit entitlement, he is entitled to 3 parking spaces. He also argues that council should designate and assign those 3 parking spaces as being next to one another and by the door nearest the owner's unit.
53. The strata says that 1 parking space has been assigned per unit, regardless of unit entitlement, since the creation of the strata.
54. Parking spaces on the strata property are designated as common property. Section 3 of the SPA says that the strata is responsible for managing and maintaining common property. Section 76 of the SPA allows the strata to grant an owner or tenant exclusive use of common property for a maximum of one year.
55. The bylaws say that the strata council may designate and assign parking spaces. There is nothing in the SPA or the bylaws that shows that any owner is entitled to a particular parking space, or to a parking space at all. I have not been provided with any municipal bylaw or zoning requirements.
56. Based on the evidence before me, I find that the strata has acted fairly in assigning 1 parking space to each owner.
57. I find that the owner is not entitled to more than 1 parking space or to a particular parking space location. I dismiss the owner's claim for reallocation of parking spaces. Nothing in this decision restricts the strata and owner agreeing to the owner's legal use of additional parking spaces for a fee, provided the parties comply with all relevant legislation and the strata's bylaws.

Should I order the strata to change its accounting or other practices relating to GST?

58. The owner asks for an order that the strata account for GST, so that the owner can claim back his portion of GST as a business expense, or for an order that the strata register for a GST account. The first request is about accounting practices. The second request is about registering for a GST account.

59. There is no evidence before me that satisfies me that the strata is required to keep its books in a particular way that separates out the portion of GST paid for the various common expenses of the strata. I decline to make an order that the strata change its accounting or bookkeeping practices to parse out the GST component of common expenses.
60. It is unclear from the evidence before me whether the strata is or is not required to register for a GST account and charge GST on strata fees to commercial strata lots. I find that the owner has not met the burden of proof, and decline to make an order.

DECISION AND ORDERS

61. I order that:
- a. The strata hold all future votes according to the SPA and its Schedule of Voting Rights.
 - b. The strata, with input from the commercial owners, review the division of common expenses to determine those that do not in any way benefit the commercial strata lots, particularly those that the commercial owners pay a separate service provider for, and those that the commercial strata lots cannot access.
 - c. The strata hold a special general meeting within 6 months to consider and vote on a different method of allocating strata fees, such as the creation of sections or different types of strata lots, or a unanimous resolution under section 100 of the SPA.
62. I dismiss all of the owner's remaining claims.
63. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The parties have each been successful in

some parts of the dispute. For this reason, I order that each party pay their own tribunal fees and dispute-related expenses.

64. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to the strata corporation's expenses of defending the claim. I order the strata ensure that no part of the strata's expenses with respect to defending the owner's claims be allocated to the owner.
65. 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.
66. 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.

Ashley Syer, Tribunal Member