



Civil Resolution Tribunal

Date Issued: August 7, 2018

File: ST-2017-004086

Type: Strata

Civil Resolution Tribunal

Indexed as: *Jedmen Holdings Inc. v. The Owners, Strata Plan NES 3120*,
2018 BCCRT 425

B E T W E E N :

Jedmen Holdings Inc.

APPLICANT

A N D :

The Owners, Strata Plan NES 3120

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Ashley Syer

INTRODUCTION

1. This is a dispute about bylaw amendments and whether the strata corporation, The Owners, Strata Plan NES 3120 (strata), is making all owners subject to a rental management contract between the strata and a third party (rental manager) that should not apply to all owners.

2. The strata has an optional rental pool that is managed by the rental manager, and that is governed by a rental management agreement between the rental manager and the strata. Some owners participate in the rental pool, and some do not.
3. The applicant, Jedmen Holdings Inc. (owner) is represented by Jed Stutchbury. The strata is represented by a 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.

ISSUES

8. The issues in this dispute are:
 - a. Is the strata acting in the interests of all owners by being involved in the rental pool? If not, should I order the strata to stop its involvement in the rental pool?
 - b. Is the Master Rental Management Agreement (MRMA) between the strata and the rental manager binding on all owners? If so, is the MRMA significantly unfair to owners that are not in the rental pool?
 - c. Is the strata restricting owners' access to common property and is it unreasonably imposing user fees for the use of common property?
 - d. Are the strata's bylaws 41-44 unenforceable? If so, should I order that bylaws 41-44 are invalid?

BACKGROUND AND EVIDENCE

9. I have considered all the evidence submitted by the owner and the strata, even if I do not refer to it in this decision.
10. The disclosure documents produced when the strata property was being built and marketed describe the strata as a "condominium hotel". Other documents filed at the land title office describe the strata in the same way. Regardless of this description, the *Strata Property Act* (SPA) applies to the strata.
11. The strata is made up of 1 commercial strata lot, and 48 residential strata lots. The residential strata lots, including the owner's strata lot, have restrictive covenants registered against them, that restrict the owners' ability to rent their strata lots on a short-term basis, except through an agreement with the rental manager in an optional rental pool.

12. 28 of 48 owners participate in the rental pool. Each owner who participates in the rental pool has a separate agreement with the rental manager for their participation in the rental pool.
13. The strata owns the commercial strata lot, and leases it to the rental manager. The lease between the strata and the rental manager was provided as evidence.
14. The rental manager manages the rental pool. The rental manager also provides some services to the strata that are separate from the rental pool (other services). At least some of the other services, including creating new key cards for owners or their visitors, are provided to all owners, not just owners who are part of the rental pool.
15. The strata council has created a committee called the Owners Rental Committee (ORC) that deals with issues arising from the rental pool. Some members of the strata council are also members of the ORC.
16. On November 8, 2016, the strata and the rental manager entered into a Master Rental Management Agreement (MRMA) that deals with the management of the rental pool.
17. The MRMA appears to impose certain conditions on all owners, whether or not they are part of the rental pool. The owner specifically takes issue with clause 6 and clause 10(h) of the MRMA. Both of those clauses were removed by agreement between the strata and the rental manager before this dispute came before me.
18. On April 12, 2016, the strata held its annual general meeting (2016 AGM). At the 2016 AGM, the strata approved bylaw amendments by $\frac{3}{4}$ vote (2016 bylaw amendments). The 2016 bylaw amendments place restrictions on owners' ability to rent their strata lots, including on a short-term basis, except through an agreement with the rental manager.
19. After the 2016 AGM, the owner asked the strata to make certain changes to the 2016 bylaw amendments.

20. On April 17, 2018, the strata held an annual general meeting (2018 AGM). At the 2018 AGM, the strata approved bylaw amendments by $\frac{3}{4}$ vote (2018 bylaw amendments). The 2018 bylaw amendments removed portions of the 2016 bylaw amendments that the owner had asked the strata to remove.
21. The owner and the strata have provided me with minutes of strata council meetings, as well as correspondence between the owner and the strata. I have considered each of these documents in reaching my decision.

POSITION OF THE PARTIES

22. The applicant argues that:
 - The strata is acting unfairly by putting the interests of the owners in the rental pool ahead of the interests of other owners.
 - It is not fair to make all owners a party to the MRMA, when some owners are not part of the rental pool.
 - The strata should not be involved in the rental pool or the rental management business.
 - Certain strata council members are acting in conflict because they are on strata council and on the ORC, and that certain council members are acting in conflict because they are part of the rental pool.
 - The strata is unfairly placing restrictions on owners that do not participate in the rental pool, including limiting access to common areas or charging user fees unreasonably for common areas.
 - The ORC should not be a committee of the strata council.
 - Bylaws 41-44 are unenforceable and unfairly restrict the rights of some owners in favour of others.

23. The applicant requests that I order:

- The strata to stop involving itself in the rental pool,
- The strata to act in the interests of all owners,
- The strata to not make individual owners a party to the MRMA,
- That all owners have an implied easement in common areas,
- That user fees should not be imposed reasonably or without being set out in a bylaw or rule,
- That the strata should not be managing the rental pool or assisting the rental manager, and
- That bylaws 41-44 are void.

24. The respondent argues that;

- The strata is putting considering the interests of all owners equally, and that all owners benefit from the MRMA.
- The parts of the MRMA that the owner complained about have been removed from the MRMA.
- The strata is involved in the rental management business because it leases the commercial strata lot to the rental agent, and has an interest in the rental management business' success.
- The strata is not involved in managing the rental pool.
- It is not logical that owners who are part of the rental pool should not be on strata council, since more than half the owners participate in the rental pool.
- The strata does not restrict any owner's access to common areas, and does not charge any user fees to owners for using common areas.

- The ORC is necessary to deal with rental pool issues that the strata council should not be involved in.
 - The strata has made changes to the bylaws that address all the owner's concerns.
25. The respondent requests that I dismiss the applicant's claim, because the strata has already made most of the changes the applicant requests in this dispute.

ANALYSIS

26. Section 3.6 of the Act explains which types of disputes the tribunal does and does not have jurisdiction over. The parts of the owner's claims that deal with conflicts of interest of strata council members are outside the tribunal's jurisdiction. Section 32 of the SPA explains the law regarding conflicts of interest. Section 33 of the SPA explains what remedies are available if there is a conflict of interest under section 32. The tribunal does not have jurisdiction to make orders under section 33 of the SPA. If the owner wants to bring claim about an alleged conflict of interest of a strata council member or members, the owner must bring that claim in the Supreme Court of British Columbia.
27. The parts of the dispute that deal with sections of the MRMA and the parts of the bylaws added at the 2016 AGM that have been removed are moot, and I will not address them in this decision.

Is the strata acting in the interests of all owners by being involved in the rental pool? If not, should I order the strata to stop its involvement in the rental pool?

28. A strata council is made up of strata owner volunteers. Section 31 of the SPA explains that council members are required to act in good faith with a view to the best interests of the strata corporation.
29. Section 3 of the SPA explains that the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 4 of the SPA explains that the

duties of the strata corporation must be exercised and performed by a strata council.

30. The strata council must act in the interests of all owners of the strata. Section 32 of the SPA explains strata council members' obligations dealing with conflicts of interests.
31. The strata acknowledges that there was some confusion in the past about what the strata council's involvement should be, but says the strata acknowledges that it should not be involved in running the rental pool, and says it has taken steps to separate the management of the rental pool from strata council business.
32. The strata says that it is involved in the rental management business because it leases the commercial strata lot to the rental manager. The strata is a party to the MRMA.
33. If the ORC was a separate committee independent from the strata, it would be free to come to the strata council with any issues involving the strata, the same as any group of owners could. However, the strata has acknowledged that the ORC is a committee of the strata council, and not a separate committee from the strata.
34. I find that by being a party to the MRMA and by having the ORC be a committee of the strata council, the strata is involved in the management of the rental pool, which is not in the interests of all owners. I find, on a balance of probabilities, that the strata council is not able to act in the interests of all owners when it is involved in the management of the rental pool, because the interests of rental pool owners and non-rental pool owners sometimes compete.
35. I order the strata to stop its involvement in the management of the rental pool.
36. I order the strata council to stop having the ORC as a committee of the strata council.

Is the MRMA between the strata and the rental manager binding on all owners? If so, is the MRMA significantly unfair to owners that are not in the rental pool?

37. I have ordered the strata to stop its involvement in the management of the rental pool.
38. Section 141 of the SPA explains that the strata cannot restrict the rental of strata lots, except to prohibit rentals, or place limits on the number of number of strata lots that may be rented. The MRMA places restrictions on the rental of strata lots in a way that is not permitted by section 141 of the SPA. I find that the MRMA is not enforceable.
39. I order the strata to not enter into another agreement with any rental manager that deals with the rental pool.
40. To the extent that the strata and the rental manager have agreements in place for other services provided to the strata and not the rental pool, those separate agreements are valid.
41. I direct the strata to ensure it enters into separate agreements for the other services that are currently being provided by the rental manager, including any services that were set out in the MRMA and not in separate agreements. I cannot make an order that the rental manager do something, because the rental manager is not a party to this dispute.
42. This order will not stop individual owners from continuing to enter into contracts with the rental manager, or stop a group of owners separate and apart from strata council from entering into an agreement like the current MRMA.
43. In light of my conclusion, I need not address the owner's claim of significant unfairness.

Is the strata restricting owners' access to common property and is it unreasonably imposing user fees for the use of common property?

44. There were some sections of the MRMA that appeared to allow a charge to owners for use of some common property. The owner and the strata agree that no owners have ever been charged user fees for use of common property. In any event, I have found that the MRMA is invalid.
45. The owner has not provided evidence that convinces me that there are restrictions being placed on a strata lot owners' ability to access common areas.
46. The owner complains that in order to get a new key card if a key card no longer works, the owner or the owner's guests have to get it from the front desk. The owner has not given me any evidence that there is any charge to the owner for a new key card. The owner has not given me any evidence that any owner has been charged a user fee for use of common property. I do not find that an owner having to interact with the rental manager for a service that benefits the owner is unfair to the owner.
47. I find that the strata is not restricting owners' access to common property.
48. I find that the strata is not unreasonably imposing user fees for use of common property.
49. For these reasons, I dismiss this aspect of the owner's dispute.

Are Bylaws 41-44 unenforceable? If so, should I order that Bylaws 41-44 are invalid?

50. Bylaw 44 provides that bylaws 41, 42, and 43 are only in effect when there is a Master Rental Agreement in place between the strata and the rental manager.
51. I have ordered that the strata stop its involvement in the rental pool, that the MRMA is not enforceable, and that the strata not enter into another rental management agreement. Therefore, bylaws 41, 42, and 43 are of no force and effect, by virtue of bylaw 44.

52. I direct the strata, at its next AGM, to put forward a resolution for amendments to its bylaws, to remove the bylaws that are of no force and effect.
53. This order has no effect on the restrictive covenants that may apply to the residential strata lots, and I have made no finding about the enforceability of those restrictive covenants.

DECISION AND ORDERS

54. I order that:
 - a. the strata stop its involvement in the management of the rental pool,
 - b. the strata council stop having the ORC as a committee of the strata council,
 - c. the MRMA is not enforceable, and
 - d. the strata not enter into another agreement with any rental manager that deals with the rental pool.
55. I dismiss all of the owner's remaining claims.
56. 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. I see no reason in this case to deviate from the general rule. I therefore order the strata to reimburse the owner for tribunal fees of \$225.
57. 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 amount ordered to be paid by the respondent, or any other part of the strata's expenses with respect to defending the owner's claims be allocated to the owner.
58. 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.

59. 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